

IN THE ARKANSAS SUPREME COURT
BRYAN NORRIS, *et al.*,)
Appellants,)
v.) Case No CV-26-116
INDEPENDENCE COUNTY,)
ARKANSAS, *et al.*, Appellees.)

**APPELLEES’ RESPONSE TO MOTION
TO EXPEDITE, FOR AN INJUNCTION, AND
ALTERNATIVE PETITION FOR A WRIT OF *CERTIORARI***

Separate Appellees* Independence County, Arkansas; Tracey Mitchell, Wendy Henry, Jennifer Emery, and Frances Haigwood, in their official capacities; and Tim Stewart, Johnny McMullin, Brent Henderson, Brad Covington, Cliff Barnett, Tammy Pearce, Kenny Hurley, Jonathan Abbott, and Dennis Stephens, individually and in their official capacities, respond that the Appellants’ motion to expedite, for an injunction, and alternative petition for a writ of *certiorari* should be denied, ARK. SUP. CT. R. 2-1 & 6-1:

1. The Independence County Quorum Court passed Ordinance No. 2025-27 on December 12, 2025. (RP 119-120). Appellants filed their complaint on February 6, 2026, (RP 10), seeking to declare Ordinance

* The Arkansas Attorney General intervened below.

2025-27 unconstitutional because Arkansas Code Annotated § 14-14-918(b)—the authority behind that Ordinance—allegedly violated Article 5, § 1 of the Arkansas Constitution, **(RP 15-19)**.

2. The Circuit Court correctly concluded it had no subject matter jurisdiction to adjudicate Appellants’ facial challenge to Arkansas Code Annotated § 14-14-918(b), and the challenge to all of that statute’s applications, because Act 975 of 2025 amended Arkansas Supreme Court Rule 1-2, vesting exclusive original jurisdiction over those challenges in the Court of Appeals. **(RT 11-13); (RP 152-156)**.

3. Amendment 80, §§ 9 & 10 granted the General Assembly authority to amend our courts’ rules establishing their jurisdiction. Nothing in Amendment 80, §§ 2, 5, or 6 compels a contrary conclusion.

4. Appellants show no basis for expedited briefing. They waited less than a month before the March 3 election to file their case below. There is no practical way for Independence County to switch to hand-marked, hand-counted paper ballots at the March 3, 2026 election in compliance with the now-repealed 2024 initiated ordinance.

5. Appellants decided to pursue a direct appeal of the order of dismissal without prejudice instead of initiating a constitutional challenge in the Arkansas Court of Appeals, with the stated desire of submitting

themselves to *res judicata* and the risk of dismissal with prejudice if the Circuit Court's order is affirmed on appeal. (RT 14-15); (RP 157). Despite those representations below and in their notice of appeal, Appellants now additionally petition for an injunction and writ of *certiorari*.

6. There is no original jurisdiction over the Appellants' petition for an injunction. Although there is appellate jurisdiction over the denial of an injunction, that request is not properly before this Court on an expedited basis. No evidence supports issuing an injunction regardless.

7. The petition for a writ of *certiorari* should be denied. Appellants make no showing their appeal presents an inadequate remedy. Appellants' strategic choice to appeal created the instant posture.

8. An affidavit of Barbara Henson is attached as Exhibit A and is incorporated by reference. A memorandum of authorities will follow and is incorporated by reference.

MEMORANDUM OF AUTHORITIES

This appeal, motion, and petition, present a narrow issue: did Arkansas Constitutional Amendment 80, §§ 9 & 10 empower the General Assembly to pass Act 975 of 2025? If so, then ARK. SUP. CT. R. 1-2(a) redefined the Court of Appeals's jurisdiction, depriving the Circuit Court of subject matter jurisdiction below.

The limitations inherent in responding to a petition for an extraordinary writ deny separate Appellees a full opportunity to respond to the spurious assertions in Appellants’ motion and petition. For example, this appeal does not involve the same ballot measure at issue in *Mitchell v. Norris*, 2024 Ark. 148, 698 S.W.3d 361; it involves the power of the Quorum Court to pass an ordinance repealing a 2024 initiated ordinance pursuant to ARK. CODE ANN. § 14-14-918(b). That action was not hidden from Bryan Norris, Arkansas Voter Integrity Initiative, Inc., or Restore Election Integrity Arkansas until January 2026; it was filed of record on December 12, 2025, (RP 119-120).

