

**IN THE CIRCUIT COURT OF PULASKI COUNTY, ARKANSAS
ELEVENTH DIVISION**

COLT SHELBY

PETITIONER

VS.

CASE NO. 60CV-25-12172

**HON. SARAH HUCKABEE SANDERS in her
official capacity as the GOVERNOR OF THE
STATE OF ARKANSAS; and HON. COLE JESTER
in his official as SECRETARY OF STATE**

RESPONDENT

ORDER

On October 15, 2025, the above-captioned case came on for hearing on Petitioner's Second Amended Petition for Writ of Mandamus, Declaratory Judgment, and Injunctive Relief filed on October 14, 2025, and Respondents' Motion to Dismiss Second Amended Petition filed on October 15, 2025. From the record, pleadings, arguments of parties and counsel, and all things and matters before it, the Court FINDS, ORDER and DECREES:

1. The court has jurisdiction over the parties and subject matter herein. Venue is proper.
2. This action was brought after the untimely death of Senator Gary Stubblefield on September 2, 2025. Senator Stubblefield was the senator representing the 26th District of the Arkansas Senate. Governor Sanders certified the vacancy on or about September 19, 2025. Governor Sanders issued the writ of election on or about September 26, 2025, setting a special election to fill the vacancy for November 13, 2026. Governor Sanders then amended the writ of election on or about September 26, 2025, changing the date of the special election to June 9, 2026.

3. It is important to note that the General Assembly will begin the 2026 Fiscal Session on April 8, 2026, with pre-fiscal session budget hearings and pre-filing to begin in early March 2026. The 2026 Fiscal Session is set to end May 7, 2026, or with the permitted extension, May 22, 2026.

4. Petitioner requests this court to find the Governor failed to follow the law concerning the calling of special elections to fill vacancies; declare the special election dates Proclaimed by the Governor to fill the vacancy in Senate District 26 are untimely and violative of law; issue an order calling the special election to fill the vacancy in Senate District 26 to be held in advance of the 2026 Fiscal Session and on the earliest date upon which the election can be held while complying with the relevant laws, and designating the deadlines required under Ark. Code Ann. § 7-11-102; and Order the Secretary of State to transmit the order as the calling document for the special election date to the appropriate county boards or election commissioners.

5. The law regarding the calling of special elections to fill vacancies is as follows:

(a) Nominees for special elections called for the purpose of filling a vacancy in office for a member of the United States House of Representatives, Lieutenant Governor, or for a member of the Senate or House of Representatives of the General Assembly shall be chosen as follows:

(1) The Governor shall certify in writing to the state committees of the respective political parties the fact of vacancy and shall request the respective state committees to make a determination and notify him or her in writing within ten (10) days with respect to whether the political parties desire to hold a special primary election or a convention of delegates held under party rules to choose nominees;

(2)(A) If the state committee of any political party timely notifies the Governor that it chooses to hold a special primary election, any political party desiring to choose a nominee shall choose the nominee at a special primary election.

(B) The Governor's proclamation shall set dates for the special primary election and the runoff primary election to be held if no candidate receives a majority of the vote at the special primary election; and

(3)(A)(i) Except as provided in subsection (c) of this section, a special election to fill the vacancy in office shall be held on a date as soon as possible after the vacancy occurs.

(ii) Except as provided in subdivision (a)(3)(A)(iii) of this section, the special election shall be held not more than one hundred fifty (150) days after the occurrence of the vacancy.

(iii) If the Governor determines it is impracticable or unduly burdensome to hold the special election within one hundred fifty (150) days after the occurrence of the vacancy, the special election shall be held as soon as practicable after the one-hundred-fiftieth day following the occurrence of the vacancy.

(B) The special election shall be held in accordance with laws governing special elections.

Ark. Code Ann. § 7-7-105(a).

6. Respondents seek dismissal of Petitioner's Second Amended Petition for Writ of Mandamus, Declaratory Judgment, and Injunctive Relief. Respondents argue this court is without authority to issue the equitable relief sought by Petitioner, Petitioner has failed to state a cognizable legal theory and factual allegations of illegal action, and sovereign immunity would apply as Petitioner has failed to assert facts that would demonstrate a legal violation.

