

**IN THE CIRCUIT COURT OF PULASKI COUNTY, ARKANSAS
CIVIL DIVISION**

**DEBORAH SPRINGER SUTTLAR, JUDY GREEN, FRED LOVE,
in his individual and official capacity as State Representative,
KWAMI ABDUL-BEY, CLARICE ABDUL-BEY, and
PAULA WITHERS,**

PLAINTIFFS

v.

No. 60CV-22-1849

**JOHN THURSTON, in his official capacity
as the Secretary of State of Arkansas and in his official capacity
as the Chairman of the Arkansas State Board of Election Commissioners,
and SHARON BROOKS, BILENDA
HARRIS-RITTER, WILLIAM LUTHER,
CHARLES ROBERTS, WENDY BRANDON, JAMIE CLEMMER and
JAMES HARMON SMITH III, in their official capacities
As members of the Arkansas State Board of
Election Commissioners,**

DEFENDANTS

**PLAINTIFFS' MOTION TO COMPEL DEFENDANTS TO FILE AN ANSWER AND
FOR ENTRY OF AN ORDER SETTING A SCHEDULING CONFERENCE**

Pursuant to Ark. R. Civ. P. 16, Plaintiffs Deborah Springer Suttlar, Judy Green, State Representative Fred Love, Kwami Abdul-Bey, Clarice Abdul-Bey, and Paula Withers respectfully move for an expedited order compelling Defendants to file an answer to Plaintiffs' Complaint pursuant to Ark. R. Civ. P. 7(a) on or before August 24, 2022, and for entry of an order to hold a scheduling conference in this case.

In support of their motion, Plaintiffs state the following:

1. This is an action challenging Arkansas's recently enacted congressional map on the grounds that it violates Plaintiffs' constitutional rights under two separate provisions of the Arkansas Constitution: Article 2, Section 3, which guarantees Free and Equal Elections, and

Article 2, Sections 2, 3 and 18, which guarantee Arkansans equal protection under the state's laws. Time is of the essence in this action, and yet Defendants have not answered Plaintiffs' Complaint in nearly five months. Further delay of this action causes irreparable harm to Plaintiffs and the people of Arkansas.

2. Plaintiffs filed their Complaint on March 21, 2022 seeking injunctive relief and declaratory judgment against Defendants John Thurston, in his official capacity as the Secretary of State of Arkansas and in his official capacity as the Chairman of the Arkansas State Board of Election Commissioners, and Sharon Brooks, Bilenda Harris-Ritter, William Luther, Charles Roberts, Wendy Brandon, Jamie Clemmer, and James Harmon Smith III, in their official capacities as members of the Arkansas State Board of Election Commissioners.

3. On April 22, 2022, prior to filing an answer, Defendants wrongfully removed this action to the United States District Court for the Eastern District of Arkansas. On April 29, 2022, Defendants filed a motion to dismiss Plaintiffs' Complaint. Plaintiffs then filed a motion for remand, which the district court granted on July 13, 2022. Because the district court stayed the case pending the decision on Plaintiffs' motion for remand, Plaintiffs were not required to respond to Defendants' motion to dismiss in federal court. The district court never considered Defendants' motion because the court remanded this case back to this Court.

4. The day after this case was remanded, on July 14, 2022, Plaintiffs filed a notice of remand in this Court and served Defendants' counsel with the notice pursuant to Ark. R. Civ. P. 12(a)(3).

5. Defendants have never filed a responsive pleading in this Court and the deadline for doing so, which was August 16, 2022, has now passed. *See* Ark. R. Civ. P. 12(a)(3) (permitting 30 days to file a responsive pleading).

6. On August 17, 2022, Plaintiffs' counsel contacted Defendants' counsel to inquire as to when Defendants intend to file a responsive pleading. Defendants' counsel responded that Defendants' federal motion to dismiss "remains pending," though Defendants have not filed any motion to dismiss in this Court since this case was remanded over a month ago.

