

**IN THE ARKANSAS STATE CLAIMS COMMISSION
LITTLE ROCK, ARKANSAS**

**HONORABLE JIM SORVILLO,
Representative, District 32
Arkansas House of Representatives,
And Candidate for ReE-Election to
District 32 in the November 3, 2020
General Election held in Pulaski County, Arkansas**

CLAIMANT

VS. CLAIM NO. 210669

**HONORABLE ASHLEY W. HUDSON,
Representative-Elect, District 32
Arkansas House of Representatives,
And Candidate for Election to
District 32 in the November 3, 2020
General Election held in Pulaski County, Arkansas;
PULASKI COUNTY ELECTION COMMISSION;
EVELYN GOMEZ, Chair, Pulaski County
Election Commission, in her official capacity;
JOSHUA A. PRICE, Member, Pulaski County
Election Commission, in her official capacity'
JOHN THURSTON, Secretary of State,
In his Official Capacity, and in his
Official Capacity as Chairman of the
State Board of Election Commissioners,**

And Secretary of the State Board of Election Commissioners;

And ASA HUTCHINSON, Governor, in his official capacity **RESPONDENTS**

**VERIFIED RESPONSE TO CLAIMANT’S “VERIFIED COMPLAINT CONCERNING
ELECTION RETURNS FOR ARKANSAS HOUSE OF REPRESENTATIVES DISTRICT
32, FROM THE NOVEMBER 3, 2020 GENERAL ELECTION HELD IN PULASKI
COUNTY, ARKANSAS PURSUANT TO ARKANSAS CONSTITUTION ARTICLE 5,
SECTION 11, AND ARKANSAS CODE ANNOTATED SECTION 7-5-805(b)”; AND
MOTION TO DISMISS**

Comes now Honorable Ashley Hudson, Respondent, by and through her attorney, Jennifer A. Waymack Standerfer, and for her Response to Claimant’s Verified Complaint and her Motion to Dismiss, states:

1. Respondent states that this action speaks for itself and no further pleading is necessary. Respondent otherwise denies the allegations contained in paragraph 1 of Claimant’s Complaint. Stating affirmatively, Claimant’s remedial relief is not available through the Claims Commission, the General Assembly, or the House of Representatives:

(A) Declaratory action is under the authority of the courts. *Ark. Code Ann. §§ 16-111-101, et seq.*;

(B) Interpretation of the Arkansas Constitution properly rests with the Courts, and not the Claims Commission or the legislative branch; the Supreme Court has the responsibility of interpreting the United States Constitution and the state courts that of interpreting the state constitutions. *Marbury v. Madison*, 1 Cranch 137, 2 L.Ed. 60 (1803);

(C) The Claims Commission is subordinate to the General Assembly, the Governor, and the Secretary of State, and has no authority to order those officials to grant Claimant’s requested relief. Likewise, the House of Representatives, a legislative body, has no authority to order the Governor, the chief executive official in the State, to

call a special election or the Secretary of State, an independent constitutional officer of the executive branch, to perform or refuse to perform any act. *Arkansas Constitution, Article 4, §§ 1 and 2; and*

(D) The Arkansas Claims Commission has extremely limited jurisdiction to make a recommendation to the House of Representatives concerning “any contest to the eligibility, qualifications, or election to serve as a member of the House of Representatives”. *Ark. Code Ann. § 7-5-805(b)(1); § 19-10-204(a)(3)*. Merriam-Webster defines “election” as: (1) “an act or process of electing”; or (2) “the fact of being elected”. *Merriam-Webster.com* 2011. <https://www.merriamwebster.com> (30 November 2020). The Claims Commission process concerns “the fact of being elected”. It does not grant the Claims Commission jurisdiction to review the administrative conduct and legality of wholesale elections which could effect the outcome of every office on the ballot. The House of Representatives and the General Assembly delegated the authority to review the “act of process of electing” to the courts in its creation of election contests to contest the “certificate of vote” for district offices. *Ark. Code Ann. § 7-5-801*.

