

NO. CV-24-674

IN THE ARKANSAS COURT OF APPEALS

FRANK BARTON, ANITA BELL, and  
JAMES PULLIAUM in their official capacity as  
the CRITTENDEN COUNTY BOARD of  
ELECTIONS COMMISSIONERS;

APPELLANTS

VS.

SHIRLEY P. BROWN and  
LAVONDA L. TAYLOR

APPELLEES

**APPELLANTS' BRIEF**

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## POINTS ON APPEAL

### Point I.

Circuit Court erred in finding the Crittenden County Clerk had the authority under Ark. Code Ann. §7-5-418(a)(1)(A) to designate the Seventh Street Church of Christ in West Memphis as an early voting site for 2024 general election.

### Point II.

Circuit Court erred in granting mandamus directing the Crittenden County Election Commissioners to conduct early voting at early voting location selected by the County Clerk in West Memphis just as they had done when Election Commissioners conducting early voting at early voting polling site they selected in West Memphis in 2022 General Election.

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## JURISDICTIONAL STATEMENT

A. Appellants bring this appeal from Crittenden County Circuit Court's September 30, 2024 order and grant of mandamus finding; (1) Crittenden County Clerk has authority under Ark. Code Ann. §7-5-418(a)(1)(A) to designate an early voting polling site location in West Memphis, Arkansas, for the 2024 general election outside the County Clerk's office in Marion, Arkansas, the county seat of Crittenden County, Arkansas; and (2) granting mandamus directing the Crittenden County Election Commissioners to conduct early voting at early voting polling site location in West Memphis designated by the County Clerk of Crittenden County for the 2024 general election.

B. Appellants filed their Notice of Appeal from the September 30, 2024 order on October 4, 2024 in the Crittenden County Circuit Court giving notice of their appeal to the Arkansas Supreme Court. Circuit Court Record (RP1-96) and court reporter's transcript were docketed with this court on October 8, 2024. Therefore this appeal is timely filed.

C. Jurisdiction of this case is in the Arkansas Supreme Court pursuant to Rule 1-2(a)4 of the Rules of the Arkansas Supreme Court and Court of Appeals concerning appeals pertaining to elections and election procedures.

## STATEMENT OF THE CASE AND THE FACTS

Appellees filed Petition for Writ of Mandamus, Declaratory Judgment, and Injunctive Relief against Crittenden County Board of Election Commission in the Circuit Court of Crittenden County, Arkansas on September 19, 2024 (RP3-24). Order was entered on September 20, 2024 scheduling an Ark. Rule. Civ. Proc. 78(d) hearing for September 23, 2024 at 9:30 a.m. at the Craighead County Courthouse in Jonesboro, Arkansas (RP28). Appellants' attorney agreed to an expedited hearing as an accommodation to appellees because appellees did not have time to issue summons and serve appellant election commissioners (RP84).

At this hearing, plaintiffs/appellees testified as to their residences, voter status, and desire to have early voting for the 2024 general election to establish standing (RT31, 33). Exhibits were introduced of video of Crittenden County Election Commission meeting on August 23, 2024 and September 3, 2024 that established Crittenden County Election Commissioners unanimously established an early voting polling site in Marion outside County courthouse but did not establish an early voting polling cite in West Memphis for the 2024 general election because republican commissioners, Frank Barton and Anita Bell voted for the new West Memphis Public Library polling cite, (RT179-180, 182) and democratic representative James Pulliaum voted against this early voting polling

cite because he preferred early voting polling cite be at West Memphis 7<sup>th</sup> Street Church of Christ (RT43).

Crittenden County Clerk Paula Brown was called as a witness by appellees. Her testimony established early voting polling sites were established by County Election Commission for 2000 and 2002 general election in Marion outside courthouse and West Memphis but prior to those years early voting was conducted at County courthouse (RT84)(RT82,84). She further testified she had her office staff stamp her name on a September 5, 2024 letter to the Crittenden County Election Commission prepared by or at the request of a representative of the Crittenden County democratic party for her signature (RT,83), but latter clarified the democratic party did not call but it was an individual (RT93). This letter was introduced as a exhibit (RT79) and states:

“According to the law, 7-5-418(a)(1)(A), the County Clerk designates the early voting polling site and the commission can designate additional polling sites. It has come to my attention that the Commission did not designate a polling site in West Memphis for early voting. This is surprising since West Memphis is the largest municipality in the county. Therefore, I am designating the 7<sup>th</sup> Street Church of Christ as an early voting polling site. The address is 899 N. 7<sup>th</sup> Street West Memphis, AR. Please select the required number of poll workers to operate this site.”

