CV-26-116

BEFORE THE ARKANSAS SUPREME COURT

BRYAN NORRIS, on behalf of himself and all similarly situated persons, *et. al.* — **APPELLANTS**

vs.

INDEPENDENCE COUNTY, ARKANSAS, *et. al.* — **APPELLEES**

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

THE HON. TIM WEAVER, CIRCUIT JUDGE

APPELLANTS' REPLY BRIEF

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REPLY ARGUMENT

Appellees and the State ask this Court to affirm based on a jurisdictional theory under Act 975 of 2025 that would remove from circuit courts original jurisdiction over the facial constitutional challenge pleaded here. That theory is incompatible with Amendment 80's text and structure and should be rejected.

This reply addresses the arguments raised by Appellees and the State in defense of the dismissal. Because the circuit court dismissed solely for lack of subject-matter jurisdiction, the order should be reversed and the case remanded for further proceedings on the merits.

I. Act 975 unconstitutionally divests circuit courts of original jurisdiction.

The State reads section 10 of Amendment 80 in isolation. Properly read, Amendment 80 permits the General Assembly to establish jurisdiction only insofar as the Constitution has not already assigned that jurisdiction elsewhere. Here, Amendment 80 already addresses the relevant allocation of jurisdiction: section 5 addresses the Court of Appeals' appellate jurisdiction, and section 6 provides that circuit courts are the trial courts of original jurisdiction of all justiciable matters not

otherwise assigned pursuant to the Constitution. Ark. Const. amend. 80, §§ 5, 6, 10.

Amendment 80, section 6, provides that circuit courts are "the trial courts of original jurisdiction of all justiciable matters not otherwise assigned pursuant to this Constitution." The State's reading effectively treats "pursuant to this Constitution" as if it meant "pursuant to statute." The text does not permit that substitution. If a matter may be removed from circuit court and reassigned elsewhere, that reassignment must be authorized by the Constitution itself, not by ordinary legislation.

Nothing in Amendment 80 grants the Court of Appeals original jurisdiction to adjudicate a facial constitutional challenge in the first instance. To the contrary, section 5 describes the powers of the Court of Appeals in appellate terms: it "shall have such appellate jurisdiction as the Supreme Court shall by rule determine." That language matters. The Constitution identifies the Court of Appeals as an appellate court, and neither Appellees nor the State identifies constitutional text conferring original trial-court jurisdiction on that court.

The State's reading would invert the constitutional structure. Under that theory, the General Assembly could create exclusive original

jurisdiction in the Court of Appeals whenever the Constitution does not expressly forbid it. But section 6 already assigns original jurisdiction to circuit courts as the default constitutional rule, and section 5 describes the Court of Appeals as an appellate court. The better reading is that section 10 permits legislation within the Constitution's framework; it does not authorize legislation that rewrites that framework.

Nor does Amendment 80, section 9, save Act 975. Section 9 permits the General Assembly, by supermajority vote, to amend or annul certain court rules. But rule-amending power does not connote constitution-amending power. Section 9 does not authorize the legislature to create jurisdiction that the Constitution itself does not confer.

Whatever the pre-Amendment 80 background may have been, the controlling question is the meaning of the constitutional text the people adopted in Amendment 80. Under that text, circuit courts are the trial courts of original jurisdiction, the Court of Appeals is an appellate court, and this Court retains general superintending control. Ark. Const. amend. 80, §§ 4-6. Act 975 cannot be reconciled with that structure.

At minimum, Appellants' constitutional challenge was substantial and properly presented. The circuit court therefore erred in dismissing the action outright for lack of subject-matter jurisdiction under Act 975.

II. Appellants preserved their constitutional objection to Act 975.

The State argues that some constitutional points were not preserved below, particularly arguments tied to Amendment 80, section 5. That argument fails because Appellants preserved the substance of their constitutional objection below: Act 975 unconstitutionally divests the circuit court of jurisdiction and violates separation-of-powers principles. (RT 07, RT 12) (RP 95-99). The circuit court ruled that it lacked subject-matter jurisdiction. (RP 155). This Court therefore may consider the constitutional provisions necessary to decide whether that dismissal rested on a valid jurisdictional statute.