2. Respondent denies paragraph 2 of Claimant’s Complaint.

3. Respondent denies paragraph 3 of Claimant’s Complaint. Stating affirmatively, as a subordinate and quasi judicial, quasi executive, and quasi legislative entity, the Claims Commission has no jurisdiction over the Governor, General Assembly, Secretary of State, House of Representatives, Pulaski County Election Commission, or Representative-Elect Ashley W. Hudson. The Claims Commission’s authority is merely ministerial in taking evidence and testimony and providing a recommendation to the House of Representatives under *Ark. Code. Ann. § 7-5-805*. Likewise, the House of Representatives has no jurisdiction over the named parties concerning the administration, conduct, and legality of the 2020 General Election; that lies properly in the courts under *Ark. Code Ann. § 7-5-801* and through application for extraordinary writs.

4. Respondent denies paragraph 4 of Claimant’s Complaint. Stating affirmatively, venue belongs in the Pulaski County Circuit Court under *Ark. Code Ann. §§ 16-60-101, et seq. and § 7-5-801*. Claimant admitted venue was proper in the

Pulaski County Circuit Court in his original complaint. (**Exhibit 1, Arkansas Supreme Court, Record Pleadings; page 4, paragraph 4**). Claimant is forum-shopping for a governmental entity that will provide the relief that he desires, despite the fact that the relief he desires is not authorized by law, and that his preferred and appropriate forum has denied him that relief in the manner within which he requested it.

5. Respondent lacks sufficient knowledge to either admit or deny paragraph 5 of Claimant's Complaint, thus same is denied.

6. Respondent lacks sufficient knowledge to either admit or deny, thus same is denied.

7. Respondent admits paragraph 7 of Claimant's Complaint.

8. Respondent admits paragraph 8 of Claimant's Complaint.

9. Respondent admits paragraph 9 of Claimant's Complaint.

10. Respondent denies paragraph 10 of Claimant's Complaint.

11. Respondent denies paragraph 11 of Claimant's Complaint. Stating affirmatively, Claimant filed substantially the same case and controversy in the Pulaski County Circuit Court under Ark. Code Ann. § 7-5-801 before certification of the election results in this case; the trial judge specifically noted in his ruling that this action would be appropriately filed after certification of the election results. (**Exhibit 1, Arkansas Supreme Court, Record Pleadings; pages 3-9, 85-88**). Claimant did not request mandamus, prohibition, or any extraordinary writ. Rather than nonsuit and refile, Claimant filed notice of appeal, and continues to pursue relief on that same case and controversy with the Arkansas Supreme Court (Case No. CV-20-666). The Arkansas Supreme Court granted his motion for expedited briefing and responses on Wednesday, November 25, 2020, and withheld ruling on his motion for preliminary injunctive relief. This appeal is still pending before the Arkansas Supreme Court. Claimant has taken no action to withdraw this case from the consideration of the Arkansas Supreme Court. Also, on Wednesday, November 25, 2020, the Claimant filed this action with the Arkansas Claims Commission concerning substantially the same case and controversy and requesting substantially the same relief, however restated, as is currently pending before the Arkansas Supreme Court.

FACTS

12. The Respondent admits that the 2020 General Election took place in Pulaski County, Arkansas on November 3, 2020. Respondent lacks sufficient knowledge to either admit or deny the remainder of paragraph 12, thus same is denied.

