

CV-26-116

BEFORE THE ARKANSAS SUPREME COURT

BRYAN NORRIS, on behalf of himself and all similarly situated persons, the **ARKANSAS VOTER INTEGRITY INITIATIVE, INC.**, and **RESTORE ELECTION INTEGRITY ARKANSAS**, a ballot question committee.

APPELLANTS

vs.

INDEPENDENCE COUNTY, ARKANSAS, **TRACEY MITCHELL** (in her official capacity only), **WENDY HENRY** (in her official capacity only), **JENNIFER EMERY** (in her official capacity only), **FRANCES HAIGWOOD** (in her official capacity only), **TIM STEWART** (personally and in his official capacity), **JOHNNY McMULLIN** (personally and in his official capacity), **BRENT HENDERSON** (personally and in his official capacity), **BRAD COVINGTON** (personally and in his official capacity), **CLIFF BARNETT** (personally and in his official capacity), **TAMMY PEARCE** (personally and in her official capacity), **KENNY HURLEY** (personally and in his official capacity), **JOHNATHAN ABBOTT** (personally and in his official capacity), **DENNIS STEPHENS** (personally and in his official capacity)

APPELLEES

ON APPEAL FROM THE CIRCUIT COURT OF INDEPENDENCE
COUNTY, FOURTH DIVISION

THE HON. TIM WEAVER, CIRCUIT JUDGE

BRIEF OF THE APPELLANTS

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JURISDICTIONAL STATEMENT

That this case involves constitutional interpretation and an election. Jurisdiction is proper in the supreme court. By my signature at the end of this document, I certify that this case is jurisdictionally significant.

This is an appeal of a dismissal without prejudice. The appellants have elected to plead further rather than refile.

The order appealed from was entered on February 18, 2026. The notice of appeal was entered the next day.

STATEMENT OF THE CASE AND FACTS

This case involves the same ballot measure in *Mitchell v. Norris*, 2024 Ark. 148, 698 S.W.3d 361. That ballot measure went to the citizens of Independence County in the November 2024 general election, and it

passed at the polls. (RP 22–23). The first election to use hand marked, hand counted paper ballots was slated for the March 2026 primary. *Id.*

However, Independence County’s elected officials did not like the new ordinance passed by the people. *Id.* The quorum court waited over a year and, on the eve of early voting, voted to rescind the ordinance approved and passed by the people in 2024. *Id.* (RP 95–96). Due to evasive actions by the elected officials, news of the rescinded ordinance was first discovered in January of 2026. (RP 95–96).

The appellants filed suit in the Independence County Circuit Court on February 6, 2025, challenging the elected officials’ *rescindere*.¹ (RP 10). The circuit court and opposing counsel raised Act 975 of 2025 as a basis for dismissal because, in that Act, the legislature rewrote Ark. Sup. Ct. R. 1-2(a) to vest original jurisdiction of all facial constitutional challenges in the Arkansas Court of Appeals. *See* Ark. Code Ann. § 16-13-201(a); Ark. Sup. Ct. R. 1-2(a). (RP 136). (RT 4).

The appellants then challenged Act 975 as unconstitutional. (RP 93). The circuit court held an expedited hearing and dismissed the case

¹ The appellants’ case in the circuit court dispositively hinges on the constitutionality of Ark. Code. Ann. § 14-14-918(b) as power to rescind or alter an Article 5, § 1 ordinance only lies only with state and city governments.

for lack of subject matter jurisdiction, finding that jurisdiction is proper in the Arkansas Court of Appeals. (RP 152). Though the dismissal was without prejudice, the appellants elected to bring this appeal instead of pleading further.

ARGUMENT

I. ACT 975 OF 2024 IS UNCONSTITUTIONAL.

This court must decide the constitutionality of Act 975. The Constitution of this state and the amendments thereto are the organic laws, and the general rule is well established that constitutional provisions are to be construed as mandatory unless by their express terms or by necessary implication a different intention is manifest. *Hargraves v. Solomon*, 178 Ark. 11, 9 S.W.2d 797, 799 (1928) (citing *Cooley on Constitutional Limitations* (8th Ed.) vol. 1, pp. 159-164, inclusive; 6 R. C. L. 55; and 12 C. J. 140). The reason for the rule is especially appropriate in cases of this sort. *Id.* Where a power is expressly given by the Constitution and the manner or means by which it is to be exercised is prescribed, such means or manner is exclusive of all others. *Id.*

A. Amendment 80 Violations

The Constitution says that “circuit courts are established as the trial courts of original jurisdiction of all justiciable matters not otherwise assigned pursuant to this Constitution.” Ark. Const. Amend. 80, § 6(a) (emphasis added). This means that the constitution has spoken on original jurisdiction of matters as belonging to the circuit courts, not the court of appeals. Additionally, Amendment 80 § 5 states that “the Court of Appeals shall have such appellate jurisdiction as the Supreme Court shall by rule determine and shall be subject to the general superintending control of the Supreme Court.” (emphasis added). Act 975 offends Amendment 80 because it purports, by legislative act, to rewrite § 6 and take away “all” original jurisdiction and change it so that the circuit courts have either “most” or “some” original jurisdiction of justiciable matters and the court of appeals as having “mostly” appellate jurisdiction—not by changing the constitution but by changing a court rule. It is axiomatic that the legislature cannot legislate changes to the constitution that are not approved by the people.