Appellants argued below that Act 975 is unconstitutional because it violates the separation of powers doctrine and Amendment 80, and that when the legislature prevents the judiciary from answering a question of law, it invades the judiciary's province. (RP 96) (RT 12). *See Ball v. Roberts*, 291 Ark. 84, 86, 722 S.W.2d 829 (1987) (explaining that the

legislature may aid the courts in the exercise of judicial power but may not deprive the courts of the power to decide judicial questions).

By statutorily defining the scope of "superintending control," the legislature attempts to prescribe the meaning of a constitutional judicial power. That is the separation-of-powers problem Appellants raised below. The circuit court dismissed solely under Act 975. (RP 155). That ruling necessarily places the constitutional validity of Act 975 before this Court.

This Court may consider arguments that refine a preserved constitutional objection, particularly where Appellees and the State defend the statute through multiple constitutional provisions and the appeal presents pure questions of constitutional interpretation. Appellants do not change their claim; they respond to the constitutional theories now advanced to sustain the dismissal.

Subject-matter jurisdiction is always a threshold issue. *Hunter v. Runyan*, 2011 Ark. 43, 7, 382 S.W.3d 643, 648 (Ark. 2011). If Act 975 is unconstitutional, then the circuit court had jurisdiction and dismissal was error. This Court therefore should decide the constitutional question

necessary to determine whether the dismissal rests on a valid jurisdictional statute.

III. Appellants adequately alleged standing.

Appellees argue that Appellants lack standing because they pleaded no concrete injury. The complaint's allegations and the nature of the rights at issue defeat that argument. (RP 10-19).

The complaint alleges that Norris is an Independence County resident and that the organizational Appellants funded, sponsored, and supported the local initiative that passed and was later nullified by Ordinance 2025-27. (RP 10-19). The complaint challenges official action alleged to have impaired rights secured by Article 5, section 1, and seeks declaratory, mandamus, and civil-rights relief arising from that governmental action. (RP 10-19).

This court addressed standing posture germane to the case at bar in *Comm. to Establish Sherwood Fire Dept. v. Hillman*, where a committee that was not itself a voter and did not purport to represent local voters sought to intervene after judgment. 109 S.W.3d 641, 353 Ark. 501 (Ark. 2003). In that case a nonprofit attempted to intervene in an initiative petition case. *Id.*, 109 S.W.3d at 647 This Court held that

because the nonprofit was not a voter affected by the ballot petition, it lacked standing to intervene. *Id.* ("committee, which is not joined by a local voter and, further, does not purport to represent local voters, lacked standing to intervene in a case concerning rights which, pursuant to Amendment 7, are reserved to the local voters").

Here, a county resident has been a named plaintiff from the outset, and the organizational plaintiffs are aligned with have and proceeded alongside that local voter. *Sherwood Fire Department* therefore does not defeat standing here; rather, it underscores why standing exists when local voters are actually before the court.

At the pleading stage, the complaint's factual allegations must be taken as true, with all reasonable inferences drawn in Appellants' favor. *Dockery v. Morgan*, 2011 Ark. 94, 7, 380 S.W.3d 377, 382 (citing *McNeil v. Weiss*, 2011 Ark. 46, 378 S.W.3d 133). Appellants alleged that county officials and a county ordinance nullified or burdened rights connected to a successful local initiative and the conduct of elections. (RP 10-19) (RP 95-99). Those allegations are sufficient to survive dismissal.

Even if this Court concluded that Norris is the only plaintiff whose standing is clear at this stage, that would still be sufficient to keep the

case alive. One plaintiff with standing is enough to permit adjudication of the claims for declaratory and related relief.

IV. Appellees' alternative grounds do not support affirmance.

Appellees ask this Court to affirm on multiple alternative grounds that the circuit court did not reach. None supports affirmance on this record.