13. The Respondent lacks sufficient knowledge to either admit or deny paragraph 13, thus same is denied.

14. The Respondent lacks sufficient knowledge to either admit or deny paragraph 14, thus same is denied.

15. The Respondent lacks sufficient knowledge to either admit or deny paragraph 15, thus same is denied.

16. The Respondent lacks sufficient knowledge to either admit or deny paragraph 16, thus same is denied.

17. The Respondent denies paragraph 17 of Claimant's Complaint.

18. The Respondent denies paragraph 18 of Claimant's Complaint. Stating affirmatively, "In an election contest, official election returns are considered prima facie correct and the party contesting the election bears the burden of offering proof to set aside the results of the election." *Binns v. Heck*, 322 Ark. 277, 908 S.W.2d 328 (Ark. 1995). *Phillips v. Earngey*, 321 Ark. 476, 902 S.W.2d 782 (1995). If these ballots were disqualified, illegal, or unlawful as Claimant Claims, then there is no right to anonymity; Claimant must attempt to meet his burden by interviewing the "disqualified", "illegal", or "unlawful voters" to ascertain who they cast their ballots for. "The law protecting the secrecy of the ballot is intended to apply only to lawful voters, and does not ordinarily apply to or protect illegal voters, who can be required to testify as to how they voted at an election." *Willis v. Crumbly*, 268 S.W.3d 288, 371 Ark. 517 (Ark. 2007). If these ballots were legal votes, then they were appropriately counted and Claimant has no cause of action.

19. The Respondent admits that Exhibit 1 to Claimant's Complaint was distributed to the Pulaski County Election Commission on or about November 12, 2020. Respondent otherwise denies the allegations contained within paragraph 19 of Complainant's Complaint. Stating affirmatively, Mr. Poe stated in Exhibit 1 to

Claimant's Complaint that the three hundred twenty-seven (327) ballots in question were "placed in a mislabeled box, processed, and tabulated alongside the approved ballots." Mr. Poe further explains that these ballots were from the category "Disqualified Absentees" despite being mislabeled as "Provisional Absentee Ballots - Optional Verification Signed." While the ballots themselves were removed from the voter secrecy envelope and cannot be retrieved, the voter materials within which the absentee ballots were included have been retained. Respondent Hudson requested the voter materials for those ballots that were voted in the 32nd District on November 16, 2020 under the Freedom of Information Act of 1967, §§ 25-19-101, et seq., and has not yet received full compliance with that request (**EXHIBIT 2**). However, the Pulaski County Board of Election Commissioners, through staff, can and has reviewed the records and determined which ballots were allegedly erroneously tabulated and who they belonged to. (**EXHIBIT 3**). County staff provided Exhibit 3 and an explanation of Exhibit 3 to counsel for Claimant and Respondent on November 25, 2020, the same date that the Claimant filed the complaint with the Arkansas Claims Commission. Despite county staff's communication advising that only twenty-seven (27) ballots from the box that was allegedly erroneously tabulated were voted in the 32nd District, Claimant improperly asserts thirty-two (32) in his complaint. Exhibit 3 lists the thirty-four (34) people whose ballots were in the box of allegedly, erroneously tabulated ballots who voted in the precincts within which the 32nd District was voted. Because some of these were precinct splits, the column "Explanatory Text" lists which District the ballot was voted in. The twenty-seven (27) names marked H32 represent the twenty-seven (27) ballots in question.

20. The respondent lacks sufficient knowledge to either admit or deny paragraph 20, thus same is denied.

21. The respondent lacks sufficient knowledge to either admit or deny paragraph 21, thus same is denied. Stating affirmatively, there is no evidence of the alleged thirty-two (32) ballots; only bare accusation without proof.

22. The Respondent denies the allegations contained within paragraph 22 of Claimant's Complaint.

23. The Respondent lacks sufficient knowledge to either admit or deny paragraph 23, thus same is denied.

24. The Respondent denies the allegations contained within paragraph 24 of Claimant's Complaint.

25. The Respondent denies the allegations contained within paragraph 25 of Claimant's Complaint. Stating affirmatively, there is absolutely no evidence that any voters were turned away at precinct 63 on election day or voted in the wrong race. Commission staff provided the same ballot style to precinct 63 from the excess of the same ballot style in precinct 73. There is absolutely no evidence or proof which even tends to indicate otherwise.

26. The Respondent denies the allegations contained within paragraph 26 of Claimant's Complaint.

27. The Respondent admits that Claimant's Exhibit 2 reflects the "official results" of the election for the Arkansas House of Representatives, District 32 that were certified by the Pulaski County Election Commission on November 18, 2020. Respondent denies the remainder of the allegations contained within paragraph 27 of Claimant's Complaint.