7. Ark. Code Ann. § 7-7-105(a) requires the Governor to certify the vacancy, proclaim and set dates for the primary and special election within 150 days of the vacancy, unless the Governor determines it is impracticable or unduly burdensome to hold the special election within 150 days.

8. Governor Sanders certified the vacancy and set dates for the primary and special election to fill the vacancy in Senate District 26; after determining it was impracticable and/or unduly burdensome to hold a special election within the 150-day time frame pursuant to the statute.

9. On its face, the law clearly affords the Governor discretion in setting the dates for a special election and permits a deviance from the 150-day requirement should the Governor determine it to be impracticable and/or unduly burdensome. The Arkansas General Assembly sets the public policy of the State of Arkansas, and the General Assembly has stated that it is public policy to hold special elections within 150 days, absent the legislative exception.

10. Respondents' position is that the General Assembly, in passing the applicable statute, has given Governor Sanders discretion in setting special elections, leaving this court without the authority to review or issue a writ of mandamus. Respondents' position is ill-founded. Although this court agrees that the Governor has the sole ability to set dates for a special election, that authority is not absolute.

11. Although Ark. Code Ann. § 7-7-105(a)(3)(iii) allows the Governor to set a special election outside 150 days should the Governor find it "impracticable or unduly burdensome" to set within the 150 days, the analysis does not stop there. The General Assembly continued to state that "the special election shall be held as soon as practicable after the one-hundred-fiftieth day following the occurrence of the vacancy." Ark. Code Ann. § 7-7-105(a)(3)(iii).

12. During the hearing, the court heard uncontroverted testimony from Franklin County Election Commission, Dara Keesee, and Logan County Election Commissioner, Jo Dawn Carter. Ms. Keesee and Ms. Carter testified that although it would be difficult, they would be able to hold the special election on the same date as the primaries in March 2026. They further testified that they would be able to meet all the state and federal guidelines should the special election be set on that date. The court appreciates the Commissioners' willingness and commitment to ensure whichever date the Governor selects for special election for Senate District 26 works for their office, schedule and deadlines. Based on the undisputed testimony presented during the hearing, an earlier more practicable date is available.

13. Assuming *arguendo* that this court adopted Respondent's argument that the Arkansas General Assembly bestowed the absolute right to the Governor to set special elections without the traditional checks and balances provided in our democratic system, the special election statute would be facially unconstitutional. *See Landers v. Stone*, 2016 Ark. 272, 496 S.W.3d 370; *Gravett*

v. Villines, 314 Ark. 320, 862 S.W.2d 260 (1993); *Martin v. Kohls*, 2014 Ark. 427, 444 S.W.3d 844. That would mean the General Assembly conferred an authority it had no power to give and indeed *ultra vires* and it would require this Court to declare it as such. AR Const. Art 4, § 2; *See Thurston v. League of Women Voters of Arkansas*, 2022 Ark. 32, 639 S.W.3d 319; *Martin v. Haas*, 2018 Ark. 283, 556 S.W.3d 509.

14. The court has the ability and authority to determine whether the application of such statute is applied constitutionally. *See Landers*, 2016 Ark. 272, 496 S.W.3d 370. The Supreme Court of Arkansas has specifically held that “a state official who acts unlawfully does so without the authority of...the state in its sovereign capacity.” *Thurston*, 2022 Ark. at *9, 639 S.W.3d at 323-24 (internal quotes omitted). Especially when such authority by the Governor runs the risk of circumventing a constitutionally protected right. *See Gomillion v. Lightfoot*, 364 U.S. 339 (1960).

15. There are two types of constitutional challenges to statutes: facially unconstitutional, for which a claimant must show that under no circumstances could the statute be constitutionally applied, and as-applied to the claimant. *See Arnold v. State*, 2011 Ark. 395, 384 S.W.3d 488 (2011); *Jegley v. Picado*, 349 Ark. 600, 80 S.W.3d 332 (2002); *Linder v. Linder*, 348 Ark. 322, 72 S.W.3d 841 (2002); *Blackburn v. Lonoke County Board of Election Commissioners*, 2022 Ark. 176, 652 S.W.3d 574; *Ward v. Hutchison*, 2018 Ark. 313, 558 S.W.3d 856; *Arkansas Tobacco Control Bd. V. Sitton*, 357 Ark. 357, 166 S.W.3d 550 (2004); *Smith v. Arkansas Midstream Gas Services Corp.*, 2010 Ark. 256, 377 S.W.3d 199; *Medlock v. Fort Smith Services Finance Corp.*, 304 Ark. 652, 803 S.W.2d 930. The court has previously determined that Ark. Code Ann. § 7-7-105 is constitutional on its face. The court will now turn to the constitutionality of this statute as applied to the claimant in the case at bar.