Separate Appellees preserved many challenges to Appellants’ complaint in their motions to dismiss below, (RP 34-86), which are alternative bases to affirm dismissal after this appeal is fully briefed. Appellants thus seek not only expedited consideration, but also an injunction and writ, to override those defects. As the Circuit Court noted below, “[t]here’s a lot of problems with this case.” (RT 3).

1. **Expedited review is not warranted.** The parties agree the sole issue on appeal is the constitutionality of Act 975 of 2025. That issue does not warrant expedited consideration. Central to Appellants’ urgency in their motion and petition is the fallacy that ongoing voting by electronic

device is somehow irreparably harmful. Appellants claim they are losing their “right to conduct their election as they have chosen for the 2026 primary,” and they have lost their “constitutional right to self-legislate” pursuant to Article 5, § 1. These arguments defy the record, ignoring the import of the December 12, 2025 Ordinance No. 2025-27, (RP 119-120).

Appellants have waited too long to change the manner of voting at the March 3, 2026 election. *Bailey v. Martin*, 2014 Ark. 213, at 9–10, 433 S.W.3d 904, 908–909 (holding appellant waited too long and made “no suggestion whatsoever as to what steps we could order the Commissioners to take to restore her name to the ballot” and “not one suggestion for what relief this court can grant that would have any practical effect in light of the fact that the ballots have been printed”). Appellants introduced no evidence below on the practical impossibility of complying with the repealed 2024 ordinance in the March 3 election, so an affidavit detailing that practical impossibility is attached to this response. *Exhibit A*.

This appeal is not an election contest requiring an advanced hearing. ARK. CODE ANN. § 7-5-804(b). Although Ordinance 2025-27 repealed an initiated ordinance which selected the manner of voting in elections, this appeal does not challenge the validity of any election. *Whitley v. Cranford*, 354 Ark. 253, 258, 119 S.W.3d 28, 31 (2003) (“Election contests are of two

types, one where a candidate seeks an order declaring himself or herself the winner, and a second where a qualified voter seeks to void the election”). The case below comprised constitutional challenges to ARK. CODE ANN. § 14-14-918, under Article 5, § 1, **(RP 15-19)**. No pleading below sought to declare any election void. There is thus no statutory impetus to expedite this appeal.

Appellants have no vested constitutional right in the “manner” of voting. *Thurston v. League of Women Voters of Arkansas*, 2024 Ark. 90, at 6, 687 S.W.3d 805, 811 (“[W]hile the right *to vote* has been held to be fundamental, the right *to vote in a particular manner* is not guaranteed”). This case is not about voting rights; it instead considers the County’s right to repeal an initiated ordinance by general law, § 14-14-918(b).

Appellants have no constitutional right to self-legislate implicated by Ordinance 2025-27 and ARK. CODE ANN. § 14-14-918(b). As pleaded, Appellants’ initiated ordinance became law in 2024. It was then repealed by Ordinance 2025-27 on December 12, 2025. ARK. CODE ANN. § 14-14-918(b) empowered that repeal of a measure approved by the electors, requiring a two-thirds vote of the Quorum Court. Appellants received their right to self-legislate under Article 5, § 1. Ordinance 2025-27 then repealed the paper-ballot initiated ordinance.

Appellants' constitutional argument below hinged upon the absence of an express prohibition in Article 5, § 1 for a quorum court to repeal an initiated ordinance.

Amendment and Repeal. No measure approved by a vote of the people shall be amended or repealed by the General Assembly or by any city council, except upon a yea and nay vote on roll call of two-thirds of all the members elected to each house of the General Assembly, or of the city council, as the case may be.

ARK. CONST. art. V, § 1. The absence of an express prohibition for quorum courts, however, does not conflict with § 14-14-918(b). To the contrary, when read in *toto*, Article 5, § 1 also states “[g]eneral laws shall be enacted providing for the exercise of the initiative and referendum **as to counties.**”

ARK. CONST. art. V, § 1 (emphasis added). Section 14-14-918(b) follows that express authority, as a general law setting a standard for counties.

Constitutional Amendment 55 further supports that construction. “A county acting through its Quorum Court may exercise local legislative authority **not denied** by the Constitution or by law.” ARK. CONST. amend. 55, § 1 (emphasis added). The absence of a constitutional prohibition in Article 5, § 1 for repeal by a quorum court is consistent with Amendment 55, § 1, bestowing it the power to repeal an initiated ordinance. ARK. CODE ANN. § 14-14-918(b) modified that power, requiring a two-thirds vote to repeal. The above reasonable construction supports Ordinance 2025-27.