28. The Respondent denies the allegations contained within paragraph 28 of Claimant's Complaint. Stating affirmatively, there is absolutely no proof of Claimant's assertions whether in fact or even by mathematical probability. While Claimant led on Election Night, November 3, 2020 when the Pulaski County Board of Election Commissioners declared the unofficial results, the Commission and staff admitted that there were at least an estimated six thousand (6,000) uncounted absentee and provisional ballots in Pulaski County at that time. While it is clear that not canvassing or counting those ballots would have benefitted Claimant greatly, it is also unconstitutional for a county board of election commissioners to neglect those lawful duties. *Arkansas Constitution, Art. 3, § 2 and § 11; Ark. Code Ann. § 7-5-701(a)(1), (c)(1), and (c)(4)*. As the absentee and provisional ballots were processed by the Commission, the "unofficial results" were amended to reflect the incremental additional counts. **(Exhibits 4-10)**. Of those additional incremental counts of absentee and provisional ballots, Representative-Elect Ashley Hudson received an average of about

65% of those votes and her opponent only an average of about 35%. If Claimant received two (2) or more of the twenty-seven (27) allegedly, erroneously tabulated ballots in the 32nd District, Representative-Elect Hudson still won the election. If Claimant received thirty-five per cent (35%) of the allegedly, erroneously tabulated ballots in the 32nd District, then at least nine (9) of those twenty-seven (27) allegedly, erroneously tabulated ballots in the 32nd District were cast for the Claimant, and Representative-Elect Hudson still won the election.

29. The Respondent denies the allegations contained within paragraph 29 of Claimant's Complaint. Stating affirmatively, while it is clear that not canvassing or counting ballots would have benefitted Claimant greatly, it is also unconstitutional for a county board of election commissioners to neglect those lawful duties. *Arkansas Constitution, Art. 3, § 2 and § 11; Ark. Code Ann. § 7-5-701(a)(1), (c)(1), and (c)(4)*.

30. The Respondent asserts that paragraph 30 of Claimant's Complaint contains argumentative and conclusory statements which demand no response. In the event a response is required, respondent denies the allegations contained in paragraph 30 of Claimant's Complaint. Stating affirmatively, if the ballots were erroneously or unlawfully tabulated, Claimant must present evidence of who they voted for in order for Claimant to try to meet his burden of proof. Under *Willis v. Crumbly*, there is no anonymity right to disqualified, unlawful, or illegal votes. *Willis v. Crumbly, 268 S.W.3d 288, 371 Ark. 517 (Ark. 2007)*. The *Whitley* case cited by Claimant is irrelevant because there were one hundred eighty-three (183) people in that election who were not allowed to vote for the office contested at all because it was not on their ballots. "Thus, those 183 voters did not cast a ballot in the justice of the peace race, and there are therefore no legal votes to be added or illegal votes that could be excluded." *Whitley v. Cranford, 119 S.W.3d 28, 354 Ark. 253 (Ark. 2003)*. Conversely, we can determine who the allegedly illegal votes were cast for through testimony.

31. The Respondent denies the allegations contained within paragraph 31 of Claimant's Complaint.

32. The Respondent denies the allegations contained within paragraph 32 of Claimant's Complaint. Stating affirmatively, the previously assigned Circuit Court Judge did not recuse until 1:03 PM on November 18, 2020. (**Exhibit 1, Arkansas**

Supreme Court, Record Pleadings; Page 72). Claimant had requested an expedited hearing, and written a letter to the court noting that his relief was needed before certification at the previously scheduled public meeting of the Pulaski County Election Commission that same day. **(Exhibit 1, Arkansas Supreme Court, Record Pleadings; Page 69).** Therefore, the trial judge of record held a hearing on Claimant's motion for 3:00 PM on November 18, 2020 to accommodate Claimant, less than two (2) hours after he had received the case assignment, and the trial judge completed his written Order the same day.

