

Case No. 24-674

IN THE SUPREME COURT OF ARKANSAS

FRANK BARTON, et al.,
Appellants,

v.

Shirley P. Brown & Lavonda L. Taylor,
Appellees-Cross Appellants.

On Appeal from the Circuit Court of Crittenden County, Arkansas

THE HONORABLE CHRIS THYER
Case No. 18CV-24-894

**BRIEF OF THE STATE OF ARKANSAS
AS AMICUS CURIAE IN SUPPORT OF APPELLANTS**

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STATEMENT OF INTEREST AND IDENTITY OF AMICUS CURIAE

Amicus curiae is the State of Arkansas. The State has an interest in ensuring fair and orderly election procedures and promoting a uniform interpretation of its election laws.

The Court's decision in this case will determine whether State election laws are interpreted inconsistently with the text of the statute and current practice in counties across the State. The circuit court's decision sidesteps the safeguards put in place by the Arkansas legislature, disrupts the balance of power between the county board of election commissioners ("CBEC") and the county clerk, and grants unfettered discretion to one county official. Worse, the circuit court's novel interpretation arrives just before early voting begins, threatening the orderly administration of early voting in the State.

INTRODUCTION

Section 7-5-418 does not give the county clerk the authority to designate early voting locations outside of the county clerk's offices. The county clerk may only designate one early voting location: a place of her choosing *within* the offices of the county clerk. The legislature explicitly vested one entity—the CBEC—with the authority to create *additional* locations outside the office of the county clerk. In the two decades that early voting has been available statewide, every county in Arkansas has understood and followed this division of authority between the county clerk and

the CBEC in early voting. The position taken by the county clerk of Crittenden County, and endorsed by the circuit court below, is as anomalous as it is wrong.

The county clerk of Crittenden County claims that Ark. Code Ann. § 7-5-418(a)(1)(A) bestows her with unilateral authority to create additional early voting polling locations, presumably anywhere in the County, subject to none of the statutory checks and balances that constrain the actions of the CBEC. The statute does not support that result. Nor is there reason to think that the General Assembly intended to vest county clerks with authority overlapping that of the CBEC without the same safeguards to ensure that authority is exercised in a fair and orderly manner.

This Court should reject the circuit court's novel expansion of the county clerk's authority and reverse its order mandating the CBEC to conduct early voting at the Seventh Street Church of Christ in West Memphis.

STATEMENT OF THE CASE

The State adopts the Statement of the Case in Appellants' Brief.

ARGUMENT

I. The circuit court's order is contrary to Section 418's text.

Section 418's text doesn't grant the county clerk the authority to designate new early voting locations outside of the clerk's office. The county clerk can only designate one location for early voting, which must be inside the office of the county clerk. Accordingly, the decision below, allowing the county clerk to designate an

early polling location at the Seventh Street Church of Christ in West Memphis—a location outside of the clerk’s office and outside of the county seat—should be reversed.

In pertinent part, subsection (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.*” Ark. Code Ann. § 7-5-418(a)(1)(A) (emphasis added). Referring to the county clerk’s designating authority, the statute uniformly uses a singular term, “the . . . location,” specifying that the county clerk can only designate one location for early voting. *See id.*; Ark. Code Ann. §§ 7-5-418(b)(1)(A); 7-5-418(b)(1)(C); 7-5-418(b)(1)(D). On its face, subsection (a)(1)(A) provides no other explicit limitation on that authority.

But that provision must read in the context of the whole statute. *See, e.g., Schnarr v. State*, 2018 Ark. 333, at 4, 561 S.W.3d 308, 311 (“[I]t is a fundamental canon of construction that when interpreting or construing a statute the court may consider the text as a whole to derive its meaning or purpose.”); *Roeder v. United States*, 2014 Ark. 156, at 4, 432 S.W.3d 627, 631 (“We reconcile provisions to make them consistent, harmonious, and sensible in an effort to give effect to every part.”). Subsection (b)(1)(A) allows the CBEC to “hold early voting at additional sites outside the offices of the county clerk.” Ark. Code Ann. § 7-5-418(b)(1)(A). Section 418(b)(1)(A)’s description of CBEC’s selected early-voting sites as being

in “addition[.]” to the “offices of the county clerk” makes sense only if the county clerk is already required to hold early voting at her office under section 418(a)(1)(A). Read together, subsection (a)(1)(A) provides the clerk’s general designation power, while (b)(1)(A) clarifies where the designated location can be, *i.e.*, *within* the offices of the county clerk. Ark. Code Ann. §§ 7-5-418(a)(1)(A); 7-5-418(b)(1)(A).

