

IN THE SUPREME COURT OF ARKANSAS

FRANK BARTON, ANITA BELL, and JAMES

APPELLANT

PULLIAUM in their official capacity as the

CRITTENDEN COUNTY BOARD OF ELECTION

COMMISSIONERS

V.

NO. CV-2024-674

SHIRLEY P. BROWN and LAVONDA L. TAYLOR

APPELLEES &

CROSS APPELLANT

**ON APPEAL FROM THE CIRCUIT COURT
OF CRITTENDEN COUNTY, ARKANSAS**

THE HONORABLE CHRIS THYER CIRCUIT JUDGE

**APPELLEES' AND CROSS APPELLANT'S RESPONSE TO APPELLANTS'
PETITION FOR AN ACCELERATED APPEAL**

COME NOW the Petitioners, Shirley Brown and Lavonda Taylor, by and through their attorney, Jennifer A. Waymack Standerfer, and in response to Appellants "Petition For an Accelerated Appeal" hereby state:

- I. Appellant's request for accelerated appeal should be denied.

(A) Appellants did not file an extraordinary writ by petition in the Supreme Court or in the Circuit Court as required by Rule 6-1(a) of the Rules of the Arkansas Supreme Court and Court of Appeals. Appellants filed notice of appeal in the Circuit Court, and an appeal to the Supreme Court is an “adequate remedy” in this case;

(B) The Circuit Court’s order does not require the Crittenden County Board of Election Commissioners to “conduct early voting for 2024 General Election at the West Memphis Seventh Street Church of Christ in West Memphis Arkansas” as alleged in Appellants’ “Petition for Accelerated Appeal”. The Crittenden County Clerk designated the Seventh Street Church of Christ in West Memphis as her early voting location and testified that she would conduct early voting at that location. At a trial court hearing on this matter, Frank Barton, Chair of the Crittenden County Board of Election Commissioners testified that he did not believe the County Clerk had the authority to make this designation, and as such the Board would not supply her with any of the items or assistance necessary to conduct early voting at this location.

After the trial court hearing on this matter, and on October 8, 2024, the Crittenden County Quorum Court unanimously voted to allocate \$50,000 to the County Clerk to accommodate early voting at the Seventh Street Church of Christ in West Memphis. The County Clerk will conduct early voting at this location pursuant to the Circuit Court’s order. Through his testimony before the trial court in this matter, Mr. Barton indicated that he and the Commission will not provide any assistance to the County Clerk, which includes the following provisions of law required for county boards of election commissioners concerning this location:

(1) Supplying the ballots and election supplies for early voting to the county clerk before early voting. Ark. Code Ann. § 7-5-211(a);

(2) Posting public notice of the places and times for early voting at the courthouse and publishing them in the newspaper. Ark. Code Ann. §§ 7-5-202 and 7-5-416;

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

(4) Delivering the voting machines necessary for early voting. Ark. Code Ann. §§ 7-5-211, 7-5-413, and 7-5-418;

(5) Certifying the election returns. Ark. Code Ann. § 7-5-701; and

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

These are mandatory requirements of the county board of election commissioners under Arkansas law, not discretionary. The County Clerk has no access to ballots, ballot boxes, or voting machines. The County Clerk has no authority to count or process ballots or to certify election results.

If Appellants’ “Petition for Accelerated Review” is denied, the Crittenden County Board of Election Commissioners will suffer no prejudice or irreparable harm. Appellants must print enough ballots for the entire county; the question before this Court is how many of those are sent to the Seventh Street Church of Christ. Appellants must prepare and maintain the voting machines; the question before the Court is whether the County Board of Election Commissioners can refuse to allocate any of them to the County Clerk’s designated location. A denial of Appellants’ request for accelerated

review will result in the minimal inconvenience of relinquishing custody of the ballots and voting machines in its possession to the County Clerk while this Court considers their points on appeal.

(C) Petitioner/ Appellant did not “identify as respondents all the other parties to the circuit court action” as required in Rule 6-1(a)(2) of Rules of the Supreme Court and Court of Appeals of the State of Arkansas. Crittenden County was a party to the Circuit Court action not named by Appellant upon appeal.

(D) Rule 6-1(b) of the Rules of the Supreme Court and Court of Appeals of the State of Arkansas requires that “the pleader shall inform the Clerk’s office of the need for an emergency or accelerated hearing by the Court”. The pleader, in the form of the notice of appeal, did not include this request. A separate “Petition for Accelerated Appeal” was filed simultaneously with a brief and after the record was lodged on appeal, and is therefore not timely.

II. Appellants alternate relief of a stay should be denied.

Rule 6-1(c) requires “reasonable notice of the application for temporary relief must be served upon the other party of the counsel of record in the circuit court and the circuit court.” Rules of the Supreme Court and Court of Appeals of the State of Arkansas. No such notice was filed in the Circuit Court, and therefore there was no review and consideration of the record and pleading by the Circuit Court.

Further, Appellants suffer no prejudice or irreparable harm by denial of their request for a stay. If the stay is denied, the Appellants will simply be required to refrain from interrupting other Election Officers from performing their duties in the conduct of

early voting in the 2024 General Election. Conversely, if the stay is granted, it will halt preparations for early voting in the 2024 General Election creating substantial prejudice and irreparable harm to the Appellee's and Cross Appellants in this case as well as to all voters of Crittenden County.

III. If Appellants' request for accelerated review is granted, Appellees request sufficient time to respond.

Appellees' notice of cross appeal was not due until on or about October 20, 2024. Promptly upon receipt of Appellant's request to accelerate review in this case, Appellees filed notice of cross appeal in the Circuit Court. Appellees now require time to supplement the record with the Supreme Court while preparing Appellant's Brief and Cross Appellate Brief.

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 Frank Barton, Anita Bell, and James Pulliaum, in their Official Capacity as the Crittenden County Board of Election Commissioners by and through service upon their attorney of record, Joe Rogers, and upon the Crittenden County Circuit Court Judge Christopher Thyer by email to tferrell@2ndjudicial.org

On this 9th day of October, 2024.

By: /s/ Jennifer A. Waymack Standerfer

Jennifer A. Waymack Standerfer

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