33. The Respondent denies the allegations contained within paragraph 32 of Claimant's Complaint. Stating affirmatively, the November 18, 2020 meeting of the Pulaski County Election Commission had been previously set to be held at 5:30PM. November 18, 2020 was the statutory deadline for certification of the results of the November 3, 2020 election, and the Pulaski County Board of Election Commissioners has an absolute, undiscretionary duty to certify. *Ark. Code Ann. § 7-5-701(a)(1), (c)(1), and (c)(4); Arkansas Constitution, Art. 3, § 2 and § 11.*

34. The Respondent denies the allegations contained within paragraph 34 of Claimant's Complaint.

35. Respondent states that this action speaks for itself and no other pleading is necessary. Respondent otherwise denies the allegations contained within paragraph 35 of Claimant's Complaint. Stating affirmatively, the Claims Commission has no duty or authority to recommend, order, or to otherwise advise anything to the Arkansas Secretary of State or Governor. This remedial request is improper. *Arkansas Constitution, Article 4, §§ 1 and 2; Ark. Code Ann. § 7-5-805.*

36. Respondent states that this action speaks for itself and no other pleading is necessary. Respondent otherwise denies the allegations contained within paragraph 36 of Claimant's Complaint. Stating affirmatively, there is absolutely no evidence or proof that Claimants claims would change the outcome of this election, or that they are even accurate.

37. Respondent states that this action speaks for itself and no other pleading is necessary. Respondent otherwise denies the allegations contained within paragraph 37 of Claimant's Complaint. Stating affirmatively, the Claims Commission has no

authority to declare a new election. Claimant's is asking the Claims Commission to misinterpret the law in a way that defies the basic tenants of democracy, disenfranchising every single voter in the 32nd District as a result of a bare accusation with no proof. In the alternative, declaring an entirely new election is not the only way to "remedy the [alleged] errors". On November 10, 2020, the date that the allegedly, erroneously tabulated votes were counted, Representative-Elect Hudson netted one hundred thirty (130) votes and the Claimant netted one hundred eight (108) votes. If the Claims Commission subtracted the November 10 net gain for each of the candidates from their final total number of votes, Representative-Elect Hudson will still win with 8,274 votes over her opponent's 8,272. (**Exhibits 6-8**).

38. Respondent states that this action speaks for itself and no other pleading is necessary. Respondent otherwise denies the allegations contained within paragraph 38 of Claimant's Complaint. Stating affirmatively, Claimant continues to a new election and the other stated remedies within this action before the Arkansas Supreme Court. (CV-20-666). Claimant has not filed a post election contest under Ark. Code Ann. § 7-5-801. Claimant did not request mandamus, prohibition, or any extraordinary writ. Claimant has abundant other administrative and state remedies that he has chosen not to pursue.

39. Respondent states that this action speaks for itself and no other pleading is necessary. Respondent otherwise denies the allegations contained within paragraph 39 of Claimant's Complaint. Stating affirmatively, Representative-Elect Ashley Hudson has been lawfully elected, and there is no proof offered to show otherwise. Claimant's requested relief is absurd. This remedial request would usurp the will of the voters with the will of an incumbent who is unwilling to fulfill his lawful duty to evidence his claims.

40. Respondent states that this action speaks for itself and no other pleading is necessary. Respondent otherwise denies the allegations contained within paragraph 40 of Claimant's Complaint.

41. Respondent states that this action speaks for itself and no other pleading is necessary. Respondent otherwise denies the allegations contained within paragraph 41 of Claimant's Complaint.

42. Respondent states that this action speaks for itself and no other pleading is necessary. Respondent otherwise denies the allegations contained within paragraph 39 of Claimant's Complaint.

43. The allegations contained in the "Wherefore" paragraph of Plaintiff's Complaint should be denied.

44. All allegations contained in Plaintiff's Complaint not specifically admitted are both generally and specifically denied.

