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RE: EXECUTIVE SUMMARY MEMORANDUM

**PROPOSED BILL NO. 4
IMPROVE JUDICIAL CHALLENGES TO ELECTIONS**

Dear Sir or Madam:

Arkansas has an antiquated election contest statute. The statute dates back to Reconstruction and has been gutted by the judiciary to prevent any challenge of an unfair or illegal election. This statute corrects those issues.

Ark. Code Ann. § 7-5-802

(a)(1)(2)

Confers the absolute right to a legal challenge of a recounted election. It creates a liberal construction of these lawsuits and directs courts to resolve the suits on the merits rather than on technical defects.

(b)

Expands venue for election challenges so that they may be brought outside of a county in which the election fraud or misconduct occurred.

(d)

Removes the ability of courts to dismiss election lawsuits for a technical defect without first giving a litigant a chance to correct the defect.

Ark. Code Ann. § 7-5-803

This section of the statutory code is currently unconstitutional as written due to the passage of Arkansas's Amendment 80. These changes make the statute current with the state constitution by only allowing elected judges or special judges appointed by the supreme court to hear election lawsuits instead of other attorneys selected by a circuit judge.

Ark. Code Ann. § 7-5-804

(a)(1)(2)(3)

This language determines the standard of review for judicial contests of recounts and election challenges by providing for a de novo review. It allows for the "plain error" approach in an election contest.

Sincerely,


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/S/ CLINTON W. LANCASTER
Attorney at Law

A Bill

1 State of Arkansas
2 94th General Assembly
3 Regular Session, 2023

SENATE BILL _____

4
5 By: Representative
6 By Senator

For An Act to Be Entitled

7
8 AN ACT TO AMEND THE LAW CONCERNING ELECTIONS
9 AND TO RESTORE ELECTION INTEGRITY IN ARKANSAS
10 AND AMENDED ELECTION PROCEDURES
11

Subtitle

12
13 TO IMPROVE LEGAL CHALLENGES TO ELECTION
14 RESULTS AND THE ELECTION CONTEST PROCESS
15

16
17 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
18

SECTION 1. Arkansas Code Title 7, Chapter 5, Subchapter 8, Section 7-5-

19
20 **801 is amended as follows:**

21 (a)(1) A right of action is conferred on any candidate or group of citizens who petitioned
22 and completed a recount to contest the certification of nomination or the certificate of vote as made
23 by the appropriate officials in any election.

24 (2) The election contest statutes of this state are to be liberally construed to allow qualified
25 persons who conducted a recount to challenge the results of an election or the decisions of a county
26 board of election commissioners without regard to any technical defects in the litigation process
27 or pleadings. There shall exist a presumption of full and quick adjudication of election contests
28 on the merits of the claim as the first and utmost priority.

29 (b) The action shall be brought in the circuit court of the county in which the certification
30 of nomination or certificate of vote is made when a ~~county or city or township office, including~~
31 ~~the office of county delegate or county committee member~~ a city or county office is involved, and

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1 ~~except as provided in this subchapter,~~ within any county in the ~~ircuit or district wherein any of~~
2 ~~the wrongful acts occurred when any ircuit or district office is involved, and except as provided~~
3 ~~in this subchapter,~~ in the Pulaski County Circuit Court when the office of United States Senator,
4 United States Congress, United States President, or any state office is involved.

5 ~~(e) If there are two (2) or more counties in the district where the action is brought and when~~
6 ~~fraud is alleged in the complaint, answer, or cross-complaint, the circuit court may hear testimony~~
7 ~~in any county in the district.~~

8 ~~(d)~~ (c) The complaint shall be verified by the affidavit of the contestant or contestants to
9 the effect that he or she believes the statements to be true and shall be filed within twenty (20)
10 days of the certification that is the subject of the complaint.

