

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS**

**NICOLE WINSTEAD, STEPHEN PETTUS,
ARETHA WARD, LETA ANTHONY &
R.S. McCULLOUGH**

PLAINTIFFS

vs.

No. 4:07-CV-682 (SWW)

**MARK STODOLA, in his individual and official capacity,
TOM CARPENTER, in his individual and official capacity,
CITY OF LITTLE ROCK, STACY HURST, in her individual
and official capacity, BRAD CAZORT, in his individual and
official capacity, MICHAEL KECK, in his individual and
official capacity, DORIS WRIGHT, in her individual and
official capacity, DEAN KUMPURIS, in his individual and
official capacity, KENT WALKER, in his individual and
official capacity, MARTHA McCASKILL, in her individual
and official capacity, OZELL SNIDER, in his individual and
official capacity, SUSAN INMAN, in her individual and
official capacity, MIKE BEEBE, in his individual and
official capacity, and the STATE OF ARKANSAS**

DEFENDANTS

**RESPONSE OF THE CITY DEFENDANTS TO THE
MOTION OF DISMISSAL FOR PULASKI COUNTY, KENT WALKER,
MARTHA McCASKILL, OZELL SNIDER & SUSAN INMAN**

Mark Stodola, Tom Carpenter, the City of Little Rock, Stacy Hurst, Michael Keck, Doris Wright, and Dean Kumpuris (collectively referred to as “the City”) respond to the motion to dismiss filed by Pulaski County, Kent Walker, Martha McCaskill, Ozell Snider and Susan Inman (collectively referred to as “the Commission”) and state:

1. The motion is well plead and should be granted.
2. For this particular election, the Commission did no more than to set up the voting machines, provide places for the vote, and will certify the election results.
3. Because the Commission was not involved in drafting the ballot, approving the state statute, approving the ordinance, and will not be involved in implementing the results of the election, its duties are merely ministerial.
4. If the Court should find that the election results create an unconstitutional impediment, the Commission will not be involved in any remedy since nothing that the

Court orders would change the certified vote at the election – i.e., the number of votes cast for and against the proposal.

5. The nature of plaintiffs’ (“Winstead”) claim against the Commission is to seek federal court administration of the details of a local election; neither federal law, nor the U.S. Constitution, permit such intervention, nor require such action. *Pettengill v. Putnam County R-1 Sch. Dist.*, 472 F.2d 121, 122 (8th Cir. 1973)(“In essence, the . . . complaint asks the federal court to oversee the administrative details of a local election. We find no constitutional basis for doing so in the absence of aggravating factors such as denying the right of citizens to vote for reasons of race.”)

6. As a result, the plaintiffs’ complaint fails to state grounds upon which relief can be granted against the Commission, and should be dismissed pursuant to Fed. R. Civ. Proc. 12(b)(6).

WHEREFORE, having fully responded with the citation of authority, the City joins the Commissions’ motion to dismiss the Commission with prejudice.

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By: /s/Thomas M. Carpenter

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By: /s/ William C. Mann, III

William C. Mann, III, Ark. ID No. 79199

Certificate of Service

I certify that on this 24th day of August, 2007, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which shall send notification of such filing to:

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In addition, I certify that on this 24th day of August, 2007, I mailed the foregoing and a copy of the Notice of Electronic Filing ("NEF") by United States Postal Service to the non-CM/ECF participants:

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