At the February 18, 2026 hearing, the Circuit Court dismissed the Appellants' case "without prejudice." (RP 152-155). This Court has recognized that, "[g]enerally, when a complaint has been dismissed without prejudice, a party may either appeal the dismissal or elect to plead further." *Griffin v. Arkansas Board of Corrections*, 2025 Ark. 81, at 4–5, 711 S.W.3d 784, 788. This is a "choice," and "[i]f the party chooses the first course, and the appeal is affirmed, then the dismissal converts to a dismissal with prejudice. This is the general rule." *Id.*

Appellants could have filed an original challenge with the Arkansas Court of Appeals, the court currently vested with exclusive jurisdiction over facial constitutional challenges. ARK. SUP. CT. R. 1-2(a). Instead, Appellants chose to file in Circuit Court and then appeal to this Court. Those decisions do not create a basis for expedited briefing.

As of the filing of this brief, early voting is already underway in Independence County, after it commenced on February 17, 2026. (RP 46). Even with expedited briefing, there is no practical way expediting this appeal would change the manner of voting in the March 3, 2026, election.

Exhibit A.

Although this appeal is not an election contest, this Court's longstanding law counsels judicial restraint towards challenges filed too

close to an election.

In the future, this court should examine the desirability of granting expedited review at such a late date, when no compelling reason has been given for the delay. As we have said in other election cases, albeit not eligibility cases, “to grant review at this late hour would not only be unfair to the adverse parties, but it would not give this court a sufficient amount of time necessary for meaningful deliberation of the issues presented.”

Clement v. Daniels, 366 Ark. 352, at 360, 235 S.W.3d 521, 527 (Brown, J., concurring). This Court should thus deny expedited consideration.

2. There is no basis for issuing an injunction.

Section 2 of Appellants’ motion and petition seeks an immediate injunction barring implementation of Act 975. To support that incredible request Appellants cite *City of Jacksonville v. Smith*, 2018 Ark. 87, 540 S.W.3d 661, which affirmed on appeal the issuance of a preliminary injunction. A party may appeal from an interlocutory order refusing an injunction, ARK. R. APP. P.-civ. 2(a)(6); *Three Sisters Petroleum, Inc. v. Langley*, 348 Ark. 167, 173–174, 72 S.W.3d 95, 99–100 (2002). As separate Appellees argued below, however, Appellant Norris did not demonstrate his entitlement to a preliminary injunction or a permanent injunction in his related filings. **(RP 103-150)**.

On the first element required to obtain a preliminary injunction, Norris has not demonstrated threatened irreparable harm by voting using

a machine instead of a water-marked paper ballot. The record is silent about the irreparable harm befalling Norris due to his manner of voting. Nor has an Arkansas case held that the repeal of an initiated ordinance under Article 5, § 1 always works an irreparable injury. (RP 125-127). There appears to be Arkansas authority supporting the contrary position. *Ark. Dept. of Education v. Jackson*, 2023 Ark. 105, 669 S.W.3d 1 (Compare majority opinion finding no irreparable injury with dissent arguing the opposite due to the alleged violation of a fundamental constitutional right).

On the second element required to obtain a preliminary injunction, Norris did not demonstrate the likelihood of success on the merits of his claims. As argued in Section 1 of this memorandum, there is no conflict between Article 5, § 1; Amendment 55, § 1; and ARK. CODE ANN. § 14-14-918(b). Those laws mean what they state, are harmonious, and should not be rewritten in defiance of their express terms. *State v. Good Day Farm Arkansas, LLC*, 2025 Ark. 207, 725 S.W.3d 1; *Martin v. Hass*, 2018 Ark. 283, 556 S.W.3d 509. ARK. CODE ANN. § 14-14-918(b) is constitutional, supporting Ordinance 2025-27 and ending Norris's claims.

A. **Act 975 is constitutional.** Appellants' challenge to Act 975 of 2025 is similarly flawed. The Arkansas Constitution of 1874 created three distinct "departments" of government, and prohibited one

department from exercising the power of another “except in the instances hereinafter expressly directed or permitted.” ARK. CONST. art. 4, § 2. Even at its 1874 inception, our Constitution recognized circumstances where it might delegate power from one branch of government to another.