11 ~~(e)~~ (d) Any preliminary motions made, or that could be made, pursuant to Rule 12 of the
12 Arkansas Rules of Civil Procedure shall be filed within five days after service of the election
13 contest complaint. If the court finds a basis for granting a preliminary motion, the contestant(s)
14 shall be allowed one opportunity to re-plead or re-file their case within three (3) calendar days
15 from the date the order granting a motion to dismiss is entered by the court. The complaint shall
16 be answered within twenty (20) days from the date the complaint was filed or the order granting
17 or denying a Rule 12(b) motion to dismiss is entered.

18
19
20 **SECTION 2. Arkansas Code Title 7, Chapter 5, Subchapter 8, Section 7-5-**
21 **803 is amended as follows:**

22 (a) In the event that there are more election contests brought under this section than the
23 circuit court judge can dispose of prior to ten (10) days before any election to be held, either
24 of the parties to the contest may so report to the circuit judge in vacation or otherwise, who
25 shall request that the Arkansas Supreme Court appoint a special judge ~~have full and complete~~
26 ~~authority to appoint an attorney with the qualifications of circuit judge~~ to hear any contest and
27 render a final judgment in such contest.

28 (b) ~~The circuit judge shall appoint as special judge any attorney named by a committee~~
29 ~~of three (3) qualified electors of the county in which the contest is pending, one (1) to be named~~
30 ~~by the contestant, one (1) to be named by the contestee, and the third to be named by those two~~
31 ~~(2) committee members. In the event that the first two (2) committee members do not agree~~

1 ~~within five (5) days on the third member, then the third member shall be chosen by lot from~~
2 ~~the respective choices of the two committee members.~~

3 (e) (b) All proceedings shall be conducted as in the case of any regular judge trying any
4 such case, including the right of appeal. The judge so appointed shall have full power and
5 authority in the trial of election contests in all respects as are now conferred by the Arkansas
6 Constitution upon circuit judges in this state. The judgment rendered ~~by the attorney so~~
7 ~~appointed~~ shall be binding with full force and effect as if the regular circuit judge had heard
8 the cause.

9 ~~(d) In the appointment of the attorney, the circuit judge shall not be confined in the~~
10 ~~selection of the attorney to the judicial circuit in which the contest is pending. However, the~~
11 ~~hearing of the contest shall be had in the county in which the contest has been filed.~~

12

13 **SECTION 3. Arkansas Code Title 7, Chapter 5, Subchapter 8, Section 7-5-**

14 **804 is amended as follows:**

15 (a)(1) The election contest shall be tried by the circuit judge in open court without a jury
16 and shall be a de novo review of the actions of the county board of election commissioners as
17 recorded and transcribed by the court reporter commissioned and serving at the recount.

18 (2) The failure to raise an issue, defect, or objection to the county board of election
19 commissioners shall preclude review of the issue, defect, or objection on judicial review unless
20 the same was unknown, unavailable, or good cause is shown for the failure to raise the issue,
21 defect, or objection to the county board of election commissioners.

22 (3) The actions of the county board of election commissioners shall not be disturbed or
23 overturned by the circuit court in the absence of clear and convincing evidence that the decision
24 of the board was incorrect, unjust, or not supported by the evidence or information before it.

25 (b) An appeal may be taken from the judgment. However, the appeal shall not operate as a
26 supersedeas by judicial order or otherwise and the judgment of the circuit court shall be obeyed by
27 officeholders, political committees and their officers, and all election officials, until reversed. It
28 shall be the duty of the Supreme Court to advance the hearing of any such appeal.

29 (c) The circuit court or, when necessary, the circuit judge in vacation shall enforce by
30 mandamus to the officers of political parties and election officials, or both, or the Secretary of
31 State the proper certification and proper ballot in accordance with the judgment of the court and

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1 shall punish the failure of any such officers to obey the mandamus by imprisonment in the county
2 jail.

3 (d) Except as provided in this subchapter, all laws pertaining to general and special
4 elections or rules of political organizations regarding primary elections providing for contest
5 before political conventions or committees, other than the proceedings provided in this subchapter,
6 shall be of no further force or effect.