

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

**PETITIONER'S RESPONSE TO "CRITTENDEN COUNTY
ELECTION COMMISSION TRIAL BRIEF"**

- I. It is the County Board of Election Commissioners' duty to provide the items necessary for the administration of an election to an early voting location designated by the County Clerk.**

Frank Barton testified that the County Clerk's designation of the Seventh Street Church of Christ as her early voting location is invalid. The Crittenden County Election Commission has not voted on that matter. Neither Barton nor the Board have the authority to make that declaration. The power to make that determination is judicial. Ark. Const. Amendment 80, § 1. Barton has no authority to interpret law or declare official acts invalid.

Further, Barton was elected to his membership on the board by a political party. Mrs. Paula Brown was elected County Clerk by the people at a countywide election.

The legislature delegated the authority to the County Clerk to designate her early voting location. The legislature delegated no oversight authority to Barton. Barton's personal opinion concerning the official action of an elected County Clerk is irrelevant, and his attempt to use his official position as a single member of a board to invalidate it violates the separation of powers doctrine. Ark. Const. Art. 4, §§ 1 and 2.

Ark. Code Ann. § 7-5-211(a) requires the county board of election commissioners to deliver the ballots and election supplies "before any election". It does not specify polling site, early voting site, or who the election is conducted by. Subsection (b) states, "The county board of election commissioners shall be responsible for providing ballots and election materials for absentee and early voting to the county clerk before the beginning day for absentee and early voting." The Board and its members have no discretion in this matter.

County Clerks staff early voting locations with both deputy clerks and poll workers selected by the County Board of Election Commissioners. The County Clerk has no authority to hire poll workers, but can designate them to assist with early voting after the county board has hired and trained them. State Board of Election Commissioners, Rules for Poll Worker & County Clerk Training, § 209 referencing Ark. Code Ann. § 7-4-109(e)(1). The Board and its members have no authority to prevent the County Clerk from designating poll workers to assist with early voting.

The county board of election commissioners is required to post public notice of the places and times for early voting at the courthouse and publish them in the newspaper. Ark. Code Ann. § 7-5-202 and § 7-5-416. The board and its members have no discretion to omit any early voting location.

The county board of election commissioners is required to:

(a) Count the early and absentee votes prior to the closing of the polls on election day. Ark. Code Ann. § 7-5-416 (a)(7);

(b) Deliver at least one (1) voting machine equipped for use by individuals with disabilities to the county clerk's designated early voting location and all off-site early voting polling locations prior to the start of early voting. Ark. Code Ann. §§ 7-5-413(a)(1) and 7-5-418(a)(1)(A); and

(c) “Ensure compliance with all legal requirements relating to the conduct of elections”. Ark. Code Ann. § 7-4-107(a).

The board and its members have no discretion in these matters. Barton testified that the board will not provide any of the money, election materials, or staff for early voting at the County Clerk’s designated location. Barton, entirely on his own and with no actual or apparent authority to do so, is holding Crittenden County’s budget line-item for elections, voting machines, ballots, and other election materials hostage, and it is improper.

II. The Crittenden County Clerk has lawfully designated her early voting location at the Seventh Street Church of Christ West Memphis.

Ark. Code Ann. § 7-5-418(a)(1)(A) provides that “early voting shall be available to any qualified elector who applies to the county clerk’s designated early voting location”. Respondent agrees that this is a grant of authority to the County Clerk, and that she may designate an early voting location.

However, Respondent misreads the plain language of Ark. Code Ann. § 7-5-418(b)(1)(A) in a manner that is designed to give greater power to the county board of election commissioners than the plain language indicates. Ark. Code Ann. § 7-5-418(b)(1)(A) provides in pertinent part: “The county board of election commissioners may decide to hold early voting at additional polling sites outside the offices of the county clerk...if it so chooses.”

Basic grammatical analysis indicates that (b)(1)(A) stands alone. The subject of the sentence is the county board of election commissioners. The verb is “may decide”; that is the grant of authority to the county board of election commissioners. The direct object of the sentence is “to hold early voting”; this is what the board may decide. That direct object is then modified by a prepositional phrase, “at additional polling sites”, which is further limited by an additional prepositional phrase “outside the offices of the county clerk”. Prepositional phrases are not stand alone statements; they only serve to modify their object. In this instance that object is the county board of election commissioners’ decision to hold early voting. There is no indication that this

prepositional phrase was meant to apply to anything beyond the period that closes the sentence.

Further, each subdivision within subsection (a) references the county clerk's authority. Each subdivision within subsection (b) references the county board of election commissioners' authority. The prepositional phrase "outside the offices of the county clerk" is contained within (b)(1)(A), limits the authority of the county board of election commissioners, and has no relevance to the authority of the county clerk.

These provisions are not ambiguous. In reviewing issues of statutory interpretation, the courts first construe a statute just as it reads, giving the words their ordinary and usually accepted meaning in common language. *McLemore*, 2013 Ark. 161, 427 S.W.3d 56. When the language of a statute is plain and unambiguous and conveys a clear and definite meaning, there is no need to resort to rules of statutory construction. *Id.* It is axiomatic that the courts strive to reconcile statutory provisions to make them consistent, harmonious, and sensible. *Brock v. Townsell*, 2009 Ark. 224, 309 S.W.3d 179. *First State Bank v. Metro Dist. Condos. Prop. Owners' Ass'n*, 2014 Ark. 48, 6, 432 S.W.3d 1 (2014).

