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BEFORE THE ARKANSAS SUPREME COURT

BRYAN NORRIS, *et. al.*	**APPELLANTS**	**Case No:**
vs.		
INDEPENDENCE COUNTY, ARKANSAS, *et. al.*	**APPELLEES**	

BRIEF IN SUPPORT / MEMORANDUM OF AUTHORITIES

Overview

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 Due to evasive actions by the elected officials, news of the rescinded ordinance was first discovered in January of 2026.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 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. The only issue on appeal is the circuit court's dismissal for lack of subject matter jurisdiction.

This court must decide the constitutionality of Act 975. Expedited consideration is merited because early voting is underway, election day

[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.

is near—March 6, there are still underlying issues that must be decided by the circuit court; if there is not expedited consideration then the people of Independence County will lose their right to conduct their election as they have chosen for the 2026 primary, and every day that passes is another day that hand marked, hand counted paper ballots are not being used.

Another basis for expedited consideration is, in the view of the appellants, their constitutional right to self-legislate found in Article 5, § 1 is being infringed. A violation of a constitutional right is always an irreparable harm. *See Elrod v. Burns*, 427 U.S. 347, 373, (1976); *Planned Parenthood of Minn., Inc. v. Citizens for Community Action*, 558 F.2d 861, 867 (8th Cir. 1977). *See also Overstreet v. Lexington–Fayette Urban County Gov't*, 305 F.3d 566, 578 (6th Cir. 2002) *Jolly v. Coughlin*, 76 F.3d 468, 482 (2d Cir. 1996).

II. The appellants are entitled to an immediate injunction barring implementation of Act 975.

The appellants are likely to prevail because Act 975 violates the separation of powers doctrine and Amendment 80. They are being irreparably harmed because their constitutional right to self-legislate is being violated by another, unconstitutional statute and the merits of the

case cannot be reached because Act 975 is squarely in the way. In determining whether to issue a preliminary injunction courts must consider two issues: (1) whether irreparable harm will result in the absence of an injunction or restraining order and (2) whether the moving party has demonstrated a likelihood of success on the merits. *City of Jacksonville v. Smith*, 2018 Ark. 87, 5, 540 S.W.3d 661, 665–66 (2018).

A. Act 975 is unconstitutional.

The Constitution of a 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.*

i. 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 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.

ii. 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. 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—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. This is because constitutional guarantees are superior to the legislative enactments. *Smith v. Faubus*, 230 Ark. 831, 837, 327 S.W.2d 562, 566 (1959). 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]

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[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."

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

III. Alternatively, this court should issue a writ of certiorari.

Certiorari is extraordinary relief and two requirements must be satisfied for this court to grant a petition for a writ of certiorari. *McCain Mall Co. Ltd. P'ship v. Pulaski Cnty. Cir. C*t., 2016 Ark. 279, 3, 495 S.W.3d 625, 626 (2016). First, there can be no other adequate remedy but for the writ of certiorari. *Id.* Second, a writ of certiorari lies only when **(A)** it is apparent on the face of the record that there has been a plain, manifest, clear, and gross abuse of discretion, or **(B)** there is a lack of jurisdiction, an act in excess of jurisdiction on the face of the record, or the proceedings are erroneous on the face of the record. *Id.*

If this court finds that the order on appeal is not final and, thus, not appealable, then a writ of certiorari is meritorious. The first prong is clearly met. Jurisdiction is muddled by Act 975. Other than appeal, the appellants can only do one thing—refile. But where, the circuit court to get the same result, beating to death the horse of redundance just to make the order in this case final? Or the court of appeals, lose on jurisdictional grounds, burn their second right to refile back in circuit court, only to be told by this court that the court of appeals lacked jurisdiction to hear facial constitutional challenges in an original action?

Surely, this court does not believe that the above constitutes an "adequate" remedy.

The appellants hit point B out of the park with the bases loaded. The word "jurisdiction" appears twice in the second prong of the test. First, Act 975 created a jurisdictional question that only this court—and no other—can decide and this is a lack of jurisdiction in both the circuit court and the court of appeals. Next, the addition of original jurisdiction to the court of appeals by Act 975 forced the circuit court to act in excess of its jurisdiction by dismissing this case because it should have been the court to hear the case pursuant to our constitution. Finally, it was erroneous on its face for the circuit court to enforce an unconstitutional law.

Conclusion

There is an underlying constitutional challenge about a serious infringement the people's rights found Article 5, § 1 and time could not be more valuable to that challenge. Act 975 is flagrantly unconstitutional because it is an attempt by the legislature to rewrite Amendment 80 and an outright raid on the judicial branches autonomy and authority to set it owns rules and have superintending power over the courts.

Alternatively, this case merits a writ of certiorari to determine proper jurisdiction of the appellants' case.

Requested Relief

1. Grant expedited consideration and immediately enjoin the implementation of Act 975.

2. Remand this case for a hearing on the merits before the circuit court and issue the mandate immediately.

3. Alternatively, issue a writ of certiorari, resolve the jurisdictional issue, and, if jurisdiction lies in the court of appeals, assign this case to the court of appeals.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

By my signature above, I certify 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

Barrett Moore Daniel Haney

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