The Circuit Court continued the hearing to 1:30 p.m. on September 25, 2024 at the Crittenden County Courthouse in Marion, Arkansas to allow appellants time



to present testimony because their attorney had been unable to secure witnesses for the 9:30 a.m. September 23, 2024 hearing in Jonesboro. A Zoom conference was conducted at 1:30 p.m. on September 25, 2024 to accommodate testimony of appellant, Frank Barton, who was out of state (RP84). Mr. Barton's testimony established that he announced at the election commissioners' meeting on September 3, 2024 that there would not be an early voting polling site in West Memphis for the 2024 general election because state law required County Election Commissioners' selection of early voting site outside the County Courthouse to be unanimous. (RT182). Mr. Barton testified he did not believe the County Clerk had authority to establish an early voting polling site outside Marion, Arkansas, which was the location of the County Clerk's office at the county seat of Crittenden County, Arkansas based on his training and understanding of election law in Arkansas as a Crittenden County Election Commissioner since 2015 (RT183).

Following the zoom hearing on September 25, 2025, the parties submitted trial briefs. (RP32,46). On September 30, 2024, the Circuit Court entered an order holding the County Clerk had authority under Ark. Code Ann. §7-5-418(a)(1)(A) to establish an early voting location in West Memphis, and granted mandamus directing Crittenden County Election Commissioners to hold early voting at West Memphis 7<sup>th</sup> Street Church of Christ just as the Election Commissioners conducted

early voting at the West Memphis First Baptist Church in the 2022 general election, when the Election Commissioners unanimously selected that as an additional polling site outside the offices of the County Clerk per Ark. Code Ann. §7-5-418(b)(1)(A) (RP77-78).

From this ruling, appellants appeal to the Arkansas Supreme Court. (RP92-94).

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## ARGUMENT

### POINT 1

**THE CIRCUIT COURT ERRED IN FINDING THE CRITTENDEN COUNTY CIRCUIT CLERK HAD THE AUTHORITY UNDER ARK. CODE Ann.§7-5-418(a)(1)(A) TO DESIGNATE THE SEVENTH STREET CHURCH OF CHRIST IN WEST MEMPHIS AS AN EARLY VOTING POLLING SITE.**

Standard of Review of Error of Law in Constructions of Statutes is De Novo.

SubTeach USA v. Williams, 210 Ark. 400, 373 S.W.3d 384

Ark. Code Ann. §7-5-418(b)(1)(A) states: “(T)he county board of election commissioners may decide to hold early voting at additional polling sites outside the offices of the County Clerk on any of the days and times provided for in subsection (a) of this section, if it so choses (emphasis added).

Subsection (b)(1)(B) provides: “(T)he county board of election commissioners shall determine by unanimous vote the location of additional polling sites for early voting” (emphasis added).

Subsection (b)(3)(A) states: “(T)he county board of election commissioners shall notify the County Clerk of its decision to hold early voting polling sites outside the office of the County Clerk within ten days of the decision.” (emphasis added)

Subsection (b)(1)(3)(B) provides: “(I)f the county board of election commissioners decides to hold early voting at one (1) or more conveniently located

polling sites on the days and times under subsection (a) of this section, the County Clerk may choose not to hold early voting within the offices of the County Clerk. The County Clerk shall notify the County Board of Election Commissioners within ten days of the receipt of notice from the County Board of Election Commissioners regarding early voting at additional polling sites.” (emphasis added)

Subsection (b)(1)(5) states: All voted ballots and unvoted ballots and all related election material at each additional early voting polling site shall be stored in a secure voting location in the County Courthouse or in a secure location as determined by the County Board of Election Commissioners immediately after the close of additional polling sites each day that early voting is concluded there.” (emphasis added)

In contrast to these subsections concerning early voting at additional polling sites outside the office of the County Clerk that is to be conducted by the County Board of Election Commissioners, early voting conducted by the County Clerk under Ark. Code Ann. §7-5-418(a)(1)(A) “shall be available to any qualified voter who applies to the County Clerk designated early voting location, beginning fifteen (15) days before a presidential primary or general election between the hours of 8:00 a.m. and 6:00 p.m. Monday through Friday and 10:00 a.m. and 4:00 p.m. Saturday and ending at 5:00 p.m. on the Monday before the election.” (emphasis added) However under (a)(2)(A) “...on all other elections, including the general

primary and general runoff elections, early voting shall be available to any qualified elector who applies to the County Clerk during regular office hours, beginning seven (7) days before the election and ending on the day before the election at the time the county clerk's office regularly closes." (§7-5-418 (a)(2)(A).

