

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

**NICOLE WINSTEAD, ET AL.**

**PLAINTIFFS**

**v.**

**NO. 4:07-CV-682-SWW**

**MARK STODOLA, ET AL.**

**DEFENDANTS**

**PULASKI COUNTY DEFENDANTS RESPONSE BRIEF**

As previously noted in their Motion to Dismiss, the Pulaski County Defendants are named in this case due to their role in overseeing and carrying out the special election that is the basis of this action. No other allegations have been made regarding the Pulaski County Defendants. Because the Pulaski County Defendants have no interest in the majority of the matters raised in the Plaintiffs' Brief, they will not address those matters, but will leave those arguments to the other defendants.

The only mention of the Pulaski County Defendants contained in Plaintiffs' brief is a factual allegation which was not included in the Complaint filed in this matter. Plaintiffs now allege that the ballot presented for the voters varied from the ordinance. Pulaski County Defendants will concede that a slight difference exists between the language contained in the ordinance and the ballot under the "Against" provision of the question of whether the directly elected mayor should have veto authority. The language contained in the "For" provision on the ballot is identical to that contained in the ordinance under the "For" provision. However, the language contained in the "Against" provision in the ordinance differed slightly from that contained in the "For" provision. The election software will not accept different language in the voting lines for the same question. Further, with regard to the question of whether to grant these duties and

authorities to the directly elected mayor, a typographical error in the ordinance was corrected on the ballot, i.e., in the listed duties, “budge” was corrected to read “budget.”

A challenge to the form of the ballot is not an issue for this court. The right to contest an election is purely statutory. McCastlain v. Elmore, 340 Ark. 365, 10 S.W.3d 835 (2000); Casey v. Burdine, 214 Ark. 680, 217 S.W.2d 613 (1949). The Arkansas Supreme Court has held that in light of the fact that the statutory proceedings for challenging elections are “special and summary in nature, the statutory requirements to secure jurisdiction must be strictly observed, and the jurisdictional facts must appear on the face of the proceedings.” McCastlain v. Elmore, 340 Ark. 365, 10 S.W.3d 835 (2000) (citing Casey v. Burdine, 214 Ark. 680, 217 S.W.2d 613 (1949)). Arkansas Code Ann. §7-9-121 established the procedure for contesting the returns and certification of the votes cast upon any measure. That action must be brought in Circuit Court by twenty-five (25) qualified electors.

RESPECTFULLY SUBMITTED,

PULASKI COUNTY ATTORNEY’S  
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/s/ Karla M. Burnett

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**CERTIFICATE OF SERVICE**

I, Karla Burnett, do hereby certify on this 13<sup>th</sup> 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 13<sup>th</sup> 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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/s/ Karla M. Burnett  
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