The original power of the circuit court in Article 7, § 11 vested it with “the exclusive jurisdiction” of all civil and criminal cases. That language was repealed by Senate Joint Resolution 9 of 1999, which proposed Amendment 80 to the electors, and was subsequently approved, effective July 2001. Article 19, § 22 of the Constitution empowered the General Assembly to propose Amendment 80 to the voters. It did so, repealing parts of Article 7 and significantly revising Arkansas’ judicial system. Our Constitution has been subject to amendment from its inception.

Amendment 80, § 6 did not repeat the “exclusive jurisdiction” of our circuit courts from repealed Article 7, Section 11. Instead, it established Circuit Courts as “the trial courts of original jurisdiction of all justiciable matters **not otherwise assigned pursuant to this Constitution.**” ARK. CONST. amend. 80, § 6 (emphasis added). Amendment 80’s omission of the previous “exclusive jurisdiction” language, and qualification of the Circuit Court’s jurisdiction as “otherwise assigned” underscore that jurisdiction became subject to modification in July 2001.

Amendment 80 included newly defined jurisdiction for the Court of Appeals in Article 5, with “appellate jurisdiction as the Supreme Court shall by rule determine.” ARK. CONST. amend. 80, § 5. Amendment 80 then added two sections, §§ 9 & 10, which empowered the General Assembly to modify the judiciary’s jurisdictional rules.

Any rules promulgated by the Supreme Court pursuant to Sections 5, 6(B), [. . .] of this Amendment may be annulled or amended, in whole or in part, by a two-thirds (2/3) vote of the members of each house of the General Assembly.

ARK. CONST. amend. 80, § 9. Again, § 5 of Amendment 80 defined the Court of Appeals’s jurisdiction in its entirety, giving it “appellate jurisdiction as the Supreme Court shall by rule determine.” Under § 9, the Supreme Court’s rules defining the Court of Appeals’s jurisdiction were subject to amendment or annulment by the General Assembly.

Amendment 80 § 6(B) defined the Judges of a Circuit Court’s jurisdiction to divide their court into subject matter divisions. Amendment 80, § 9 thus made those Courts’ administrative case plans subject to amendment by the General Assembly.

Amendment 80 then left no doubt about the General Assembly’s power to assign the jurisdiction of all courts in § 10.

The General Assembly shall have the power to establish jurisdiction of all courts and venue of all actions therein, unless otherwise provided in this Constitution[.]

ARK. CONST. amend. 80, § 10. Appellants ignored §§ 9 and 10 below and again in their instant motion and petition. Appellants' arguments cannot survive a reasonable reading of Amendment 80, §§ 9 & 10.

Arkansas Supreme Court Rule 1-2(a) previously defined the jurisdiction of the Supreme Court and the appellate jurisdiction of the Court of Appeals. ARK. SUP. CT. R. 1-2(a) (prior to Nov. 1, 2025). Rule 1-2 determined the appellate jurisdiction of the Court of Appeals pursuant to Amendment 80, § 5, and is subject to amendment under Amendment 80, § 9. When the General Assembly passed Act 975 of 2025, it did so pursuant to §§ 9 and 10, creating exclusive original jurisdiction in the Court of Appeals. The only fair reading of those sections empowers the General Assembly to amend Supreme Court Rule 1-2 and the jurisdiction of our courts, including the jurisdiction of the Court of Appeals and Circuit Courts. Any different construction renders §§ 9 and 10 meaningless. The Circuit Court therefore correctly concluded it lacked subject matter jurisdiction. Appellants' contrary suggestion is not well-taken.

3. A writ of *certiorari* is not appropriate.

A writ of *certiorari* is only appropriate when the Circuit Court has committed a plain, manifest, clear, and gross abuse of discretion and there is no other adequate remedy. *Arkansas Pub. Defender Comm'n v. Burnett*, 340 Ark. 233, 12 S.W.3d 91 (2000). The Circuit Court properly exercised its jurisdiction below to determine that it lacked subject matter jurisdiction. Appellants have made no showing that this appeal is an inadequate remedy to determine the Circuit Court's subject matter jurisdiction. *Cf. Jordan v. Cir. Ct. of Lee Cty.*, 366 Ark. 326, 235 S.W.3d 487 (2006) (granting writ of certiorari from denial of motion to dismiss on a jurisdictional issue, as no appeal was possible from that denial). It is well-settled that this Court will not allow a writ to act as a substitute for an appeal, *See, e.g., Moore v. Cir. Ct. of Phillips Cty.*, 2013 Ark. 443, at 5, 430 S.W.3d 663, 666. The appeal should proceed with the writ denied.