Based on these contrasting subsections, two important points stand out. First, the Crittenden County Election Commissioners have discretion to hold early voting at additional polling sites outside the office of the County Clerk, which by law is located at the county seat of Crittenden County, which is Marion. (Ark. Code Ann. §14-14-301) but if they do so they can only do so by an unanimous vote (Ark. Code Ann. §7-5-418 (b)(1)(B) and must hold early voting fifteen days before the election and at the hours set forth in §7-5-418(a)(1)(A). Second, the County Clerk must hold early voting during the period, hours, and days set forth in §418-(a)(1)(A) at the County Clerk's "designated early voting location, during presidential primary or general election. However, the County Clerk is only required to hold early voting at all other elections for those voters who apply to the County Court during regular office hours of the County Clerk (8:00 a.m. – 4:30 p.m.) five (5) days per week, seven (7) days before and ending on the day before the election (§7-5-418(a)(2)(A), which means such early voting would be conducted at the County Clerk's office in the County Courthouse. This comparison clearly reveals legislative intent that the "County Clerk's designated early voting

location for presidential primary and general election under §7-5-418(a)(1)(A) must be in some area of the County Courthouse Complex in the county seat where the County Clerk can accommodate extra hours and Saturday voting for fifteen (15) days before the election, and not at the West Memphis 7<sup>th</sup> Street Church of Christ in West Memphis, which is outside Marion, the county seat and location of Crittenden County Courthouse and office buildings for county offices and employees.

In construing a particular provision in a statute, i.e. §7-5-418(a)(1)(A), it must be construed with reference to the statute as a whole including §7-5-418(a)(2)(A). Robinson v. Taylor, 342 Ark. 459, 29 S.W.3d 691(2001). Consequently, when these two (2) subsections are construed together it becomes clear the legislature could not have intended by “The County Clerk’s designated early voting location in §7-5-418(a)(1)(A)” to authorize the County Clerk to conduct early voting in West Memphis at the 7<sup>th</sup> Street Church of Christ location during the general election yet County Clerk has to hold early voting she conducts in other elections in county clerks’ office under §7-5-418(a)(2)(A). When interpreting statutes, courts reconcile the statutory provision in order to make them consistent, harmonious, and sensible, and will not construe a statute in such a way it leads to an absurd result. First State Bank v. City of Elkins, 2018 Ark 191, 546 S.W.3d 477. Surely the legislature would not have intended to give the County

Court Clerk the authority to hold early voting at a church facility in West Memphis during the general election but limit early voting to the courthouse complex in Marion, the county seat of county governmental affairs, in all other elections including primary and runoff elections.

The only way to harmonize these two provisions concerning the office of the County Clerk's duties in holding early voting to make them sensible is to conclude term "at the County Clerk's early voting designated location" was intended to give the County Clerk discretion to hold early voting in general elections on Saturday and after regular business hours of the County Clerk at somewhere other than the County Clerk's office but somewhere in the county courthouse complex at the county seat in Marion to accommodate larger number of persons expected to vote in the general election as opposed to other elections where the County Clerk could accommodate early voters at offices in the Courthouse during regular business hours. This is practically true when Subsection 7-5-418(b)(1)(A), (b)(1)(B), (b)(1)(3)(A), and (b)(1)(3)(B), are construed with 7-5-418(a)(1)(A) and 7-5-418(a)(2)(A) because the (b) subsections specifically authorize the County Board of Election Commissioners to hold early voting during all elections at additional polling sites outside the office of the County Clerk.

The Circuit Court seeks to justify its holding that Subsection of 7-5-418(a)(1)(A) and Subsection 7-5-418(b)(1)(A), et al are not in conflict and

ambiguous but if they are legislative history supports the Circuit Court's finding (RP71). This is not true as historical review of Ark. Code Ann. §7-5-418 shows. Act 948 of 1995 created early voting in Arkansas as revealed by its title which in pertinent part stated: "An act...to establish early voting...and subtitle "To Establish Early Voting." Section 7 of this act provides: "Subchapter 4 of Chapter 5 of Title 7 is amended by adding the following section "7-5-418 Early Voting..."In pertinent part it provided.

"(a) Early voting shall be available to any qualified elector who applies at the office of the County Clerk during regular office hours beginning fifteen (15) days before an election and ending on the day before election day at the time the County Clerk's office regularly closes...

(d) The county clerk shall furnish voting locations that adequately allows early voter to personally and secretly execute his or her ballot."

Following this amendment adding provisions of 7-5-418, the Arkansas Legislature in Act 967 of 1997 amended this subsection to read in pertinent part

"§7-5-418. Early voting.

(a) Early voting shall be available to any qualified elector who applies at the office of the county clerk during regular office hours, beginning fifteen (15) days before an election and ending on the day before election day at the time the county clerks' office regularly closes.

(b)(1) In any county containing one hundred fifty thousand (150,000) registered voters or more, the county board of election commissioners may decide to hold early voting at additional polling sites outside the offices of the county clerk, and to include the additional voting locations for a maximum of fifteen (15) days, but fewer if it so chooses by majority vote. The county board of election commissioners shall determine by unanimous vote the location of additional polling sites for early voting. The county clerk shall publish the location of additional early voting polling sites in a newspaper of general circulation at least five (5) days before early voting begins.



