

IN THE CIRCUIT COURT OF PULASKI COUNTY, ARKANSAS
FOURTH 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

VS.

CV 2022-1849

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

ORDER

Comes now for consideration the Plaintiffs' Motion for Partial Summary Judgment and the Defendants' Motion for Judgment on the Pleadings and for Expedited Treatment, and based upon a review of the pleadings, the files and records of the case, the briefs submitted by the parties, and all other matters considered, the Court DOTH FIND:

Plaintiffs filed this case with the Pulaski County Circuit Clerk on March 21, 2022, alleging infirmities with the 2021 Arkansas federal congressional districting map ("The 2021 Map"). Plaintiffs pray that this Court enter an Order declaring the 2021 Map unconstitutional, enjoining the Defendants from implementing the Map, and compelling the adoption of a "valid" congressional map. On April 22, 2022, Defendants removed the case to federal court. On July 13, 2022, the U.S. District Court remanded the case, finding that it lacked subject-matter jurisdiction.

Upon remand back to this Court, Plaintiffs filed a Motion to Compel Defendants to File an Answer, a Motion which this Court addressed by Order entered August 25, 2022. The Court pointed

out that it does not routinely direct litigants how to plead in cases but warned the Defendants about the consequences of failing to respond.

Defendants filed an Answer on September 1, 2022. That same day, Plaintiffs filed a Motion for Partial Summary Judgment with accompanying Brief, and Defendants filed their own Motion for Judgment on the Pleadings and for Expedited Treatment. The case is currently set for a four-day bench trial commencing July 11, 2023. Proceedings are currently stayed by Agreed Order entered February 10, 2023. That Order specifies that the Court will resolve the two pending Motions. The Court agreed, at the parties' request, to rule on these pleadings without hearing.

Plaintiff's Motion for Partial Summary Judgment was filed approximately three hours before Defendants filed their September 1, 2022 Answer. It asserts that, no answer having been filed, the Court should find that there is no genuine issue as to material facts. Plaintiffs requested a summary judgment that would only apply to the factual averments in their Complaint. Defendants countered that this would essentially be the equivalent of a default judgment and that a summary judgment motion should only be entered to resolve a legal complaint. Defendants also pointed out that they filed an Answer when the case was in federal court prior to remand. The Court agrees with the Defendants and finds that the Plaintiffs' Motion should be and is hereby ordered DENIED. The Plaintiffs have not shown that they are entitled to summary judgment based on the facts or law before the Court.

Turning to Defendants' Motion for Judgment on the Pleadings, it essentially raises the same issues presented by Defendants' Answer. Defendants argue that this Court should enter an Order under Rule 12(c) finding that there is no merit to Plaintiffs' suit. Defendants argue that this Court lacks subject-matter jurisdiction under federal and state law, that the case is barred by sovereign immunity, that the Plaintiffs' claim under Arkansas' Free and Equal Elections Clause is irrelevant

because it only applies to fraud and intimidation, and that Plaintiffs have failed to state a claim under the Arkansas Constitution.

Plaintiff argues that the Court has subject-matter jurisdiction under Amendment 80 to the Arkansas Constitution and the Arkansas Declaratory Judgment Act, codified at Ark. Code Ann. § 16-111-101, et seq. Defendants reply that such a case would have original jurisdiction with the Arkansas Supreme Court and not the Circuit Court.

Article 8, Section 1 of the Constitution of the State of Arkansas creates a “Board of Apportionment” which is to make apportionment of representatives. Section 5 of that Article gives original jurisdiction to the Arkansas Supreme Court where a party is seeking to compel the board to perform its duties or to revise any arbitrary action of or abuse of discretion by the board in its apportionment process. Defendants argue that this is clear language indicating that the case should have been filed with the Arkansas Supreme Court. Plaintiffs argue that § 5 has only been applied to *State* legislative apportionment and that there are no similar cases finding that the section applies to federal redistricting. Without similar precedent showing that § 5 has been applied to federal redistricting, Plaintiffs argue that this Court would have “fallback” jurisdiction under Arkansas Constitutional Amendment 80, § 6(A) (“Circuit Courts are established as the trial courts of original jurisdiction of all justiciable matters not otherwise assigned pursuant to this Constitution.”)

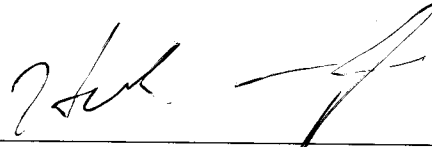
The Defendants’ position is more persuasive. Though cases like Harvey v. Clinton, 307 Ark. 567 (1992) and Rockefeller v. Smith, 246 Ark. 819 (1969) involve redistricting for the purposes of state legislative seats, the Court can find no such distinction in case law or the Arkansas Constitution. The language and inferences from Article 8 convince the Court that this case is subject to the original jurisdiction of the Supreme Court. Plaintiffs’ argument that federal apportionment should be considered a distinct cause of action subject to this Court’s general jurisdiction under Amendment 80 is unconvincing. Plaintiffs have not shown where this distinction is otherwise made

with respect to the Board of Apportionment. There does not appear to be such a distinction between state and federal apportionment, and the Court will not add language to create one.

Exclusive of Defendants' other arguments, this case should be dismissed pursuant to Rule 12(b)(1) of the Arkansas Rules of Civil Procedure. It is clear to this Court that it lacks subject-matter jurisdiction and that this case should have been filed in the Arkansas Supreme Court.

THEREFORE, the Court finds and determines that this case should be dismissed pursuant to Rule 12(b)(1) of the Arkansas Rules of Civil Procedure.

IT IS SO ORDERED.



HERBERT T. WRIGHT, JR. – CIRCUIT JUDGE

5-11-23

DATE