WHEREFORE, Appellees Independence County, Arkansas; Tracey Mitchell, Wendy Henry, Jennifer Emery, and Frances Haigwood, in their official capacities; and Tim Stewart, Johnny McMullin, Brent Henderson, Brad Covington, Cliff Barnett, Tammy Pearce, Kenny Hurley, Jonathan Abbott, and Dennis Stephens, individually and in their official capacities, respond that Appellants' motion and petition should be denied.

Respectfully Submitted,

Appellees Independence County,
Arkansas; Tracey Mitchell,
Wendy Henry, Jennifer Emery,
and Frances Haigwood, in their
official capacities; and Tim
Stewart, Johnny McMullin, Brent
Henderson, Brad Covington, Cliff
Barnett, Tammy Pearce, Kenny
Hurley, Jonathan Abbott, and
Dennis Stephens, individually
and in their official capacities,

By: /s/ Daniel R. Haney
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Respectfully Submitted,

Appellees Kenny Hurley and
Johnathan Abbott, individually,

By: /s/ Barrett S. Moore
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CERTIFICATE OF SERVICE

I served a copy of the forgoing document on February 25, 2026,
by emailing it and filing it using the contexte e-filing system, which will
serve notice of its filing on all counsel of record, addressed to the following
persons:

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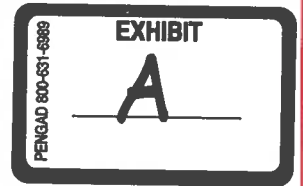
/s/ Barrett S. Moore
Barrett S. Moore

IN THE ARKANSAS SUPREME COURT

BRYAN NORRIS, <i>et al.</i> ,)	
Appellants,)	
v.)	Case No CV-26-116
)	
INDEPENDENCE COUNTY)	
ARKANSAS, <i>et al.</i> ,)	
Defendants.)	

AFFIDAVIT OF BARBARA HENSON

STATE OF ARKANSAS)	
)	ss.
COUNTY OF <u>Independence</u>)	



Comes Barbara Henson, affiant, who, after being duly sworn, states under oath as follows below:

1. I am an adult resident and citizen of Batesville, Independence County, Arkansas.
2. I am one of two election coordinators for Independence County, Arkansas.
3. It is impossible to transition the current early voting and future voting methods for the March 3, 2026, preferential primary and nonpartisan election to comply with the now-repealed 2024 initiated county ordinance calling for paper ballots because no company known to

me will produce a paper ballot bearing a watermark, which is a requirement of that now-repealed ordinance. It is thus impossible for the County to comply with that ordinance based upon the information known to me.

4. There are approximately 20,000 eligible voters in Independence County. In the current election, there are approximately 84 different ballot styles. To comply with law, we believe the County cannot have more than 105% of the ballots on hand, in total, for each election, as counted between any two early voting locations (before March 3, 2026), or any six voting centers on the day of the election.

5. Even if the County ignored the previous requirement for a watermark, there is no practical way for Independence County to implement voting by paper ballot that would be in compliance with the law in the next six business days based upon my understanding of our current resources and their allocation.

6. The repeal of the 2024 initiated ordinance stopped our calculation of the division of paper ballots between voting centers necessary to comply with the 105% limit required by law. The 84 different styles of ballots create a practical difficulty in light of this limit

and dispersing sufficient numbers of each ballot style between our different voting centers. Any voter may appear at any voting center in our County to vote.

7. We do not presently have election privacy drapes to allow voters to complete paper ballots in large numbers for the March 3, 2026 election with privacy.

8. There is no practical way for Independence County to submit to a hand-marked, hand-counted paper ballot election for the March 3, 2026 election in compliance with the repealed 2024 initiated ordinance.

9. This affidavit is given free from any duress, undue influence, promise, or incentive by any person. It is true and accurate.

FURTHER AFFIANT SAYETH NOT.


BARBARA HENSON

SUBSCRIBED and SWORN to before me on this 23rd day of February, 2026.


Notary Public

My Commission Expires:

10/01/2029