(2) The county board of election commissioners shall select the number of election officials if necessary to adequately staff the additional early voting polling site or sites as in any other election.

(3) The county board of election commissioners shall notify the county clerk of its decision to hold early voting at additional polling sites outside the office of the county clerk within ten (10) days of the decision. If the county board of election commissioners decides to hold early voting at additional polling sites outside the office of county clerk, the county clerk may choose not to hold early voting within the office of the county clerk. The county clerk shall notify the county board of election commissioners within ten (10) days of the receipt of notice from the county board of election commissioners regarding early voting at additional polling sites.

(4) The early voting election official shall record the date on all pages of the early voting roster or early voting request form and keep a daily record of the number of early ballots cast.

(5) The county board of election commissioners may vote to extend the normal hours for voting during early voting. The county clerk shall publish the additional hours for early voting with the location of additional early voting polling sites in a newspaper of general circulation at least five (5) days before early voting begins. ...

(e) The county clerk or county board of election commissioners shall furnish voting locations that adequately allow early voter to personally and secretly execute his or her ballot.”

The underlined language is what was added by the 1997 amendment.

The legislature then enacted Act 269 of 2003 to revise Ark. Code Ann. §7-5-418. In pertinent part this act provided:

SECTION 1. Arkansas Code §7-5-418 (a) and (b) are amended to read as follows:

(a)(1) Early voting shall be available to any qualified elector who applies to the county ~~clerk~~ clerk's during regular office hours designated early voting location, beginning fifteen (15) days before a preferential primary, general primary, general election or general run-off election and ending on the day before election day at the time the county clerk's office regularly closes between the hours of 8:00 a.m. to 6:00 p.m., Monday through Friday, and 1:00 p.m. to 4:00 p.m. Saturday, and ending at 6:00 p.m. on the Monday before the election.

2. However, on all other elections, early voting shall be available to any qualified elector who applies to the county clerk during regular office hours, beginning fifteen (15) days before an election and ending on the day before the election day at the time the county clerk's office regularly closes.

(b)(1)(A) ~~In any county containing one hundred fifty thousand (150,000) registered voters or more, the~~ The county board of election commissioners may decide to hold early voting at additional polling sites outside the offices of the county clerk and to include the additional locations for a maximum of fifteen (15) days ~~but fewer if it so chooses by a majority vote on any of the days and times provided for in §7-5-418(a), if they so choose.~~

(B) The county board shall determine by unanimous vote the location of additional polling sites for early voting.

(C) The county clerk shall publish the location of additional early voting polling sites in a newspaper of general circulation at least five (5) days before early voting begins.

(2) The county board shall select the number of election officials necessary to adequately staff additional early voting polling site or sites as in any other election.

(3) (A) The county board shall notify the county clerk of its decision to hold early voting at additional polling sites outside the office of the county clerk within ten (10) days of the decision.

(B) If the county board decides to hold early voting at additional sites outside the office of county clerk, the county clerk may choose not to hold early voting within the office of the county clerk. The county clerk shall notify the county board within ten (10) days of the receipt of notice from the county board regarding early voting at additional polling sites.

(4) The early voting election official shall record date on all pages of the early voting roster or early voting request form and keep a daily record of the number of early ballots cast.

(5) ~~(A) The county board may vote to extend the normal hours for voting during early voting.~~

~~(B)~~ The county clerk shall publish the additional hours for early voting with the location of additional early voting polling sites in a newspaper of general circulation at least five (5) days before early voting begins.”

The underlined and interlined language is what was added or deleted by the 2003 amendment.

In review, Act 948 of 1995 created §7-5-418, but only defined the County Clerk's responsibility for early voting at the clerk's office where she was required to furnish voting location that adequately allowed the early voter to personally and secretly execute his or her ballot. Act 967 of 1997 retained Subsection A of the 1995 Act and added subsections (b)(1-5) that established the County Board of Election Commissioners had authority and discretion in any county in Arkansas with a population of registered voters in excess of 150,000 to establish additional polling sites outside the office of the County Clerk but only if decided by the unanimous vote of the County Election Commissioners. This amendment retained provisions from 1995 Act in §7-5-418(e) but supplemented it to provide "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" (underlined portion is language added by 1997 Act). Act 269 of 2003 amended subsection 7-5-418(a) by adding "designated early voting location" in place of County Clerk during regular office hours, substituted presidential primary, general primary, general election, or general runoff election for an election, and set early hours at 8:00 a.m. to 6:00 p.m., Monday through Friday, 1:00 – 4:00 p.m. on Saturday and ending at 6:00 p.m. on the Monday before election in place of business hours at the County Clerk's office. The 2003 amendment also added subsection (a)(2)(A) which established that early voting in

all other elections would remain at the County Clerk's office during regular office hours.

