

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 &  
CROSS APPELLEES

VS.

SHIRLEY P. BROWN and  
LAVONDA L. TAYLOR

APPELLEES &  
CROSS APPELLANTS

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ON APPEAL FROM THE  
CIRCUIT COURT OF CRITTENDEN COUNTY, ARKANSAS  
THE HONORABLE CHRIS THYER CIRCUIT JUDGE

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CROSS APPELLEES' BRIEF IN REPOSENSE TO CROSS APPEAL

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## **POINTS ON CROSS APPEAL**

- 1. THE CIRCUIT COURT CORRECTLY FOUND EARLY VOTING WOULD NOT BE HELD AT FIRST BAPTIST CHURCH OF WEST MEMPHIS IN THE 2024 GENERAL ELECTION.**

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## **JURISDICTIONAL STATEMENT ON CROSS APPEAL**

Appellants/cross appellees admit that issue on cross appeal whether Circuit Court correctly found that the First Baptist Church in West Memphis was not an early voting site for 2024 General Election is timely before the Arkansas Supreme Court under Rule 1-2(a) of the Rules of the Arkansas Supreme Court and Court of Appeals.

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## **STATEMENT OF THE CASE AND THE FACTS ON CROSS APPEAL**

The Crittenden County Election Commission did not conduct early voting at the West Memphis Church of Christ as the early voting location in West Memphis for the 2022 General Election as appellees/cross appellants submit (Brief at 12). Instead it was held at the First Baptist Church in West Memphis. (RT35, 68, 74, 198, 222)

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## ARGUMENT

### STANDARD OF REVIEW

In Carrol v Hobbs, 2014 Ark. 395, 442 S.W.2d 834, this Court in a petition for declaratory judgments and for a writ of mandamus that appellees/cross appellants seek in this case (RP3,38), this Court held “we review the action of the Circuit Court de novo and will uphold the decision unless it is clearly erroneous. However in Martz v Felts, 2019 Ark. 297, 585 S.W. 3d 675, as noted by appellees/cross appellants (Brief at 16) the standard of review in a mandamus case is whether the Circuit Court abused its discretion, which is when it makes a decision that is arbitrary and capricious.

### ARGUMENT OF CROSS APPEAL

#### **1. THE CIRCUIT COURT CORRECTLY FOUND EARLY VOTING WOULD NOT BE HELD AT FIRST BAPTIST CHURCH OF WEST MEMPHIS IN THE 2024 GENERAL ELECTION.**

Regardless of the appropriate standard of review, cross appellants’ request for a writ of mandamus directing cross appellees Crittenden County Election Commissioners to hold early at the First Baptist Church in West Memphis for the 2024 general election, just because they held it there in 2022, must fail because they have shown no right to the relief sought much less a clear and certain right to that relief, which is necessary to obtain a writ of mandamus. Carrol v Hobbs, supra.

In denying cross appellees' request for mandamus relief directing Crittenden County Election Commissioners to hold early voting at the First Baptist Church in West Memphis for the 2024 general election, the Circuit Court discussed rules of statutory construction and held:

“...Stated differently “(a) general law does not apply where there is another statute governing the particular subject, irrespective of the date of either the general or particular law; neither repeals the other, the particular legislation covers the narrower field where it is applicable. Cheney v East Texas Motor Freight, Inc., 346 S.W. 2d 513, 515 (1961)(quoting Lawyer v. Carpenter, 97 S.W. 662, 663 (Ark. 1906). See also Ark. Dep’t of Fin. & Admin. V. Trotter Ford, Inc., 685 S.W. 3d 889, 898-899 (Ark. 2024)(Webb, J. dissenting).