The analysis should stop here, and the Court does not have to consider legislative intent at all. However, Respondent's argument fails on a legislative intent argument as well. Ark. Code Ann. § 7-5-401(b) provides that "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." This language further evidences that other locations beyond the courthouse can be designated by the county clerk for early voting.

Respondent's mistaken interpretation rests on an assumption that all county clerks hold early voting at their offices in the courthouse, and this is simply not the case. The Crittenden County Courthouse is not suitable for early voting given the inconsistency of access for disabled voters. To stretch the interpretation of these provisions to require that the County Clerk's only authority to hold early voting exists at a location where disabled voters would be disenfranchised is absurd. The legislature did not intend to disenfranchise disabled voters. Nor did it intend to grant absolute authority to a county board of election commissioners to be the only entity with the

power to designate early voting locations. The Courts will not interpret a statute to yield absurd results that are contrary to legislative intent. *City of Maumelle v. Jeffrey Sand Co.*, 353 Ark. 686, 120 S.W. 3d 55, (2003). “We will not interpret the statute in a meaning that is contrary to the clear language of the statute; nor will we read into the statute language that is not there.” *Turnbough v. Mammoth Spring School List. No.2*, 349 Ark. 341, 78 S.W.3d 89 (2002).

III. The Crittenden County Election Commission lawfully established First Baptist Church West Memphis as an early voting location.

The Crittenden County Election Commission established the First Baptist Church of West Memphis as the early voting location for the 2022 general election by unanimous vote. Respondents’ argument that this location is not a “polling site” ignores its definition. Ark. Code Ann. § 7-5-101(29) provides “‘Polling site’ means a location selected by the county board of election commissioners where votes are cast.” The definition does not distinguish between early voting sites and election day sites. The First Baptist Church West Memphis meets this definition. If the legislature had intended for this term to apply only to election day polling sites, the legislature would have said that.

Ark. Code Ann. § 7-5-101(d)(1) provides that “the polling sites for each election shall be the same as those established for the immediately preceding general election unless changed by order of the county board of election commissioners.” The plain language of this subdivision is clear. If the legislature had intended this provision to apply to polling sites for any precinct, it would have said “polling site for any precinct” as it did in subdivisions (d)(2) and (d)(3).

Respondents attempt to muddy subdivision (d)(1) with reference to separate subdivisions. While (d)(2) and (d)(3) reference ‘polling sites for precincts’ those subdivisions stand alone and do not reference (d)(1). When the legislature intends for a subdivision to reference another, it does so explicitly with an internal reference like “except for school elections under § 6-14-106”, “as provided under subdivision (a)(1)”, or “including those elections listed under subsection (c)”. “Legislative Drafting Manual”, Bureau of Legislative Research, State of Arkansas, pp 50-55. (<https://www.arkleg.state.ar.us/Home/FTPDocument?path=/BLR+Publications/>

The Crittenden County Election Commission designated the First Baptist Church West Memphis as an early voting location, and took no official action to move or close that location for the 2024 General Election.

IV. It is an abuse of Barton's office to use his position to prevent early voting in West Memphis.

Barton's authority as Chair of the Crittenden County Board of Election Commissioners is limited. Ark. Code Ann. § 7-4-105(b) does not even designate the Chair to call the meetings. Instead, it gives him the duty to notify all commissioners of all meetings, and further requires that those meetings be public and held under the Freedom of Information Act of 1967, § 25-19-101 et seq. Arguably, if Mr. Pulliaum or Mrs. Bell were to call a meeting, it would be Mr. Barton's responsibility to notify the others of the date and time.

Barton's oath is that of an election officer. "I do swear that I will perform the duties of an election official of this election according to law and to the best of my abilities, and that I will studiously endeavor to prevent fraud, deceit, and abuse in conducting the same, and that I will not disclose how any voter shall have voted, unless required to do so as a witness in a judicial proceeding or a proceeding to contest an election." Ark. Code Ann. § 7-4-110(a).

Ark. Code Ann. § 7-4-107(a) requires the county board of election commissioners to "ensure compliance with all legal requirements relating to the conduct of elections", and the first and foremost requirement relating to the conduct of elections is in the Arkansas Constitution. "Elections shall be free and equal." Ark. Const., Art. 3, § 2.

Barton testified that no time limit in the law bars the Crittenden County Board of Election Commissioners from designating an early voting location in West Memphis even today. He testified that he knows there would be a unanimous vote in favor of his preferred location at the West Memphis Library if he called a meeting today. And regardless, he maintained that he will not call a meeting to do so. He offers no explanation or justification. "No power, civil or military, shall ever interfere to prevent the

free exercise of the right of suffrage; nor shall any law be enacted whereby such right shall be impaired or forfeited..." Ark. Const., Art. 3, § 2.

Barton may have been elected by his political party, but his duty in this election is to the people of Crittenden County. Barton's use of his civil power to prevent early voting access for West Memphis voters is unwarranted, unjustified, and an outright abuse of discretion.

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 ECF filing to the attorneys of record on this 26th day of September, 2024.

By: /s/ Jennifer A. Waymack Standerfer