16. The Fourteenth Amendment provides in relevant part that “[No state shall] deprive any person or life, liberty, or property, without due process of law.” U.S. Const. amend. 14 § 1; *See Linder*, 348 Ark. at 342, 72 S.W.3d at 851. “The substantive component of the due process clause protects those fundamental rights and liberties which are, objectively, deeply rooted in this Nation’s history and tradition and implicit in the concept of ordered liberty, such that neither liberty nor justice would exist if they were sacrificed.” *Id.* (internal quotes omitted); *See Washington v. Glucksberg*, 521 U.S. 702, 117 S. Ct. 2258 (1997).

17. “The Arkansas Constitution’s free and equal protection clause, found in article 3, section 2, states: Elections shall be free and equal. No power, civil or military, shall ever interfere to prevent the free exercise of the right of suffrage; nor shall any law be enacted whereby such right shall be impaired or forfeited, except for the commission of a felony, upon lawful conviction thereof.” *Thurston*, 2024 Ark. 90, *10-11, 687 S.W.3d 805, 813 (internal quotes omitted).

18. “[R]epresentative government is in essence self-government through the medium of elected representatives of the people, and each and every citizen has an inalienable right to full and effective participation in the political processes of his State’s legislative bodies. Most citizens can achieve this participation only as qualified voters through the election of legislators to represent them. Full and effective participation by all citizens in state government requires, therefore, that each citizen have an equally effective voice in the election of members of his state legislature. Modern and viable state government needs, and the Constitution demands, no less.” *Reynolds v. Sims*, 377 U.S. 533, 565, 84 S.Ct. 1362, 1383 (1964); *See Pritchett v. City of Hot Springs*, 2017 Ark. 95, 514 S.W.3d 447 (Hart, J., dissenting) (rejecting the Court’s determination that a unilateral annexation of unincorporated area by the City of Hot Springs was not violative of the Equal

Protection Clause of the 14th Amendment); *Taylor v. Clinton*, 284 Ark. 170, 680 S.W.2d 98 (1984); *Reynolds v. Holland*, 35 Ark. 56 (1879).

19. “[The concept of equal protection has been traditionally viewed as requiring the uniform treatment of persons standing in the same relation to the governmental action questioned or challenged. With respect to the allocation of legislative representation, all voters, as citizens of a State, stand in the same relation regardless of where they live.” *Reynolds v. Sims* at 377 U.S. at 565.

20. Should the special election take place on June 9, 2026, the citizens of Senate District 26 are left without a senator for the entire 2026 Fiscal Session of the General Assembly. The citizens of Senate District 26 would be unconstitutionally impaired if this were to occur. They would not be able to fully and effectively participate, nor would they be able to have an effective voice in the election of members of their state legislature. To allow the special election to take place after the conclusion of a legislative session would indeed result in an infringement of a constitutional right based on the fundamental democratic principle of ‘no taxation without representation.’ There would be far-reaching ramifications if the Governor were allowed to deny duly elected representation for the citizens of the State of Arkansas and any action resulting in the denial of adequate representation for any Arkansas citizen conscience of this court.

21. Therefore, Petitioner’s Second Amended Petition for Writ of Mandamus, Declaratory Judgment, and Injunctive Relief, subject to the explanations and limitations discussed, is hereby **GRANTED**. The date for the special election for Senate District 26 shall be set as soon as practicable after the one-hundred-fiftieth day following the occurrence of the vacancy in accordance with Ark. Code Ann. § 7-7-105(a)(3)(A)(iii) to ensure that the date for special election

for Senate District 26 will not infringe upon or curtail the constitutional and fundamental rights of the citizens of Arkansas Senate District 26.

IT IS SO ORDERED.



JUDGE PATRICIA JAMES

DATE 10/22/25