

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
WESTERN DIVISION

LIBERTARIAN PARTY OF ARKANSAS, *et al.*

PLAINTIFFS

v.

Case No. 4:19-cv-00214-KGB

JOHN THURSTON, in his official capacity as
Secretary of State for the State of Arkansas

DEFENDANT

SUPPLEMENTAL BRIEF IN SUPPORT OF DEFENDANT'S MOTION FOR STAY PENDING APPEAL

Over three weeks ago, on July 12, 2019, Defendant Arkansas Secretary of State filed a motion asking this Court to stay its order preliminarily enjoining him from enforcing Arkansas election law during his appeal of that order. That is what the federal rules required. *See* Fed. R. App. P. 8(a)(1) (parties “ordinarily move first in the district court” for a stay pending appeal). This Court has neither denied that motion nor “afford[ed] the relief requested” by the Secretary. Fed. R. App. P. 8(a)(2)(A)(ii). That delay has inflicted—and continues to inflict—irreparable harm on the people of Arkansas. As a result, the Secretary intends to ask the United States Court of Appeals for the Eighth Circuit to immediately stay this Court’s erroneous preliminary injunction order pending resolution of the Secretary’s appeal of that order. Absent a ruling by this Court granting the Secretary’s motion, the Secretary intends to file that motion on Wednesday, August 7, 2019.

In his earlier filings, the Secretary explained at length how this Court’s order conflicts with precedent and why it is likely to be reversed on appeal. The Secretary’s previous filings in support of a stay also detailed the harm to the public from Arkansas’s “inability to enforce its duly enacted [laws].” *Abbott v. Perez*, 138 S. Ct. 2305, 2324 n.17 (2018). That harm easily outweighs any speculative harm to the Libertarian Party from a stay pending appeal. (*See* Br. in Supp. of Stay, DE 35 at 8-10.) Indeed, the lack of a stay pending resolution of this Court’s

preliminary injunction order has resulted in—and undoubtedly will continue to cause—unnecessary voter and candidate confusion. (*See* Reply in Supp. of Stay, DE 43-1.) That harm increases daily, and this Court should immediately grant the Secretary’s motion. And to avoid further harm, absent such an order, the Secretary intends to seek immediate relief from the Eighth Circuit.

Dated: August 5, 2019

Respectfully submitted,

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