A statute passed by the legislature will always be upheld, unless it is clearly prohibited by the Constitution. *Bd. of Comm'rs of Red River Bridge Dist. v. Wood*, 183 Ark. 1082, 40 S.W.2d 435, 437 (1931). While

legislation may be enacted in implementation of constitutional provisions, such legislation may not be inconsistent or repugnant to the constitutional. *Myhand v. Erwin*, 231 Ark. 444, 451, 330 S.W.2d 68, 72 (1959). The General Assembly cannot do indirectly what the Constitution prohibits it from doing directly. *Cragar v. Thompson*, 212 Ark. 178, 180, 205 S.W.2d 180, 181 (1947).

In this case, Act 975 is repugnant to the constitution because the constitution says that original jurisdiction over facial challenges lies with the circuit courts. The General Assembly cannot void, re write, or overwrite a constitutional provision. *Smith v. Faubus*, 230 Ark. 831, 837, 327 S.W.2d 562, 566 (1959). This is because constitutional guarantees are superior to the legislative enactments. *Id.* Constitutional provisions always prevail over statutes. *Pritchett v. Spicer*, 2017 Ark. 82, 8–9, 513 S.W.3d 252, 257 (2017) Ark. *Power & Light Co. v. Curlin*, 187 Ark. 562, 61 S.W.2d 73, 74 (1933). *See also Abbott v. State*, 256 Ark. 558, 563, 508 S.W.2d 733, 736 (1974).

If Act 975 could pass constitutional muster, it would still violate Amendment 80 by rendering § 4 superfluous. This court does not have control of all courts if the legislature can simply change the court's rules

about what courts will or will not do. That is not superintending control by this court but shared control between this court and the legislature with the judicial branch having no exclusive power to regulate itself.²

B. Article 4, §§ 1 and 2 Violations.

Article 4, § 1 creates three distinct branches of government. The judicial power of Arkansas is, of course, in the appellate, trial, and inferior courts *Ball v. Roberts*, 291 Ark. 84, 86, 722 S.W.2d 829, 830 (1987). Article 4, § 2 prohibits any persons in one department from exercising any power belonging to either of the others, except in the instances expressly directed or permitted. There are no such express directions or permissions which enable the General Assembly to assign original jurisdiction cases to the court of appeals.

An act of the General Assembly violates the separation-of-powers doctrine when it deprives the courts of the power to decide a judicial question. *Luebbers v. Money Store, Inc.*, 344 Ark. 232, 238, 40 S.W.3d 745, 749 (2001). Constitutional interpretation about original jurisdiction

² "One half of me is yours,
the other half yours—
Mine own, I would say.
But if mine, then yours, And so all yours."

Shakespeare, William, *The Merchant of Venice*, Act 3, Scene 2 (1605).

found in § 6 is a judicial question. Additionally, statutes are given deference only to the extent that they are compatible with the supreme court's rules, and conflicts which compromise these rules are resolved in favor of court rules. *Smith v. State*, 321 Ark. 195, 197, 900 S.W.2d 939, 940 (1995). Here, the legislative act clearly conflicts with the Ark. Sup. Ct. R. 1-2(a) that has been adopted and approved by this court. The act also violates Amendment 80.

CONCLUSION

It is a story that dates as far back as *Marbury v. Madison*, 5 U.S. 137 (1803). Here we are, again, before the third branch of government asking it to check the other two branches and limit an encroachment into the realm of the judiciary.

The constitution is clear. The constitution says that circuit courts have original jurisdiction. The constitution says that the court of appeals has appellate jurisdiction, not original jurisdiction. The constitution says that this court has superintending control.

Under Act 975's logic the legislative and executive branches can control the third branch of government. Inquiring minds would like to know—can they really do that? At what point does the judiciary lose

control of its powers because those powers are overshared? When does the third branch become dependent on the other two branches of government? How is the judiciary independently checking and balancing the other two branches of government if it can only check them as the other branches permit a check or a balance?

Act 975 is a bridge too far, a jaunt too fast, and a cut too deep. This is the spot on the map where the paths of shared powers and exclusivity of the branches diverge. While the standards for invalidating the actions of the two other branches are high, Robert Frost took the path less traveled, and everything turned out for the better because of it.³ The time is nigh and urgent for this court to do the same.

REQUESTED RELIEF

1. Find Act 975 of 2024 to be unconstitutional.
2. Reverse and remand this case for a hearing on the merits.

Respectfully Submitted,

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³ Frost, Robert. "The Road Not Taken." *Mountain Interval*, Henry Holt and Company, 1916, pp. 9-10



By: /S/ CLINTON W. LANCASTER
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CERTIFICATE OF SERVICE

By my signature above, I certify pursuant to Ark. R. Civ. P. 5(e) that a copy of the foregoing has been delivered by the below method to the following person or persons:

First Class Mail Email AOC/ECF Hand Delivery

Arkansas Attorney General

Daniel Haney

Hon. Tim Weaver

CERTIFICATE OF COMPLIANCE

I certify that this brief complies with Ark. Sup. Ct. Admin. Order 19 in that there is no unredacted confidential information (no confidential information is contained in the brief), Admin Order No. 21 in that this brief contains no live hyperlinks (hyperlinks, if any, removed by Adobe Acrobat Pro Continuous Release Version 2023.008.20458), and conforms to Rule 4-2(d) because the jurisdictional statement, statement of the case, argument section, conclusion, and requested relief portions of this brief, including the footnote(s) (if any), contains **1584** words.



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