The 2003 Act eliminated the previous requirements set forth in 7-5-418(b)(1)(A) that County Board of Election Commissioners only had authority to establish early voting polling sites outside the offices of the County Clerk in Counties with in excess of 150,000 registered voters to all counties on any of the days and times set forth in 7-5-418(a). However it specifically readopted all other subdivision of 7-5-418(b) that had been added in the 1997 Act except it eliminated provision in 7-5-418(b)(5)(A) that the County Board may vote to extend the normal hours for early voting. This was obviously because the 2003 amendment had established hours for early voting in all elections.

The crux of argument in Point I on appeal turns on what the legislature intended in Act 269 of 2003 that amended Ark. Code Ann. §7-5-418 by substituted language in 7-5-418(a)(1)(A) “ to designated early voting location” for “County Clerk during regular business hours” while at the same time, the legislature readopted all significant provisions of the prior legislature in §7-5-418(b)(1)(A), (b)(2),(3)(A and (3B)) that gave the authority to the County Election Commissioners to establish early additional early voting polling sites outside the office of the County Clerk so long as done by unanimous vote.

To answer this question, Arkansas law requires this Court to apply certain rules of statutory construction that have been established by prior rulings of this Court. The first general rule of statutory construction is the reason, spirit, and intended purposes of acts of General Assembly are basic guidelines in statutory construction. Woodcock v. First Comm. Bank, 284 Ark. 490, 683 S.W.2d 605 (1985). The primary rule of statutory interpretation is to give effect to the intent of the legislature. BHC Pinnacle Point Hospital, LLC v. Nelson, 2020 Ark. 79, 594 S.W.3d 62. Courts do not make the law they merely construe, apply, and interpret it. Benca v. Martin, 2016 Ark. 359, 500 S.W.3d 742. 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) . In ascertaining legislative's intent when interpreting a statute, the court looks to the statutory language, subject matter, objects to be accomplished, purpose to be served, remedy provided, legislature history, and other appropriate matters. Miller v. Endes, 2013 Ark. 23, 425 S.W.3d 723. Although a statute should be construed to give effect to every word therein if possible, unnecessary or contradictory clause 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.2s 356 (1993). When general terms in a statute are inconsistent with more specific provisions, the most specific provisions will be regarded as the clearer and most definite expressions of legislative will or intent.

Langford v. Brand, 274 Ark. 426, 626 S.W.2d 1981 (1981). In this regard, §7-1-101(29) specifically defines polling site “ to mean a location selected by the County Board of Election Commissioners” yet the legislative did not “define designated early voting location in definition section of §7-1-101.

Under these rules of statutory construction and the legislative history of Ark. Code Ann. §7-5-418, it is clear the Arkansas legislature did not intend for the County Clerk to be able to establish a polling site for early voting outside the Crittenden County Courthouse and offices therein or in other County office buildings in Marion, the county seat of Crittenden County for multiple reasons.

First in §7-5-418(b)(1)(A), (3)(A), (3)(B), the legislature gave the County Election Commissioners sole authority and discretion “to hold early voting at additional polling sites outside the offices of the County Clerk...” Second, the legislature established in §7-5-418(e) that “(T)he County Clerk or County Board of Election Commissioners should furnish voting locations that adequately allow the early voter to personally and secretly execute his or her ballot.” The obvious intent of this subsection, when construed with other provisions of 7-5-418, is that if the County Board established additional polling sites outside the offices of the County Clerk, or if the County Clerk elects to also have early voting, both the Election Commissioners and the County Clerk must have early voting locations that guarantee the early voter’s vote is secretly made.

The legislature's intent is directed toward protecting the secrecy of the ballot. Therefore the legislature provided in §7-5-418(a)(1)(A) that the County Clerk could establish an early voting location but it had to be where the County Clerk could assure the early voter has the right to secrecy of his or her ballot. This is the sensible meaning to be assigned to the meaning of the County Clerk's established early voting location, and does not support the absurd result reached by the Circuit Court that County Clerk's early voting designated location means the County Clerk has the right to establish an early voting policy site at the West Memphis 7<sup>th</sup> Street Church of Christ.

In its order, the Circuit Judge opines that his findings result in the County Clerk having the right to protect the voting public from what the Circuit Court believed to be:

“...broad grant of power contained in Ark. Code Ann. §7-5-418(b)(1)(A) to a single unelected politically affiliated person. When the two subsections (a)(1)(A) and (b)(1)(A) are read together as required when doing statutory analysis, the duly elected clerk can act as a safeguard to ensure that there is a early vote at some place outside the Courthouse in each Arkansas county. Thus citizens in all seventy five (75) counties have at least one elected official with the power to conduct early voting outside the Courthouse. While a single, unelected, politically affiliated person's power remains immense, it is at least checked in one regard”(Circuit Ct. Order at RP72).

