

IN THE CIRCUIT COURT OF GARLAND COUNTY, ARKANSAS
CIRCUIT COURT: CIVIL DIVISION
IV DIVISION

BLAKE ROBERTSON, DOUG JONES,
TED BURHENN

2010 JUN 8 PM 4 44

PLAINTIFF(s)

V.

CASE NO. CV-2010- 775

GARLAND COUNTY ELECTION COMMISSION;
CHARLES TAPP, GINA WATSON, and TWILA BROWN,
Individually and as members of Commission;

DEFENDANT(s)

**PETITION TO CONTEST CERTIFICATION OF ELECTION AND VOTE AND
OTHER RELIEF**

COMES, the Plaintiffs, by and through the Hooten Law Firm, by their attorney, Benjamin D. Hooten, and for their Petition, state:

1. All events happened within Garland County, Arkansas therefore venue is proper.
2. The circuit court determines "Election Contest" cases therefore subject matter jurisdiction lies within this Court and is proper.
3. The Plaintiffs are residents, and registered voters of the City of Hot Springs, Garland County, Arkansas.
4. The Defendant Garland County Election Commission (hereafter GCEC) are the entity authorized and empowered under Arkansas law to fix the times, polling places, and conditions for elections.
5. A Runoff Election was scheduled by Defendants, Charles Tapp, Twila Brown and Gina Watson on June 8, 2010 for the voters of the City of Hot Springs, Arkansas to decide who would be the Democratic candidate of the United States Senate between Blanche Lincoln and Jim Halter mainly, and a couple more state wide races, in addition to runoff in the local JP District 9.

6. On May 18, 2010, Defendants held a preferential primary election with the customary 36 polling places within the County of Garland open to the members of the voting public, consistent with previous elections.

7. sometime in May, a notice was published in the local newspaper of record that voting in the subject Runoff Election would be limited to two (2) polling places within the County, namely the Office of Election Commission at 649-A Ouachita Avenue, Hot Springs, Arkansas 71913, and one in Hot Springs Village.

8. Arkansas Code Annotated § 7-5-101(a)(4)(A) states that the Defendants do not have the power to change polling places within 30 days of an election. Notwithstanding that express prohibition, Defendants purported to change the polling places as stated above, and proceeded to hold the subject elections.

9. A.C.A. § 7-5-101 further provides that any lawful change in polling sites be at a public meeting by an unanimous decision of the commissioners, that the record of the decision be kept in the office of the county clerk, and that polling places be well known sites easily accessible to the voters. The Defendants failed to follow any of these legal requirements. No public meeting was conducted and no record was kept.

10. That A.C.A. § 7-5-202 requires that the Defendants advertise each election at least 10 days before holding the election including certain information including the time and location of opening processing, canvassing, and counting ballots, be included in such notice. The Defendants failed to publish the required notice.

11. That A.C.A. § 7-5-202 further requires that the Defendants GCEC advertise each election at least 5 days before holding the election including the time and location of opening

processing, canvassing, and counting ballots, be included in such notice. The Defendants failed to publish the required notice.

12. That the Defendants GCEC failed to provide information to the Arkansas Secretary of State for the Secretary of State to comply with A.C.A. § 7-1-110 which requires that the Arkansas Secretary of State shall provide on their Internet website a mechanism to allow a person to enter his or her home address and retrieve information concerning the person's polling location. The Secretary of State's website address for this is <https://www.voterview.ar-nova.org>. Every runoff election in Arkansas on June 8, 2010 is listed on this website with the exception of the subject Hot Springs election. Further when a voter puts in his name and date of birth at this website it directs him or her to go to the customary 36 polling sites which are not open for this election.

13. That the referenced runoff election was intentionally scheduled by the Defendants at two polling sites for the purpose of disenfranchising minority, elderly, poor, and the disabled voters of Garland County, Arkansas. These voters do not have the economic or physical means to cast their votes at the two designated polling places which is not a well known location nor easily accessible to these groups of voters. The actions of the Defendants render the results of this election doubtful. Using precedent from other cases, this Court should then look to see if Article 3 § 2 of the Arkansas Constitution guarantee that elections are free and equal has been violated. Where it is uncertain what the results would have been absent the irregularities then the election must be voided. Whitley v. Cranford, 354 Ark. 253, 119 S.W.3d 28 (2003).

14. That the greater part of the voting electorate are unable to find or reach the single polling place and are thereby deprived of their right to vote and were disenfranchised.

15. Since the right to vote is a fundamental right so engrained into the fabric of a free society, any abridgement thereof requires that strict scrutiny be applied to any measures that the State may take, and there must be a compelling reason to take the actions they have, and there must not have been any less restrictive measures available. This standard is intentionally high and these Defendants have not even followed the required statutory requirements in regards to notice. The Defendants ignored the statutes and didn't have the power to change polling places within thirty days of an election, therefore ultra vires and void.

16. Actions taken by the Defendant Garland County Election Commission have violated the United States Constitution's guarantee of citizens' right to vote.

17. The actions taken have violated Article 3 § 2 of the Arkansas Constitution of having free and clear elections. The Legislature obviously had in mind avoiding the disenfranchisement of voters when they expressly required by statute that polling places could not be changed within thirty days of an election.

18. This is a challenge to the validity of the election.

19. The results of this runoff election should not be certified, because the results are uncertain and disenfranchises the voters.

20. This election should be voided because the GCEC's commission's limitation of polling places to two (2) sites was ultra vires.

21. There is simply no way to ascertain how many voters did not vote because of their lack of notice, inability to travel to the single polling place due to disabilities or transportation, incorrect place to vote, confusion as to where to vote. The Legislature had this in mind when they expressly prohibited changing polling places within thirty days of an election.

22. The Garland County Election Commission previously had a lawsuit filed against them for the very same issue as the present one, therefore they knew what they were doing would violate constitutional rights.


23. The Plaintiffs reserve the right to make such other pleadings, allegations, or motions as may become necessary.

WHEREFORE, for the above reason, the Plaintiffs respectfully pray that any certification of the election results be avoided and be voided and held for naught; and for an award of attorney's fees, costs, and for all other relief deemed appropriate by this Court.

Respectfully submitted,
Blake Robertson, Doug Jones,
Ted Burhenn (Plaintiffs)

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