7. "After remand from federal court, a case stands as if it had never been removed from state court, and what happened in federal court has no bearing on the proceeding in state court." *NCS Healthcare of Arkansas, Inc. v. W.P. Malone, Inc.*, 350 Ark. 520, 526 (Ark. 2002) (citing *Steve Standridge Ins., Inc. v. Langston*, 321 Ark. 331 (1995) (relying on *Allstate Ins. Co. v. Bourland*, 296 Ark. 488, 758 S.W.2d 700 (1988), *cert. denied*, 490 U.S. 1006 (1989)). See also *B-W Acceptance Corp. v. Colvin*, 252 Ark. 306, 478 (1972); *Trinity Universal Ins. Co. v. Robinson*, 227 Ark. 482 (1957).

8. Accordingly, since Defendants did not file a response to Plaintiffs' Complaint in this Court before removal, they were required to do so by August 16, 2022 pursuant to Ark. R. Civ. P. 12(a)(3). See *NCS Healthcare*, 350 Ark. at 526 (long-standing Arkansas law requires Defendants to file a pleading or responsive motion upon remand).

9. In addition, in *NCS Healthcare*, the Arkansas Supreme Court contrasts the rule in Arkansas with the approach of sister states, such as Ohio, which do not require post-remand refiling: "Even in states that do *not* require a party to refile pleadings upon remand from federal court, the party is charged with the responsibility of making the trial court aware of the filings and must be able to show proof of service on the other party." *Id.* (citing *Banks v. Allstate Indemnity Co.*, 757 N.E.2d 775 (2001) (emphasis added)). Defendants have not filed any document to make this Court aware of their filings in federal court, nor have Plaintiffs been served with any such state court filing.

10. Defendants are not permitted to file an untimely motion to dismiss Plaintiffs' Complaint, and Plaintiffs would move to strike any such motion pursuant to the plain text of Ark. R. Civ. P. 12(a)(3). *See Looney v. Blair*, 2010 Ark. 479, *2 (holding that lower court did not abuse discretion in striking untimely responsive pleading even where default was unavailable).

11. Although the time for Defendants to file an answer has also elapsed, default is unavailable at this time. *See Ark. R. Civ. P. 55(f)*. Accordingly, Plaintiffs request that the Court compel Defendants to file an Answer to their Complaint in order to move this litigation forward and to obtain Defendants' position on the facts asserted in Plaintiffs' Complaint. *See Ark. R. Civ. P. 55(f)*, Addition to Reporter's Notes, 2004 Amendment (noting that "the plaintiff may move for an order from the circuit court directing the defendant to revise his or her answer to conform to the Arkansas pleading rules").

12. Plaintiffs further request that this Court direct the parties to appear at a conference to set a schedule in this case that will ensure that Plaintiffs can proceed with the prosecution of their claims without further delay. Plaintiffs also wish to discuss the appropriate scope of discovery; the possibility of obtaining admissions of fact and of documents to avoid unnecessary proof; and any other matters that would aid the Court in the proper disposition of the action. *See Ark. R. Civ. P. 16*.

13. This action must move forward. Since this case was remanded, Plaintiffs have been diligent. They have proceeded with discovery, including by serving discovery requests on Defendants and a third-party subpoena on the Arkansas Bureau of Legislative Research. Plaintiffs also attempted to serve a third-party subpoena on the Arkansas Geographic Information Systems Office on August 17, but service was unsuccessful. Plaintiffs intend to re-attempt service on Friday, August 19.

14. Plaintiffs' Complaint raises claims of utmost importance to the public. Defendants have delayed the proceedings for more than five months by their wrongful removal and failure to respond to the Complaint. As outlined above, further delay of this action causes irreparable harm to Plaintiffs and the people of Arkansas.

WHEREFORE, Plaintiffs respectfully request that the Court award the relief requested, act on an expedited basis, and grant all other just and proper relief.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on August 18, 2022, I electronically filed the foregoing with the Clerk of the Court using the Arkansas Judiciary Electronic Filing System, which shall send notification of such filing to the following counsel-of-record:

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