

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF ARKANSAS
FAYETTEVILLE DIVISION**

**GET LOUD ARKANSAS; VOTE.ORG;
NIKKI PASTOR; and TRINITY “BLAKE”
LOPER**

PLAINTIFFS

VS.

CASE NO. 5:24-CV-05121-TLB

**JOHN THURSTON; SHARON BROOKS;
JAMIE CLEMMER; BILENDA HARRIS-
RITTER; WILLIAM LUTHER; JAMES
HARMON SMITH, III; and JONATHAN
WILLIAMS, in their official capacities as
Commissioners of the Arkansas State Board
of Election Commissioners; BETSY
HARRELL, in her official capacity as
Benton County Clerk; BECKY
LEWALLEN, in her official capacity as
Washington County Clerk; and TERRI
HOLLINGSWORTH, in her official
capacity as Pulaski County Clerk**

DEFENDANTS

**BRIEF IN SUPPORT OF MOTION TO DISMISS
SEPARATE DEFENDANT BETSY HARRELL**

Comes now, Separate Defendant Betsy Harrell, in her official capacity as Benton County Clerk (Benton County, Arkansas), by and through undersigned counsel, and for her Brief in Support of Motion to Dismiss, states:

I. INTRODUCTION

Plaintiffs' Complaint alleges violations of the materiality provision of the Civil Rights Act of 1964 against: John Thurston, Sharon Brooks, Jamie Clemmer, Bilenda Harris-Ritter, William Luther, James Harmon Smith III, and Jonathan Williams in their official capacities as Commissioners of the Arkansas State Board of Election Commissioners; Betsy Harrell, in her official capacity as Benton County Clerk; Becky Lewallen, in her official capacity as Washington County Clerk, and Terri Hollingsworth, in her official capacity as Pulaski County Clerk. Plaintiffs' Complaint fails to state facts upon which relief can be granted against Separate Defendant Betsy Harrell, in her official capacity as Benton County Clerk (Benton County, Arkansas). The Complaint contains no allegations that any of the named Plaintiffs attempted to register to vote in Benton County, Arkansas and were denied the opportunity to do so. Accordingly, the individual Plaintiffs lack standing to its bring claims against Benton County, Arkansas.

II. LEGAL STANDARD

Pursuant to the Federal Rules of Civil Procedure, a pleading must contain a "short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2). To survive a motion to dismiss, a complaint must "contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id.* If a complaint does not allege a factual basis for recovery, it must be dismissed under Fed. R. Civ. P. 12(b)(6).

Plaintiffs' Complaint must be dismissed as to Separate Defendant Betsy Harrell, in her official capacity as Benton County Clerk, because it fails to satisfy pleading standard of Rule 8(a)(2) of the Federal Rules of Civil Procedure and fails to demonstrate standing against Betsy Harrell. When a complaint fails to meet the pleading standard, Rule 12(b)(6) requires dismissal of the action for "failure to state a claim upon which relief can be granted." Fed. R. Civ. P. 12(b)(6).

III. ARGUMENT

A. Plaintiff's Complaint fails to state sufficient facts upon which relief could be granted.

Section 10101 of the Civil Rights Act of 1964, also known as the materiality provision, states:

(2) No person acting under color of law shall—

(B) deny the right of any individual to vote in any election because of an error or omission on any record or paper relating to any application, registration, or other act requisite to voting, if such error or omission is not material in determining whether such individual is qualified under State law to vote in such election...

52 U.S.C. § 10101(a)(2)(B).

Plaintiffs have failed to establish a claim for violation of the materiality provision of the Civil Rights Act of 1964 by Separate Defendant Betsy Harrell. Plaintiffs' Complaint alleges that two named Plaintiffs, Nikki Pastor and Trinity "Blake" Loper, attempted to register to vote using GLA's online tool and that their applications were rejected due to the Defendants' enforcement of the wet signature rule. Compl. ¶¶ 18-19. However, neither Plaintiff attempted to register to vote in Benton County, Arkansas. Plaintiff Nikki Pastor is a resident of Fayetteville, Arkansas, in Washington County. Compl. ¶ 18. Plaintiff Trinity "Blake" Loper is a resident of Russellville, Arkansas, in Pope County. *Id.* at ¶ 19. Plaintiffs' Complaint contains no allegations or facts establishing that a resident of Benton County, Arkansas was prevented from registering to vote because of the wet signature rule. Further, Plaintiffs make no other allegations against Separate

Defendant Betsy Harrell, in her capacity as Benton County Clerk, or against anyone else in Benton County, Arkansas.

Plaintiffs' Complaint fails to state facts upon which relief can be granted. This Court should dismiss the Plaintiffs' Complaint against Separate Defendant Betsy Harrell pursuant to Fed. R. Civ. P. 12(b)(6).

B. Plaintiffs lack standing to bring the cause of action against Betsy Harrell in her official capacity as Benton County Clerk.

As set forth above, neither of the two individual Plaintiffs are residents of Benton County, Arkansas. Plaintiffs Nikki Pastor, a resident of Washington County, and Blake Loper, a resident of Pope County, base their claims in this suit on the rejection of their voter registration applications by Washington County and Pope County, respectively. There is no individual Plaintiff who alleges any harm or wrongdoing by Benton County or its officials.

Standing requires that that in order to seek injunctive relief, "a plaintiff must show that he is under threat of suffering "injury in fact" that is concrete and particularized; the threat must be actual and imminent, not conjectural or hypothetical...". *Bernbeck v. Gale*, 829 F.3d 643, 646 (8th Cir. 2016) (quoting *Summers v. Earth Island Inst.*, 555 U.S. 488, 493, 129 S.Ct. 1142, 173 L.Ed.2d 1 (2009)). Plaintiffs cannot establish that they are under any threat of suffering an injury in fact and neither are residents of Benton County, nor are there any factual allegations related to Benton County in Plaintiffs' Complaint. Accordingly, Plaintiffs cannot establish standing against Benton County and therefore Betsy Harrell, in her official capacity as Benton County Clerk, should be dismissed from this action.

IV. CONCLUSION

Plaintiffs' Complaint fails to state a claim upon which relief can be granted under the Federal Rule of Civil Procedure, thus this Court should dismiss the claims in the Complaint against Betsy Harrell in her official capacity as Benton County Clerk.

WHEREFORE, for the reasons set forth above, Separate Defendant Betsy Harrell, in her official capacity as Benton County Clerk (Benton County, Arkansas), respectfully requests that the Court grant her Motion and all claims against her be dismissed, for appropriate attorney's fees, and for all other relief, both in law and in equity, to which the Court determines she is justly entitled.

Respectfully submitted,

Betsy Harrell, in her official capacity as
Benton County Clerk (Benton County, Arkansas)

SEPARATE DEFENDANT

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CERTIFICATE OF SERVICE

I, Thomas N. Kieklak, do hereby certify that on the 2nd of July 2024, a true and correct copy of the above and foregoing was filed with the Clerk of the Court via CM/ECF, which shall send notification of the same to all counsel of record.

Thomas N. Kieklak

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