Here, Ark. Code Ann.§7-5-101 deals exclusively with day-of-voting and day-of-polling sites...in consideration of the subject matter, object and purpose of Ark. Code Ann.§7-5-101, this Court is convinced that this statute, generally, and thus, Ark. Code Ann§7-5-101(d)(1), particularly, is not applicable to early voting or early voting “polling sites.” Here, there is a specific statute dealing with early voting Ark. Code Ann.§7-5-418 that most likely subsumes the field of early voting polling sites which would take precedence over the generality of Ark. Code Ann.-§7-5-101- as that statute applies to early voting or early voting polling sites. In the determination of legislative intent, the best (or safest) reading of these statutes is to read them separately and to read them as dealing with distinct subject matters, objects and purposes. One -Ark. Code Ann.§7-5-101- deals with day of voting and day-of polling sites. The other-Ark. Code Ann. §7-5-418—deals with early voting and early voting polling sites.

By reading the two statutes in this fashion, the Court is able to make the two statutes harmonious. If the two statutes are read as Plaintiffs suggest, an absurd



result is produced in that a previously established early voting site could only be eliminated upon some vote of the Commission(maybe unanimous, maybe not), yet the establishment of an early voting site by the Commission each election year is purely discretionary function requiring unanimous consent of the Commission.” (RP67-68)

This is exactly Cross Appellees point. Cross Appellants cite Ark. Code Ann.§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 Ark. Code Ann. §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(B)(i),(B)(i)(2),(b)(1)(2),(3)(A),(3)(B),(4)(A),(4)(B)i,ii,iii,and (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 cross appellants rely.

The balance of §7-5-101 deals with voting centers, which are also not used in early voting. Ark. Code Ann. §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.” A particular provision in a statute must be construed with reference to the statute as a whole. Robinson V. Taylor, 342 Ark. 459, 295 S.W. 3d 691(1991) Consequently arguing that §7-5-101(d)(1) should stand alone as cross appellants do from every other subsection in §7-5-101 is absurd as the Circuit Court held. (RP68)

Ark Code Ann. §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 .... if it so chooses.” As the Circuit Court held: “to read Ark. Code Ann. §7-5-101 as Plaintiffs suggest is to also render parts of Ark. Code Ann. §7-5-418 superfluous. That is a bridge too far for the Court, and if that is in fact what the Arkansas Legislature intended, it is up to the legislature to say so more clearly and/or up to the Supreme Court to interpret the statute in that fashion. If it is true that “every word and every provision is to be given effect...None should needlessly be given an interpretation that causes it to duplicate another provision or have no consequence (citations omitted) then the only conceivable way this Court can avoid a finding that portions of Ark. Code Ann. §7-5-418 are superfluous is to read that statute as dealing with different subject matters, objects and purposes than Ark. Code Ann. §7-5-101(d)(1).”(RP69)

The decision of the Circuit Court to deny Cross Appellants petition for a writ of mandamus to compel the Crittenden County Board of Election Commissioners

to perform early voting at the First Baptist Church in West Memphis should be affirmed for two distinct reasons. First Cross Appellants have no right to such relief much less a clear and certain right thereto. Carroll v. Hughes, supra. Second Cross Appellees Crittenden County Election Commissioners have the discretion to establish polling sites outside of offices of the County Clerk - “may decide to hold early voting at additional polling sites outside the offices of the Court Clerk... if they so choose”- under Ark. Code Ann. §7-5-418(b)(1)(A). A writ of mandamus will not lie to control or review matters of discretion Martz v. Felts, supra, 585 S.W. 3d at 677.

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## **REQUEST FOR RELIEF ON CROSS APPEAL**

Cross Appellees Crittenden County Board of Election Commissioners' request that the Circuit Court of Crittenden County, Arkansas holding "that Crittenden County Election Commissioners were not required to hold early voting at the First Baptist Church in West Memphis, Arkansas for the 2024 General Election" be affirmed, and that Cross Appellants' petition for such relief be dismissed with prejudice.

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## CERTIFICATE OF SERVICE

Cross Appellees 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 their brief on Cross Appellants, 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 Honorable Judge Christopher Thyer by email to [tferrell@2ndjudicial.org](mailto:tferrell@2ndjudicial.org).

this 14th day of October, 2024.

/s/Joe M. Rogers  
Joe M. Rogers  
Attorney for Cross Appellees

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

On this 14th 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 1,298 words within the limitation of 8,600 words allowed for cross appellees' 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  
Attorney for Cross Appellees