

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

**DR. CHRIS M. JONES**

**PLAINTIFF**

vs.

**CASE NO. 60CV-24-3690**

**BART F. HESTER**

**DEFENDANT**

**DEFENDANT'S ANSWER AND AFFIRMATIVE DEFENSES TO  
PLAINTIFF'S SECOND AMENDED COMPLAINT**

Defendant Bart F. Hester, by and through his attorneys, Friday, Eldredge & Clark, LLP, for his Answer and Affirmative Defenses to Plaintiff's Second Amended Complaint, states as follows:

**PRELIMINARY STATEMENT**

The following matters are incorporated into responses to each paragraph of the Second Amended Complaint:

A. The Second Amended Complaint contains out-of-context screenshots from the exchange between Plaintiff and Senator Hester and ensuing third-party publications and statements, which have been excerpted, mischaracterized, and otherwise taken out of context. Senator Hester denies the allegations in the Second Amended Complaint to the extent the allegations are inconsistent with the entire exchange and denies Plaintiff's characterization of the exchange and ensuing third-party publications and statements.

B. Except as otherwise stated herein, Senator Hester denies each and every allegation in the Second Amended Complaint, including any allegations in the preamble, unnumbered paragraphs, subparagraphs, prayer for relief, titles, headings, subheadings, footnotes, tables, graphs, and illustrations of the Second Amended Complaint, and specifically denies liability to

Plaintiff. To the extent not expressly denied, all allegations for which Senator Hester denies possessing knowledge or information sufficient to form a belief are denied.

C. The Second Amended Complaint is rife with pages full of irrelevant, slanted political commentary that is, at best, impertinent and irrelevant. Accordingly, Senator Hester reserves the right to move to strike these portions of the Second Amended Complaint under Ark. R. Civ. P. 12(f).

D. Senator Hester reserves the right to seek to amend and supplement his Answer and Affirmative Defenses as may be appropriate or necessary.

### **ANSWERING THE JURISDICTION AND VENUE ALLEGATIONS**

1. Senator Hester is without sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 1 and therefore denies them.

2. Senator Hester admits the allegations in Paragraph 2.

3. The allegations in Paragraph 3 are conclusions of law to which no response is required, and which are therefore denied.

4. The allegations in Paragraph 4 are conclusions of law to which no response is required, and which are therefore denied.

### **ANSWERING THE FACTUAL ALLEGATIONS**

5. Senator Hester admits that Paragraph 5 purports to reference a “tweet” that he published on a social media platform called “X” and previously known as “Twitter”<sup>1</sup> on May 1, 2024, at 10:47 a.m. CST. Senator Hester affirmatively states that the tweet speaks for itself and denies the allegations in Paragraph 5 to the extent inconsistent therewith. Senator Hester is

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<sup>1</sup> For purposes of this Answer, “X” will hereafter be referred to as “Twitter” and publications on the platform will be referred to as “tweets.”

otherwise without sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 5 and therefore denies the same.

6. Senator Hester is without sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 6 and therefore denies the same.

7. Senator Hester is without sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 7 and therefore denies the same.

8. Senator Hester admits he received his bachelor's degree in business management from the University of Arkansas. Senator Hester admits he was elected as the President Pro Tempore of the Arkansas Senate in 2021 and was reelected to serve as the leader of the Arkansas Senate through 2026. To the extent the alleged public statements regarding Arkansas Governor Sarah Huckabee Sanders exist, Senator Hester affirmatively states that those statements speak for themselves and denies the allegations in Paragraph 8 to the extent inconsistent therewith. Senator Hester admits that a statement by United States Senator Tom Cotton appears on [hesterforarkansas.com](http://hesterforarkansas.com). Senator Hester affirmatively states that statement speaks for itself and denies the allegations in Paragraph 8 to the extent inconsistent therewith.

9. Senator Hester denies the allegations in Paragraph 9.

10. Senator Hester denies the allegations in Paragraph 10 and responds to the allegations in the sub-paragraphs of Paragraph 10 as follows:

- a. Senator Hester denies the allegations in sub-Paragraph 10(a), except that, to the extent that the referenced public statements by Senator Hester exist, Senator Hester affirmatively states that those statements speak for themselves and denies the allegations in sub-Paragraph 10(a) to the extent inconsistent therewith.

- b. Senator Hester admits only that he co-sponsored SB202, which was passed by the Arkansas General Assembly as Act 137 of 2015, which is codified at Ark. Code Ann. §§ 14-1-401 to -403. Senator Hester is otherwise without sufficient knowledge or information to form a belief as to the truth of the allegations in sub-Paragraph 10(b) and therefore denies the same.
- c. Senator Hester denies the allegations in sub-Paragraph 10(c), except that, to the extent that the referenced public statements by Senator Hester exist, Senator Hester affirmatively states that those statements speak for themselves and denies the allegations in sub-Paragraph 10(c) to the extent inconsistent therewith.
- d. Senator Hester denies the allegations in sub-Paragraph 10(d), except that, to the extent that the referenced tweets, public statements, and news article exist, Senator Hester affirmatively states that the same speak for themselves and denies the allegations in sub-Paragraph 10(d) to the extent inconsistent therewith.
- e. Senator Hester denies the allegations in sub-Paragraph 10(e).
- f. Senator Hester denies the allegations in subparagraph 10(f), except that, to the extent that the referenced public statement by Senator Hester exists, Senator Hester affirmatively states that such statement speaks for itself and denies the allegations in sub-Paragraph 10(f) to the extent inconsistent therewith. The allegations in footnote 1, referenced in sub-Paragraph 10(f), are conclusions of law for which no responsive pleading is required, and which are therefore denied.
- g. Senator Hester denies the allegations in sub-Paragraph 10(g), except that he affirmatively states that he was one of thirty co-sponsors of Senate Bill 892. To the extent that sub-Paragraph 10(g) references public statements made by Senator

Hester and news articles, Senator Hester affirmatively states that the same speak for themselves and denies the allegations in sub-Paragraph 10(g) to the extent inconsistent therewith.

11. Senator Hester admits that he became a Twitter user in 2011 and that he had 2,107 followers on Twitter as of May 8, 2024. Senator Hester admits that his Twitter profile contains the quoted language, “Christian Conservative,” and a link to [hesterforarkansas.com](http://hesterforarkansas.com) but denies Plaintiff’s characterization of same. Senator Hester otherwise denies the allegations in Paragraph 11.

12. The allegations in Paragraph 12 do not appear to be directed to Senator Hester and therefore do not warrant a response. To the extent a response is required, Senator Hester is without sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 12 and therefore denies the same.

13. The allegations in Paragraph 13 do not appear to be directed to Senator Hester and therefore do not warrant a response. To the extent a response is required, Senator Hester is without sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 13 and therefore denies the same. Senator Hester admits that a portion of Paragraph 13 purports to reference screenshots from the Twitter platform, and affirmatively states that those screenshots speak for themselves. Senator Hester otherwise denies the allegations in Paragraph 13 to the extent inconsistent therewith.

14. The allegations in Paragraph 14 do not appear to be directed to Senator Hester and therefore do not warrant a response. To the extent a response is required, Senator Hester is without sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 14 and therefore denies the same. Senator Hester admits that a portion of Paragraph 14 purports to

reference an unspecified “Pew Research Center analysis,” and affirmatively states that, to the extent such analysis exists, it speaks for itself and otherwise denies the allegations in Paragraph 14 to the extent inconsistent therewith.

15. The allegations in Paragraph 15 do not appear to be directed to Senator Hester and therefore do not warrant a response. To the extent a response is required, Senator Hester is without sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 15 and therefore denies the same.

16. The allegations in Paragraph 16 do not appear to be directed to Senator Hester and therefore do not warrant a response. To the extent a response is required, Senator Hester is without sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 16 and therefore denies the same.

17. The allegations in Paragraph 17 do not appear to be directed to Senator Hester and therefore do not warrant a response. To the extent a response is required, Senator Hester is without sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 17 and therefore denies the same.

18. The allegations in Paragraph 18 do not appear to be directed to Senator Hester and therefore do not warrant a response. To the extent a response is required, Senator Hester is without sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 18 and therefore denies the same.

19. The allegations in Paragraph 19 do not appear to be directed to Senator Hester and therefore do not warrant a response. To the extent a response is required, Senator Hester is without sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 19 and therefore denies the same. To the extent that the referenced video scenes and still images

exist, Senator Hester affirmatively states that the same speak for themselves and otherwise denies the allegations in Paragraph 19 to the extent inconsistent therewith.

20. The allegations in Paragraph 20 do not appear to be directed to Senator Hester and therefore do not warrant a response. To the extent a response is required, Senator Hester is without sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 20 and therefore denies the same.

21. The allegations in Paragraph 21 do not appear to be directed to Senator Hester and therefore do not warrant a response. To the extent a response is required, Senator Hester is without sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 21 and therefore denies the same. Senator Hester admits Paragraph 21 purports to reference a *New York Times* report and a screenshot of a map from same, and affirmatively states that such report and all of its contents speak for themselves and otherwise denies the allegations in Paragraph 21 to the extent inconsistent therewith.

22. The allegations in Paragraph 22 do not appear to be directed to Senator Hester and therefore do not warrant a response. To the extent a response is required, Senator Hester is without sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 22 and therefore denies the same.

23. The allegations in Paragraph 23 do not appear to be directed to Senator Hester and therefore do not warrant a response. To the extent a response is required, Senator Hester is without sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 23 and therefore denies the same. Senator Hester admits that Paragraph 23 purports to reference certain media reports, and affirmatively states that the same speak for themselves and otherwise denies the allegations in Paragraph 23 to the extent inconsistent therewith.

24. The allegations in Paragraph 24 do not appear to be directed to Senator Hester and therefore do not warrant a response. To the extent a response is required, Senator Hester is without sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 24 and therefore denies the same.

25. The allegations in Paragraph 25 do not appear to be directed to Senator Hester and therefore do not warrant a response. To the extent a response is required, Senator Hester is without sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 25 and therefore denies the same.

26. Senator Hester admits that Paragraph 26 purports to reference screenshots of tweets published by third parties that he re-posted on Twitter, and that the same speak for themselves, and Senator Hester denies the allegations in Paragraph 26 to the extent inconsistent therewith.

27. Senator Hester denies the allegations in the first sentence of Paragraph 27. Senator Hester admits that Paragraph 27 purports to reference tweets published by third parties that he re-posted on Twitter, and that the same speak for themselves, and Senator Hester otherwise denies the allegations in Paragraph 27 to the extent inconsistent therewith.

28. Senator Hester denies the allegations in the first two sentences of Paragraph 28. To the extent the third sentence of Paragraph 28 purports to reference tweets, replies to tweets, and reposts on Senator Hester's Twitter account, the same speak for themselves and Senator Hester denies the allegations in Paragraph 28 to the extent inconsistent therewith.

29. Senator Hester admits that Paragraph 29 purports to reference a screenshot of a tweet by *Arkansas Times* editor Austin Bailey and Plaintiff's reply tweet to same, and affirmatively states that the screenshot speaks for itself. Senator Hester denies the allegations in Paragraph 29 to the extent inconsistent therewith. Senator Hester otherwise denies the allegations in Paragraph

29. Senator Hester is without sufficient knowledge or information to form a belief as to the truth of the allegations in footnote 2, referenced in Paragraph 29, and therefore denies the same.

30. Senator Hester admits that Paragraph 30 purports to reference a screenshot of a tweet by Senator Hester, and affirmatively states that the screenshot speaks for itself. Senator Hester denies the allegations in Paragraph 30 to the extent inconsistent therewith. Senator Hester otherwise denies the allegations in Paragraph 30. The allegations in footnote 3, referenced in Paragraph 30, are conclusions of law to which no response is required, and which are therefore denied.

31. Senator Hester admits that Paragraph 31 purports to quote certain United States Supreme Court caselaw. Senator Hester affirmatively states that this precedent speaks for itself and denies the allegations in Paragraph 31 to the extent inconsistent therewith. The allegations in Paragraph 31 are otherwise conclusions of law for which no responsive pleading is required, and which are therefore denied.

32. The allegations in Paragraph 32 are conclusions of law to which no response is required, and which are therefore denied.

33. The allegations in Paragraph 33 are conclusions of law to which no response is required, and which are therefore denied.

34. Senator Hester denies the allegations in Paragraph 34.

35. Senator Hester denies the allegations in Paragraph 35.

36. Senator Hester denies the allegations in Paragraph 36.

37. Senator Hester denies the allegations in Paragraph 37.

38. Senator Hester denies the allegations in the first sentence of Paragraph 38. Senator Hester is otherwise without sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 38 and therefore denies the same.

39. Senator Hester denies the allegations in Paragraph 39.

40. Senator Hester denies the allegations in Paragraph 40.

41. Senator Hester denies the allegations in Paragraph 41.

42. Senator Hester is without sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 42 and its sub-paragraphs and therefore denies the same.

43. Senator Hester denies the allegations in Paragraph 43.

44. Senator Hester admits that Paragraph 44 purports to reference certain United States Supreme Court caselaw, and affirmatively states that such caselaw speaks for itself and otherwise denies all remaining allegations in Paragraph 44 and its sub-paragraphs and footnote referenced therein.

45. Senator Hester is without sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 45 and therefore denies the same.

46. The allegations in Paragraph 46 do not appear to be directed to Senator Hester and therefore do not warrant a response. To the extent a response is required, Senator Hester is without sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 46 and therefore denies the same. Senator Hester admits that a portion of Paragraph 46 and footnote 5 purports to reference an article entitled "*Polarizing Feedback Loops on Twitter*," and affirmatively states that the article speaks for itself and denies the allegations in Paragraph 46 to the extent inconsistent therewith.

47. The allegations in Paragraph 47 do not appear to be directed to Senator Hester and therefore do not warrant a response. To the extent a response is required, Senator Hester is without sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 47 and therefore denies the same. Senator Hester admits that a portion of Paragraph 47 purports to reference a University of Cambridge study, and to the extent such study exists, Senator Hester affirmatively states that the study speaks for itself and denies the allegations in Paragraph 47 to the extent inconsistent therewith.

48. The allegations in Paragraph 48 do not appear to be directed to Senator Hester and therefore do not warrant a response. To the extent a response is required, Senator Hester is without sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 48 and therefore denies the same. Senator Hester admits that footnote 7, referenced in Paragraph 48, purports to reference an article entitled “*More Tweets, More Votes: Social Media as a Quantitative Indicator of Political Behavior*,” and affirmatively states that the article speaks for itself and denies the allegations in Paragraph 48 to the extent inconsistent therewith.

49. Senator Hester is without sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 49 and therefore denies the same.

50. The allegations in Paragraph 50 do not appear to be directed to Senator Hester and therefore do not warrant a response. To the extent a response is required, Senator Hester denies the same. Senator Hester admits that a portion of Paragraph 50 purports to reference an article from the *National Post*, and affirmatively states that the article speaks for itself, and Senator Hester denies the allegations in Paragraph 50 to the extent inconsistent therewith.

51. The allegations in Paragraph 51 do not appear to be directed to Senator Hester and therefore do not warrant a response. To the extent a response is required, Senator Hester is without

sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 51 and therefore denies the same. Senator Hester affirmatively states that the *National Post* article, purportedly referenced in Paragraph 50 and referenced again in Paragraph 51, speaks for itself, and Senator Hester denies the allegations in Paragraph 51 to the extent inconsistent therewith.

52. The allegations in Paragraph 52 do not appear to be directed to Senator Hester and therefore do not warrant a response. To the extent a response is required, Senator Hester is without sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 52 and therefore denies the same. Senator Hester admits that footnote 8, referenced in Paragraph 52, purports to reference a *WNYC* article, and affirmatively states that the article speaks for itself and denies the allegations in Paragraph 52 to the extent inconsistent therewith.

53. Senator Hester is without sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 53 and therefore denies the same.

54. Senator Hester is without sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 54 and therefore denies the same.

55. Senator Hester is without sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 55 and therefore denies the same.

56. Senator Hester is without sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 56 and therefore denies the same.

57. The allegations in Paragraph 57 and footnote 9 contain conclusions of law to which no response is required, and which are therefore denied. Senator Hester admits that footnote 9, referenced in Paragraph 57, purports to cite to certain Arkansas caselaw. Senator Hester affirmatively states that this precedent speaks for itself and denies the allegations in Paragraph 57 to the extent inconsistent therewith.

58. Senator Hester admits that Paragraph 58 purports to reference screenshots of tweets published by third parties on Twitter. Senator Hester affirmatively states that the tweets speak for themselves and denies the allegations in Paragraph 58 to the extent inconsistent therewith.

59. Senator Hester admits Plaintiff's counsel sent a letter to him via e-mail on May 2, 2024, regarding Senator Hester's tweet. Senator Hester affirmatively states that the contents of the letter and e-mail speak for themselves and denies the allegations in Paragraph 59 and footnote 10 to the extent inconsistent therewith. Senator Hester denies that Plaintiff's counsel's communication to him is relevant in any respect, and therefore denies all remaining allegations in Paragraph 59.

60. Senator Hester admits that he never deleted his tweet, did not retract any statement about Plaintiff, or reply to Plaintiff's counsel's May 2, 2024 e-mail. Senator Hester denies the characterization of his tweet and all remaining allegations in Paragraph 60.

**COUNT I  
DEFAMATION WITH ACTUAL MALICE**

61. Senator Hester's responses above are incorporated herein by reference.

62. Senator Hester denies the allegations in Paragraph 62.

63. Senator Hester denies the allegations in Paragraph 63.

64. Senator Hester denies the allegations in Paragraph 64.

65. Senator Hester denies the allegations in Paragraph 65.

66. Senator Hester denies the allegations in Paragraph 66.

67. Senator Hester denies the allegations in Paragraph 67.

68. To the extent a response is required to Plaintiff's demand for a trial by jury on Count I of the Second Amended Complaint, Senator Hester denies that demand. Senator Hester hereby demands a trial by jury of all issues so triable.

**COUNT II**  
**REQUEST FOR DECLARATORY JUDGMENT THAT THE “CITIZEN PARTICIPATION IN GOVERNMENT ACT” IS INAPPLICABLE AND THAT ITS PROCEDURAL REQUIREMENTS ARE UNCONSTITUTIONAL**

69. The allegations in Paragraph 69 are conclusions of law for which no responsive pleading is required, and which are therefore denied. Senator Hester affirmatively states that the substantive provisions of the Citizen Participation in Government Act, commonly known as the Anti-SLAPP Act, *see* Ark. Code Ann. §§ 16-63-501 to -508, apply to this case and responds to the allegations in the sub-paragraphs of Paragraph 69 as follows:

- a. Senator Hester admits that sub-Paragraph 69(a) purports to quote Senator Hester’s Brief in Support of Motion to Dismiss filed on June 14, 2024, which speaks for itself. Senator Hester denies the allegations in sub-Paragraph 69(a) to the extent inconsistent therewith. The allegations in sub-Paragraph 69(a) are otherwise conclusions of law for which no responsive pleading is required, and which are therefore denied.
- b. Senator Hester admits that sub-Paragraph 69(b) purports to quote Senator Hester’s Brief in Support of Motion to Dismiss filed on June 14, 2024, which speaks for itself. Senator Hester denies the allegations in sub-Paragraph 69(b) to the extent inconsistent therewith. The allegations in sub-Paragraph 69(b), including footnote 13 referenced therein, are otherwise conclusions of law for which no responsive pleading is required, and which are therefore denied.
- c. The allegations in sub-Paragraph 69(c) are conclusions of law for which no responsive pleading is required, and which are therefore denied.

70. Senator Hester affirmatively states that the procedural framework of the Anti-SLAPP Act is constitutionally sound. Senator Hester admits that Paragraph 70 purports to seek a

declaratory judgment but denies that Plaintiff is entitled to that relief or any other relief, and otherwise denies the allegations in Paragraph 70. The allegations in Paragraph 70 are otherwise conclusions of law for which no responsive pleading is required, and which are therefore denied. Senator Hester admits that footnote 14, referenced in Paragraph 70, purports to quote the court's Order in *Fox v. Lyon*, Case No. 60CV-20-1999, and affirmatively states that the Order speaks for itself. Senator Hester denies the allegations in Paragraph 70 and footnote 14 to the extent inconsistent therewith.

71. Senator Hester admits that Paragraph 71 purports to quote the Arkansas Constitution and cites to certain Arkansas caselaw. Senator Hester affirmatively states that the Arkansas Constitution and caselaw speaks for itself and denies the allegations in Paragraph 71 to the extent inconsistent therewith. The allegations in Paragraph 71 are otherwise conclusions of law for which no responsive pleading is required, and which are therefore denied.

72. Senator Hester admits that Paragraph 72 purports to quote certain Arkansas caselaw. Senator Hester affirmatively states that this precedent speaks for itself and denies the allegations in Paragraph 72 to the extent inconsistent therewith. The allegations in Paragraph 72 are otherwise conclusions of law for which no responsive pleading is required, and which are therefore denied.

73. Senator Hester admits that Paragraph 73 purports to quote the court's Order in *Fox v. Lyon, supra*. Senator Hester affirmatively states that the Order speaks for itself and denies the allegations in Paragraph 73 to the extent inconsistent therewith. The allegations in Paragraph 73 are otherwise conclusions of law for which no responsive pleading is required, and which are therefore denied.

74. Senator Hester admits that Paragraph 74 purports to quote certain Arkansas caselaw. Senator Hester affirmatively states that this precedent speaks for itself and denies the allegations in Paragraph 74 to the extent inconsistent therewith. The allegations in Paragraph 74 are otherwise conclusions of law for which no responsive pleading is required, and which are therefore denied.

75. The allegations in Paragraph 75 are conclusions of law for which no responsive pleading is required, and which are therefore denied.

76. Senator Hester admits that Paragraph 76 purports to seek a declaratory judgment, but denies that Plaintiff is entitled to that relief or any other relief, and otherwise denies the allegations in Paragraph 76. The allegations in Paragraph 76 are otherwise conclusions of law for which no responsive pleading is required, and which are therefore denied.

77. Senator Hester admits that Paragraph 77 purports to quote the Anti-SLAPP Act, which speaks for itself. Senator Hester denies the allegations in Paragraph 77 to the extent inconsistent therewith. The allegations in Paragraph 77 are otherwise conclusions of law for which no responsive pleading is required, and which are therefore denied.

78. Senator Hester admits that Paragraph 78 purports to quote certain statutes, which speak for themselves. Senator Hester denies the allegations in Paragraph 78 to the extent inconsistent therewith. The allegations in Paragraph 78 are otherwise conclusions of law for which no responsive pleading is required, and which are therefore denied.

79. Senator Hester admits that Paragraph 79 purports to quote the Arkansas Constitution and certain caselaw. Senator Hester affirmatively states that the Arkansas Constitution and caselaw speak for themselves and denies the allegations in Paragraph 79 to the extent inconsistent therewith. Senator Hester admits that Paragraph 79 purports to seek a

declaratory judgment, but denies that Plaintiff is entitled to that relief or any other relief, and otherwise denies the allegations in Paragraph 79.

80. Senator Hester denies each and every allegation in the Second Amended Complaint not specifically admitted herein and further denies that Plaintiff is entitled to any relief whatsoever, including, without limitation, all relief requested in the “WHEREFORE” paragraph of the Second Amended Complaint. Senator Hester hereby demands a trial by jury of all issues so triable.

### **AFFIRMATIVE DEFENSES**

Senator Hester asserts the following affirmative and additional defenses to the Second Amended Complaint. By identifying the following defenses, Senator Hester does not admit or acknowledge that he bears the burden of proof and/or burden of persuasion with respect to any such defense. Senator Hester also gives notice that he intends to rely upon such other and further defenses of which he becomes aware during discovery in this action and reserves the right to amend his Answer to assert any such defenses.

A. Senator Hester affirmatively states that the claims asserted in Plaintiff’s Second Amended Complaint are barred because Senator Hester did not act with actual malice.

B. Senator Hester affirmatively states that the claims asserted in Plaintiff’s Second Amended Complaint are barred because Senator Hester’s tweet is a nonactionable statement of opinion and not a statement of fact.

C. Senator Hester affirmatively states that the claims asserted in Plaintiff’s Second Amended Complaint are barred because Senator Hester’s tweet is neither false nor defamatory.

D. Senator Hester affirmatively states that the claims asserted in Plaintiff’s Second Amended Complaint are barred because Senator Hester’s tweet has not caused actual damage to Plaintiff’s reputation.

E. Senator Hester affirmatively states that the claims asserted in Plaintiff's Second Amended Complaint are barred because Senator Hester's tweet is protected by the Citizen Participation in Government Act, commonly known as the Anti-SLAPP Act, *see* Ark. Code Ann. §§ 16-63-501 to -508.

F. Senator Hester affirmatively states that Plaintiff is barred from recovery to the extent of Plaintiff's failure to avoid or mitigate harm, including but not limited to Plaintiff and Plaintiff's counsel's conduct in reposting and quoting Senator Hester's tweet so that it was broadcast to a significantly larger audience than it would have been if Plaintiff and Plaintiff's counsel had not done so.