Other provisions of the statute confirm this conclusion. Subsection (b)(3)(B) allows the county clerk to “choose not to hold early voting *within the office of the county clerk*” if the CBEC conducts early voting at “conveniently located polling sites on the days and times under subsection (a).” Ark. Code Ann. § 7-5-418(b)(3)(B) (emphasis added). That language relieves the county clerk of her obligation under subsection (a)(1)(A) to hold early voting *within* the office of the county clerk—an explicit indication of where the clerk’s designated early voting location must be. *See id.* Subsection (b)(5)(A) lends further support, instructing that a safe and secure location be made in the courthouse to store ballots from “each additional early polling site.” *See* Ark. Code Ann. § 7-5-418(b)(5)(A). Noticeably absent is any reference to the county clerk’s designated early voting location. This omission makes sense only if the designated site is already within the office of the county clerk. There would be no need for the statute to mandate the creation of a secure location for a polling location inside of

the offices of the county clerk, which is generally located in the county courthouse or another location under the county's control.

This interpretation also aligns with section 7-5-401, which specifies the county clerk's duties. Under subsection 401(b), the county must furnish a room where the county clerk exercises "all the powers and duties concerning . . . the voting of . . . early voting ballots required by law of the county clerk." Ark. Code Ann. § 7-5-401(b). Because the county must provide the room where the county clerk exercises "all" her "powers and duties" regarding early voting, it would be incongruous for the statute to require the county to furnish a site outside of the county's control—like the Seventh Street Church of Christ.

Moreover, subsection 401(c)(2) (though it does not apply to Crittenden County), underscores that the legislature meant the county clerk could only designate a location within the county clerk's office. When a county has more than one county seat, unlike the present case, the county clerk must have a designated location "in *each* county seat." Ark Code Ann § 7-5-401(c)(2) (emphasis added). There is no need for a similar provision in counties with one seat, like Crittenden County, because the background statutory requirement is that the clerk's designated location will be within the clerk's offices, which will be in the county seat (here, Marion). Thus, the clerk's designated polling location can never be a place outside of the county seat, like the Seventh Street Church in West Memphis.

II. The circuit court's reading of the statute conflicts with longstanding practice.

The contrary interpretation endorsed by the circuit court is not only atextual, but also runs contrary to the practices of counties throughout the State. To the State's knowledge, no county clerk has ever attempted to unilaterally designate a polling location outside of the county seat since early voting was expanded statewide in 2003. Consequently, this Court has not had occasion to interpret the early voting statute's balance between the duties of the CBEC and the county clerk. If left unanswered, the circuit court's interpretation risks creating confusion throughout the State.

The circuit court's reading of the statute also leads to absurd results. For example, because the county clerk may designate only one location for early voting, *see* Ark. Code Ann. § 7-5-418(a)(1)(A), and (under the circuit court's reading) that choice is without limitation, the county clerk could presumably choose any single location in the county for early voting. But if the chosen location were outside the clerk's office, the county clerk would not be able to additionally conduct early voting at the clerk's office or the county seat (the typical location for early voting). Thus, the clerk would be barred from conducting early voting at the one place the statute is clear it must ordinarily be held.

The circuit court's reading also invites mischief. The county clerk's designated location could be, for example, as remote as possible or in the most

convenient location for the county clerk's party of choice, opening a new avenue of partisan gamesmanship. The county would be required to furnish that site, even if the county does not own the property, and the CBEC would be required to staff the location and provide election machines. Indeed, the county clerk's decision would be essentially unreviewable and not subject to the checks and balances present when the CBEC decides to designate an early voting site. *See* Ark. Code Ann. § 7-5-418(b)(1)(B) (requiring a unanimous vote to designate a site). There's no indication the legislature intended to vest such unreviewable power in the county clerk's hands.

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Conclusion

This Court should interpret Section 418 in accord with its text and reverse the circuit court's order mandating the CBEC to conduct early voting at the Seventh Street Church of Christ in West Memphis.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I certify that this motion complies with Administrative Order No. 19 and that it conforms with the page-count limitations contained in Rule 4-6(g) of this Court's rules as it contains 1,441 words. The brief also does not contain hyperlinks to external papers or websites.

/s/ Nicholas J. Bronni

Nicholas J. Bronni

CERTIFICATE OF SERVICE

I certify that on October 15, 2024, I electronically filed this document with the Clerk of Court using the eFlex electronic-filing system, which will serve all counsel of record.

/s/ Nicholas J. Bronni

Nicholas J. Bronni