The simple answer to the Circuit Court's criticism and disagreement with the legislature in giving the Crittenden County Board of Election Commissioners the sole statutory authority to provide early voting polling sites in the County outside

the County Clerk's office is that the circuit courts or any other court do not make the law but merely construe, apply, and interpret it. Benca v. Martin, supra at 17.

Furthermore, the facts of this case do not support the Circuit Court's conclusion the County Clerk was protecting the voters from political actions of what the Circuit Court believed to be "a single, unelected, politically affiliated person's power." It was a Crittenden County democratic party representative that prepared or had prepared the September 5, 2024 letter (Ex. 7, RT83) the County Clerk had her office staff stamp her signature to (RT92,93,95) that resulted in the designation of 7<sup>th</sup> Street West Memphis Church of Christ as the County Clerk's designated voting location for early voting in West Memphis for the 2024 general election. The facts are this is the same voting location in West Memphis where the democratic party representative on the Crittenden County Election Commission wanted the Crittenden County Board to select for "additional polling site" outside the office of the County Clerk per 7-5-418(b)(1)(A). This is the site that the Circuit Court acknowledged lead to the democratic party representative on the election commission getting his way (RT136) that was not selected as an additional polling site outside the offices of the County clerk per §7-5-418(b)(1)(A) by the election commissioners because the majority republican representatives on the Crittenden County Board of Election Commissioners felt the new West Memphis Public Library in West Memphis was a better site.(RT180) The democratic representative



rejected West Memphis Public Library site in two separate meetings of the County Election Commissioners. This caused the Election Commissioner Chairman to state that there would be no additional early voting polling sites in West Memphis for the 2024 general election because the Election Commissioners have to be unanimous in their vote (Ark. Code Ann. §7-5-418(b)(1)(B) (RT182)).

The facts are clear. The only reason there was no additional polling site in West Memphis, Arkansas established by the Election Commissioners is that the minority democratic party representative on the Election Commission wanted a site that the democratic party in Crittenden County felt was more favorable to it that it got by virtue of the Circuit Court order despite §7-5-418(b)(1)(B) requirement that unanimous vote of the County Election Commissioners is necessary before additional polling site for early voting can be established outside the offices of the County Clerk.

The Circuit Court committed error in doing so. The clear legislature's intent was to keep politics out of the election commissioners' control by requiring their unanimous consent to establish additional polling sites for early voting outside the Crittenden County Courthouse Complex under Ark. Code Ann. §7-5-418(b)(1)(B), yet politics have driven the establishment of the Seventh Street Church of Christ in West Memphis as an early voting location.

There are other Arkansas statutes that establish legislative intent §7-5-418(a)(1)(A) did not authorize the County Clerk to conduct early voting outside the County Courthouse Complex. As previously noted, Act 948 of 1995 was passed to establish early voting in Arkansas. It amended Ark. Code Ann. §7-5-401 to read: “Duties of the County Clerk. The County Clerk shall be the custodian of the absentee and early voting ballots. The County Clerk shall be furnished a suitable room at the County Courthouse and shall exercise all the powers and duties concerning the application for, the issuance of, and the voting of the absentee and early voting required by law of the County Clerk.”

Act 67 of 2005 amended Ark. Code Ann. §7-5-401 to provide “The County Clerk shall be the custodian of the absentee ballots and early voting ballots for any early voting conducted by the clerk at the courthouse. The County Clerk shall be furnished a suitable room at the County Courthouse and shall exercise 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.” The underlined language is the change to §7-5-401 effected by the 2005 amendment. The obvious purpose of this 2005 amendment was to establish that the County Clerk was the custodian of the early voting ballots for any early voting conducted by the clerk at the courthouse, while the County Election Commissioners were

responsible for early voting ballots cast at additional polling sites outside the county court's office under §7-5-418(b)(5)).

§7-5-401 was further amended in 2007 to add (c)(1) and (2) which state: "In counties with more than one 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." When these subsections of 7-5-401 are construed together and with the provisions of 7-5-418 as the rules of statutory construction require (supra at 14,21) it becomes evident the legislature did not intend the County Clerk to have authority to conduct early voting outside the county courthouse complex in Marion, the county seat of Crittenden County for several reasons.

First, §7-5-401(b) states the county clerk shall be furnished a suitable room at the county courthouse or other location for the purpose of exercising all the powers and duties concerning the application for, the issuer of, and the voting of absentee and early voting ballots required by law of the County Clerk. The first rule of statutory construction is to apply a plain reading to the statute construing it just as it reads by giving the words their ordinary and usually accepted meaning in common language. Torres v. State 2019 Ark. 101 571 S.W.3d 456. Given that rule of construction, it should be noted the language in 7-5-401(b) "(T)he County Clerk

shall be furnished a suitable room at the county courthouse or other location designated for the purpose of...concerning the application for, the issuance of, and the voting of absentee and early voting ballots required by law of the County Clerk.” (emphasis added) In context, this provision requires some county official other than the County Clerk to furnish a suitable room at the courthouse or other location to apply for, and the issuance of absentee and early voting. The County Clerk has designated the 7<sup>th</sup> Street Church of Christ in West Memphis but surely the legislature did not intend for the County Clerk to issue absentee ballots there. Consequently, 7-5-401(b) by its plain language precludes the County Clerk from holding early voting at the 7<sup>th</sup> Street Church of Christ in West Memphis.