A. Immunity does not bar the claims for declaratory, mandamus, and prospective relief.

The complaint primarily seeks prospective relief: declarations concerning the validity of Ordinance 2025-27, Ark. Code Ann. § 14-14-918(b), and mandamus concerning election administration. (RP 10-19). Those claims are materially different from claims for retrospective money damages. Even if some damages theories ultimately face immunity objections, that would not justify dismissal of the entire action where the complaint principally seeks declaratory, mandamus, and other prospective relief.

Official-capacity claims for prospective relief to prevent unconstitutional or ultra vires action are not defeated merely by invoking

sovereign or statutory immunity. *Harris v. Hutchinson*, 2020 Ark. 3, 591 S.W.3d 778, 781 (citing *Martin v. Haas*, 2018 Ark. 283, 556 S.W.3d 509). Appellees' immunity arguments therefore do not provide a complete basis to affirm dismissal of all claims.

B. Service, process, personal jurisdiction, and venue do not justify affirmance.

The order appealed from dismissed for lack of subject-matter jurisdiction under Act 975. (RP 155). The circuit court did not make developed findings on the remaining Rule 12 defenses. On the current record, those issues are not suitable alternative grounds for affirmance.

V. The complaint stated claims sufficient to proceed.

Appellees insist the complaint failed to state any claim under Arkansas law. But the complaint identified concrete governmental actions, identified the constitutional and statutory provisions allegedly violated, and requested recognized forms of relief: declaratory judgment, mandamus, and civil-rights relief. (RP 10-19). Whether Appellants ultimately prevail is a merits question, not a pleading defect requiring wholesale dismissal at the threshold.

The declaratory-judgment claims are especially straightforward. Appellants alleged an actual controversy over the validity of a county ordinance and over the constitutionality of Ark. Code Ann. § 14-14-918(b) under Article 5, section 1. That is the paradigmatic function of declaratory relief.

VI. The merits were not properly reached, but Appellants' claims are substantial.

Because the circuit court dismissed on jurisdictional grounds, this Court need not definitively resolve the underlying merits now. It need only hold that the claims belong in circuit court. Still, Appellees' effort to portray the claims as facially insubstantial should be rejected.

Appellants contend that county action and the governing statute impaired rights reserved by Article 5, section 1 concerning local initiative and referendum. Those allegations present a concrete constitutional controversy concerning local initiative and referendum rights reserved by Article 5, section 1. The claims warrant adjudication in a court of original jurisdiction with authority to develop the record and decide the merits.

VII. *Hutton v. Savage* does not support affirmance.

Hutton is distinguishable. *Hutton v. Savage*, 298 Ark. 256, 268, 769 S.W.2d 394, 401 (Ark. 1989). That case did not authorize the legislature to transfer to an appellate court original jurisdiction that the Constitution assigns to circuit court. *Id.* Instead, the *Hutton* Court agreed that the legislature can expand already the already existing original jurisdiction of circuit courts to include original jurisdiction of probate matters. *Id.* Whatever room *Hutton* leaves for legislative implementation within the constitutional structure, it does not permit legislation that alters that structure itself.

The legislature may not use ordinary legislation to alter the Constitution's allocation of original and appellate jurisdiction. No one believes that the legislature can expand circuit court's original jurisdiction to include appellate jurisdiction. However, Act 975 attempts exactly that to the Court of Appeals and therefore cannot stand.

RELIEF REQUESTED

A. Appellants respectfully request that this Court hold Act 975 of 2025 unconstitutional to the extent it purports to divest circuit courts of original jurisdiction over the facial constitutional challenge asserted here and to vest exclusive original jurisdiction in the Court of Appeals.

B. Appellants respectfully request that this Court reverse the order dismissing the complaint.

C. Appellants respectfully request that this Court remand this matter to the Independence County Circuit Court for further proceedings on the merits of Appellants' claims and on any remaining issues not decided by the circuit court.

Respectfully Submitted,

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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 — Barrett Moore

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, 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 1970 words.

By: /s/ CLINTON W. LANCASTER
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