45. Pleading affirmatively, the Pulaski County Board of Election Commissioners conducted its canvassing of absentee ballots and its provisional ballot reviews in a public meeting and using a live stream on its YouTube channel. Thousands of ballots were canvassed and set aside as disqualified by the Pulaski County Board of Election Commissioners on video. Many of these ballots were erroneously disqualified, disenfranchising those voters without following the legally required processes. Multiple mistakes and illegalities in the Pulaski County Board of Election Commissioners process that resulted in lawful votes going uncounted can be viewed publicly from its website including without limitation:

A. Requiring a "match" in signature, address, date of birth, or name without any consideration of whether they "compare";

B. Disqualifying ballots for failure to submit the absentee materials in the proper envelopes;

C. The Commission mailed the constitutionally required notice to the persons whose absentee ballots needed to be cured for no voter identification on Saturday, November 7, 2020 advising them that they had until noon on Monday, November 9, 2020 to cure their ballots. The mail did not run on Sunday November 8, 2020;

D. Disqualifying ballots for minor clerical errors; and

E. General failure to follow the procedures set out by Ark. Code Ann. § 7-5-416.

Ark. Code Ann. § 7-5-416; Ark. Con. Amendment 51, § 13.

46. Pleading affirmatively, as indicated by Exhibit 3, twelve (12) of the twenty-seven (27) ballots in question were cast aside and disqualified with a notation that it is

due to a “mismatch” or “don’t match” where Ark. Code Ann. § 7-5-416 only requires that they “compare”. One (1) of the twenty-seven (27) ballots in question was cast aside and disqualified because “everything in ballot envelope”; Ark. Code Ann. § 7-5-416(b)(1)(l) states “failure of the voter to submit the required absentee materials in the proper envelopes shall not be grounds for disqualifying the voter”. Five (5) of them were disqualified for no voter identification and were not mailed their notice until the Saturday before the Monday at noon deadline to cure their ballot. The remaining ballots were disqualified based upon notations of minor clerical errors.

47. Pleading affirmatively, if the Claims Commission deems it appropriate to consider Claimant’s claims for relief, it should first re-canvass the voter materials for the twenty-seven (27) ballots in question, declare those ballots that were erroneously disqualified to be legal votes, and declare them to have been properly counted.

48. Pleading affirmatively, as indicated by Exhibit 2, Respondent requested the voter materials for all uncounted ballots for the 32nd District. Those have not yet been provided. However, if the Claims Commission deems it appropriate to consider Claimant’s claims for relief, it should first re-canvass the voter materials for all uncounted ballots in the 32nd District, declare those ballots that were erroneously disqualified to be legal votes, and order them to be counted. No vote should go uncounted due to an error or mistake.

49. Pleading affirmatively, Respondent Representative-Elect Ashley Hudson verifies the foregoing through her affidavit. **(EXHIBIT 11)**.

WHEREFORE, Respondent prays that the Arkansas Claims Commission and the House of Representatives dismiss this action outright and deny all of Claimant’s requests for relief, or, in the alternative:

(A) Re-canvass the ballots alleged to have been erroneously tabulated, declare those that were erroneously disqualified to be legal votes, and declare them to have been properly counted;

(B) Re-canvass all uncounted ballots in the race for the 32nd District of the House of Representatives, declare those that were erroneously disqualified to be legal votes, and order them to be counted;

(C) Report every instance of suspected voter fraud found in the re-canvassing process to the Pulaski County Prosecuting Attorney;

(D) Hold Claimant to his burden of proof, and require him to bring evidence of his bare allegations; and

(E) Grant Respondent all other proper relief.

Respectfully submitted,

By: /s/ Jennifer A. Waymack Standerfer

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CERTIFICATE OF SERVICE

I, Jennifer A. Waymack Standerfer, do hereby certify that the foregoing pleading was served electronically via e-mail to the following attorneys and attorneys of record on this 30th day of November, 2020:

AJ Kelly for Claimant Sorvillo

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By: /s/ Jennifer A. Waymack Standerfer