

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

**COLT SHELBY**

**PETITIONER**

v.

**Case No. 60CV-25-12172**

**SARAH HUCKABEE SANDERS, in  
her official capacity as Governor; and  
COLE JESTER, in his official  
capacity as Secretary of State**

**RESPONDENTS**

**RESPONDENTS' BRIEF IN SUPPORT OF MOTION TO DISMISS**

While Petitioner, