

IN THE CIRCUIT COURT OF CRITTENDEN COUNTY, ARKANSAS
CIVIL DIVISION

SHIRLEY P. BROWN and LAVONDA L. TAYLOR
PETITIONERS

V. CASE NO. 18 CV-2024-894

FRANK BARTON, ANITA BELL, and JAMES PULLIAUM in their official capacity
as the CRITTENDEN COUNTY BOARD OF ELECTION COMMISSIONERS;
and CRITTENDEN COUNTY
RESPONDENTS

CRITTENDEN COUNTY ELECTION COMMISSION TRIAL BRIEF

I. Introduction

In accordance with the Court's remarks at end of hearing on Monday, September 23, 2024, Crittenden County Election Commission submits its trial brief on two points of concern to the Court.

II. **The Crittenden County Election Commission has the sole authority to establish early voting polling sites in West Memphis.**

A.C.A. §7-5-418 (b)(1)(A) provides: "The county board of election commissioners may decide to hold early voting at additional polling sites outside the office of the county clerk on any of the days and times provided for in subsection (a) of this section, if it so chooses". A.C.A. §7-5-418 (b)(1)B provides: "The county board of elections commissioners shall determine by unanimous vote the location of additional polling sites for early voting."

An Ambiguity exists between these provisions and A.C.A. §7-5-418(a)(1)(A) because they are inconsistent with and contrary to that subsection which provides in pertinent part... "early voting shall be available to any qualified elector who applies to the County Clerk's designated early voting location"... to the extent petitioners claim this provision gives the County Clerk authority to designate

early voting sites outside the Crittenden County Courthouse, or Marion, Arkansas, which is the county seat of Crittenden County.

When a statute is ambiguous, the Supreme Court must interpret it accordingly to legislative intent and the court's review becomes an examination of the whole act. Simpson v Calvary SPV I, LLC, 440 S.W.3d355, 2014 Ark 363. In this regard, A.C.A. §7-5-401 provides:

"(a) The county clerk shall be the custodian of the absentee ballots and early voting ballots for any early voting conducted by the county clerk.(b) The county clerk shall be furnished a suitable room at the county courthouse or other location designated for the purpose of exercising all the powers and duties concerning the application for, the issuance of, and the voting of absentee and early voting ballots required by law of the county clerk. (c) In counties with more than one (1) county seat, the county clerk shall conduct: (1) Absentee voting in the courthouse or other room provided by the county; and (2) Early voting at the county clerk's designated early voting location in each county seat if the county clerk conducts early voting under §7-5-418."

Since subsection 7-5-418(a)(1)(A) must be construed with §7-5-401, is clear the legislature did not intend for the County Clerk to be allowed to designate a early voting location outside the Crittenden County Courthouse, or elsewhere in the county outside Marion, the county seat. Furthermore a particular provision in a statute must be construed with reference to the statute as a whole. Robinson v. Taylor 342 Ark.459, 29 S.W.3d 691 (2001). When this is done subsection 7-5-418(a)(1)(A) phrase "County Clerk designating early voting location" conflicts with and is inconsistent with other provisions of §7-5-418 to wit §7-5-418(b)(1)(A), (3)(A), and (3)(B), which give the County Board of Election Commissioners the sole authority to designate additional early voting polling sites outside the offices of the County Clerk. Although a statute should be construed to give effect to every word therein if possible, unnecessary or contradictory clauses in acts will be deleted and disregarded in order to give effect to clear legislative intent. Ft. Smith v. Tate, 311 Ark. 405, 844 S. W.2d 356 (1993). Also when general terms in a statute are inconsistent with more specific provisions, the more specific provisions will be regarded as the clearer and most definite expression of the legislative will. Langford v. Brand, 274 Ark, 426,626 S,W,2d198(1981).

Under these rules of statutory construction, the more specific provisions of §7-5-418(b)(1)(A), (3)(A) and (3)(B) granting the County Election Commission power to designate additional early voting polling sites in the County outside the offices of the county Clerk, which are in the Crittenden County Courthouse , must prevail over the more general phrase in §7-5-418(a)(1)(A) "County Clerk's designating early voting location"

It should be noted that the petition for mandamus cites the Court to definitions section in A.C.A. § 7-1-101 to establish a polling site is defined "to mean a location selected by the County Board of Elections Commission where votes are cast §7-1-101(29). Yet there is no definition given for meaning of "County Clerk's designating early voting location" that appear in §7-5-418(a)(1)(A).

§7-5-418(e) provides: "The county clerk or county board of election commissioners shall furnish voting locations that adequately allow the early voter to personally and secretly execute his or her ballot". This is a clear expression of legislative intent that the County Clerk and County Election Commission both furnish voting locations that insure the voter privacy in casting his or her ballot. This provision supports legislative intent that the County Clerk is required to designate a voting location that is safe and secure for early voting she conducts under §7-5-401, and does not grant authority for the County Clerk to designate a polling site outside the courthouse in Marion, particularly when §7-5-401 is considered as the Court is required to do since it is part of the same act. Simpson v. Calvary, et al (supra at page 2) .

II. First Baptist Church in West Memphis, Arkansas is not a designated polling site for early voting in West Memphis in the 2024 General Election.

Petitioners cite A.C.A. 7-5-101(d)(1) for the proposition the First Baptist Church in West Memphis is a designated early voting polling site for general election in 2024, because it was designated and used in the 2022 general election, and has not been changed by unanimous vote of the County

Election Commission. This is false because A.C.A. §7-5-101 is not applicable to early voting because it expressly provides it is only applicable to voting at designated polling sites in specific precincts, which only occurs on election day. This is clear from sections 7-5-101(a)(1)(A), (B)(1) and (2), (b)(1)(2),(3A)(1) (B), (4)(A), (4)(B)I,ii,iii, (c)(1)(3)(C) that immediately precede §7-5-101(d)(1). It is also clear from subsection (d)(1)(2) that immediately follows subsection §7-5-101 (d)(1) upon which petitioners rely.

The balance of §7-5-101 deals with voting centers which are also not used in early voting. A.C.A. §7-1-113 establishing procedure for voting centers specifying states in § 7-1-113(a)(1) " The county board of elections commissions may establish one (1) or more voting centers in the county on election day under §7-5-101.

There is no ambiguity whatsoever in A.C.A. §7-5-101. It specifically applies to establishing polling sites in specific precincts only, which cannot apply to early voting because early voting is for all voters from all precincts within the city.

CONCLUSION

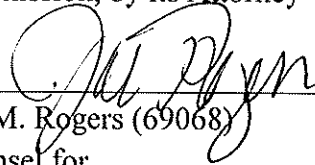
For the reasons set forth herein, respondent Crittenden County Elections Commission submit:

(1) County Clerk does not have authority to establish an early voting location in West Memphis, Arkansas at 7th Street Church of Christ, and (2) The First Baptist Church in West Memphis, Arkansas is not a designated polling site for early voting in 2024 general election. Consequently there will be no early voting polling site in West Memphis for the general election in 2024. Petitioners request for this Court to mandate Crittenden County Elections Commission to prepare for and authorize early voting in West Memphis at either the West Memphis 7th Street Church of Christ, or West Memphis First Baptist Church must be denied because it has the authority and discretion to decide there will be no early

voting polling sites in West Memphis for 2024 general election Martz v. Felts, Chairman Arkansas Board of Parole. 2019 Ark. 297, 585 S.W. 3rd 675.

Respectfully submitted,

Respondent Crittenden County Election
Commission, by its Attorney



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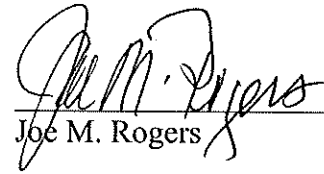
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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served upon the following attorney (s) by emailing a copy, as follows:

Jennifer A. Waymack Standerfer
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this 25th day of September, 2024.



Joe M. Rogers

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