G. Senator Hester affirmatively states that Plaintiff's Second Amended Complaint and each claim contained therein fails to state a claim upon which relief can be granted, fails to state facts sufficient to constitute a cause of action, and fails to plead cognizable injury.

H. Senator Hester affirmatively states that Plaintiff's Second Amended Complaint and each claim contained therein fails to state a claim upon which relief can be granted for the reasons set forth in Senator Hester's Motion to Dismiss Second Amended Complaint filed on August 19, 2024.

I. Senator Hester affirmatively states that Plaintiff's Second Amended Complaint relies throughout on out-of-context screenshots excerpted from the exchange between Plaintiff and Senator Hester yet fails to attach a full copy of the exchange between Plaintiff and Senator Hester as required by Rule 10(d). Accordingly, Senator Hester affirmatively pleads that this matter should be dismissed pursuant to Rule 10(d).

J. Senator Hester affirmatively states that the claims asserted in Plaintiff's Second Amended Complaint are barred by the doctrines of waiver, laches, unclean hands, estoppel, or other related equitable doctrines.

K. Senator Hester affirmatively states that the claims asserted in Plaintiff's Second Amended Complaint are barred to the extent it fails to allege a justiciable controversy.

L. Senator Hester affirmatively states that the claims asserted in Plaintiff's Second Amended Complaint are barred because the damages and other monetary relief sought by Plaintiff are speculative and remote and/or impossible to ascertain.

M. Senator Hester affirmatively pleads that Plaintiff's Second Amended Complaint fails to state facts sufficient to justify an award of punitive damages.

N. Senator Hester affirmatively pleads that Plaintiff's claim for punitive damages cannot be sustained because an award of punitive damages under Arkansas law does not provide constitutionally adequate standards of sufficient clarity for determining the appropriate imposition of, and the appropriate size of, a punitive damages award.

O. Senator Hester affirmatively pleads that, to the extent that Plaintiff seeks punitive damages above and beyond actual damages, such damages would violate Senator Hester's due process rights and equal protection rights guaranteed by the Fifth and Fourteenth Amendments to the United States Constitution, the Excessive Fines Clause of the Eighth Amendment of the United States Constitution, and Article 2, §§ 2, 3, & 8 of the Arkansas Constitution.

P. Senator Hester respectfully reserves the right to supplement his Answer and Affirmative Defenses to assert other lawful defenses applicable to this action. Senator Hester reserves the right to plead further and reserve objections on the basis of lack of subject-matter jurisdiction, lack of personal jurisdiction, improper venue, insufficient process, insufficient service

of process, failure to state a claim upon which relief can be granted, and failure to join a party under Rule 19, and the affirmative defenses, including, but not limited to, failure to mitigate, comparative fault, lack of causation, fault of third party, collateral estoppel, intervening cause, accord and satisfaction, arbitration and award, exclusiveness of remedy under workers' compensation law, contributory negligence, duress, estoppel, failure of consideration, fraud, illegality, injury by fellow servant, laches, license, payment, release, res judicata, statute of frauds, statute of limitations, waiver, and any other matter constituting an avoidance or affirmative defense if discovery supports those defenses.

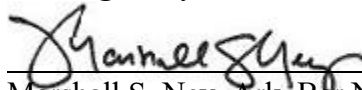
**PRAYER**

WHEREFORE, Defendant, Bart F. Hester, prays for the following:

1. That Plaintiff's Second Amended Complaint be dismissed with prejudice;
2. That judgment be rendered in favor of Senator Hester;
3. That Senator Hester be awarded all fees, costs, and expenses incurred in defense of this action; and
4. For all such other relief as the Court deems just and proper.

Respectfully submitted,

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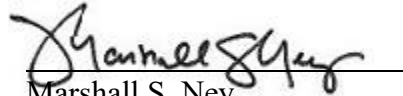
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Marshall S. Ney, Ark. Bar No. 91108  
Katherine C. Campbell, Ark. Bar No. 2013241  
Alexis E. Bibbs, Ark. Bar No. 2021261

**CERTIFICATE OF SERVICE**

I, Marshall S. Ney, hereby certify that a true and correct copy was served on the following via the Court's electronic filing system this the 30<sup>th</sup> day of December 2024:

Thomas A. Mars  
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Marshall S. Ney