Second, in substance, §7-5-401(c) requires the County Clerk in counties with more than one county seat to conduct early voting at the County Clerk’s designated early voting location in each county seat under 7-5-418. The Circuit Court’s conclusion §7-5-401(c) has no bearing whatsoever on authority of the County Clerk to hold early voting at West Memphis 7<sup>th</sup> Street Church of Christ (RP70) defies common sense and violates rule of statutory construction that courts seek to reconcile statutory provisions to make them consistent, harmonious, and sensible, and to avoid interpretation that results in absurdity, leads to contradiction or defeats plain purpose of law. Ragland v. Alpha Aviation, Inc., 285 Ark. 182, 686 S.W.2d 301, opinion supplemented on denial of rehearing 285 Ark. 182, 688

S.W.2d 301 (1985). This rule requires the court to analyze §7-5-401 and §7-5-401(c)(2) together to establish purpose of these subsections is to allow early voting at the courthouse with either one or two county seats at a location designated by the County Clerk for early voting but it must be at the county seat. Marion is the county seat of Crittenden County. Therefore, the County Clerk has no authority under 7-5-401 or 7-5-418(a)(1)(A) to designate an early voting cite for the 2024 general election at the 7<sup>th</sup> Street Church of Christ in West Memphis.

There is one other statute to consider and construe along with the provisions of §7-5-401 and §7-5-418. It is §7-5-413. Subsection §7-5-413(a) provides “(a)(1) At least one (1) voting machine equipped for use by individuals with disabilities shall be placed in the county clerk’s designated location for early voting for the election in accordance with this subchapter and at any off-site polling locations established by the county board of election commissioners.”(emphasis added). Subsection 7-5-413(b) provides: (b) After regular business hours, the clerk at the clerk’s designated early voting location or the election official at any off-site polling place shall secure the machines against further voting at the close of each day’s voting.”(emphasis added).

The logical and sensible construction of these provisions is that the legislature in enacting these subsections recognized that the County Clerk’s designated early voting location under §7-5-418(a)(1)(A) must be on site at the

Crittenden County Courthouse and office complex in Marion because the Election Commissioners are the officials with authority to establish additional off site polling sites outside the offices of the County Clerk under §7-5-418(b)(1)(A), (3)(A), and (3)(B).

In conclusion, the Circuit Court's finding that under §7-5-418(a)(1)(A), the County Clerk had the authority to designate the 7th Street Church of Christ in West Memphis, Arkansas as an early voting site for the 2024 general election (RP77) was in error and should be reversed.

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## Point II.

### **CIRCUIT COURT ERRED IN GRANTING MANDAMUS DIRECTING THE CRITTENDEN COUNTY ELECTION COMMISSIONERS TO CONDUCT EARLY VOTING AT EARLY VOTING LOCATION SELECTED BY THE COUNTY CLERK IN WEST MEMPHIS JUST AS THEY HAD DONE WHEN ELECTION COMMISSIONERS CONDUCTING EARLY VOTING AT EARLY VOTING POLLING SITE THEY SELECTED IN WEST MEMPHIS IN 2022 GENERAL ELECTION.**

Standard of review of circuit court decisions in a mandamus action is de novo. Carrol v. Hobbs, 2014 Ark. 395, 442 S.W.2d 834.

Section 7-5-418(a)(1)(A) provides for early voting at the County Clerk's designated early voting location for general elections. The County Clerk is responsible for early voting the clerk conducts under Ark. Code Ann. §7-5-401. Under Ark. Code Ann. §7-5-301(e), the County Clerk has supervision of voting machines and electronic vote tabulating devices used for voting in the Clerk's designated early voting locations. §7-5-418(b)(1)(A) and (b)(2) allow the County Election Commissioners to name additional polling sites outside the County Clerk's office, and provide that the County Board of Election Commissioners shall appoint election officials at additional early polling sites they select.

In spite of these statutes that do not require the County Election Commissioners to appoint election workers, or supervise the conduction of early voting at the County Clerk's designated early voting location, the Circuit Court has

ordered (granted mandamus)(RP77, 78) appellants to “conduct early voting at the 7<sup>th</sup> Street Church of Christ in West Memphis in the same or substantially the same manner as early voting was conducted at First Baptist Church in West Memphis for the 2022 general election.” The record establishes that early voting was conducted at the West Memphis First Baptist Church in 2022 at the direction of the County Election Commissioners under Ark. Code Ann. §7-5-418(b)(1)(A). (RT74) The Circuit Court has no authority to grant mandamus to direct appellants to conduct early voting at the 7<sup>th</sup> Street Church of Christ in West Memphis for the 2024 general election because it is at the sole discretion of appellants under Ark. Code Ann. §7-5-418(1)(b)(A) whether to conduct early voting at polling sites outside the office of the county clerk. Martz v. Felts, Chairman Arkansas Board of Parole, 2019 Ark. 297, 585 S.W.3d 675.

Appellants will comply with its responsibilities under Ark. Code Ann. §7-5-211(c), 7-5-202(a)(3), and 7-5-413 as directed by the circuit court because it has those responsibilities under the statutes. Appellants submit they have no responsibility for the County Clerk’s duties regarding absentee ballots under §7-5-416, conducting of early voting at the Clerk’s designated early voting location under §7-5-418(a)(1)(A), or under §7-4-107 for conducting of early voting at the



7<sup>th</sup> Street Church of Christ in West Memphis as the County Clerk had no authority to select such location for early voting conducted by the County Clerk. Therefore appellants request this Court to reverse that part of the Circuit Court's order directing it to do so (RP77& 78).

### **REQUEST FOR RELIEF**

Appellants request this court to reverse findings of the Crittenden County Circuit Court that the County Clerk of Crittenden County, Arkansas has the authority to establish an early voting location at the 7<sup>th</sup> Street Church of Christ in West Memphis, Arkansas for the 2024 general election under Point I of their argument, and dismiss appellees' petition that the County Clerk has such authority with prejudice.

Appellants further request under Point II that this court find that the Circuit Court of Crittenden County, Arkansas erred in granting appellees' petition for mandamus directing appellants to conduct early voting at the West Memphis 7<sup>th</sup> Street Church of Christ designated by the Crittenden County Clerk in the manner they did at the First Baptist Church in West Memphis at the 2022 general election, and dismiss appellees' petition for mandamus with prejudice.

## CERTIFICATE OF SERVICE

Petitioners/appellants Frank Barton, Anita Bell and James Pulliaum, in their Official Capacity as the Crittenden County Board of Election Commissioners by their attorneys Rogers & Coe, do hereby certify that they served a copy of this pleading on respondents/appellees, Shirley P. Brown and Lavonda L. Taylor, by service by email on their attorney, Jennifer A. Waymack Standerfer at [jenniferwaymack@sbcglobal.net](mailto:jenniferwaymack@sbcglobal.net) and Crittenden County Circuit Court Hon Judge Christopher Thyer by email to [tferrell@2ndjudicial.org](mailto:tferrell@2ndjudicial.org).

this 8<sup>th</sup> day of October, 2024.

/s/Joe M. Rogers  
Joe M. Rogers  
Attorney for Petitioners/Appellants

## CERTIFICATE OF COMPLIANCE WITH ADMINISTRATIVE ORDER 19, ADMINISTRATIVE ORDER 21§9, AND WITH WORD COUNT LIMITATIONS

On this 8<sup>th</sup> day of October, 2024, I hereby certify that this brief complies with (1) Administrative Order No. 19's requirements concerning confidential information, (2) Administrative Order No. 21, Section 9 and that this document does not contain hyperlinks to external papers or websites, and the word count for this document is 6,613 words within the limitation of 8,600 words allowed for appellants' brief. I have submitted and served on opposing counsel an unredacted, and if required, a redacted PDF document(s) that comply with the Rule of the Supreme Court and Court of Appeals. The PDF document is identical to the corresponding parts of the paper document from which they were created as filed with the Court. To the best of my knowledge, information, and belief formed after scanning the PDF document for viruses with an antivirus program, the PDF document(s) are free of computer viruses. A copy of this certificate has been filed with the Court and has been served on all opposing parties.

/s/Joe M. Rogers  
Joe M. Rogers

CERTIFICATE OF COMPLIANCE WITH ARKANSAS SUPREME COURT  
RULE 1.8

On this 8<sup>th</sup> day of October, 2024, I hereby certify that I have submitted and served on opposing counsel an unredacted, and if required, a redacted PDF document(s) that comply with the Rule of the Supreme Court and Court of Appeals. The PDF document is identical to the corresponding parts of the paper document from which they were created as filed with the court. To the best of my knowledge, information, and belief formed after scanning the PDF document for viruses with an antivirus program, the PDF document(s), are free of computer viruses. A copy of this certificate has been submitted with the paper copies filed with the Court and has been served on all opposing parties.

/s/ Joe M. Rogers  
Joe M. Rogers

Appellants, Frank Barton, Anita Bell, &  
James Pulliam, in their official capacity as  
The Crittenden County Board of Election  
Commissioners;

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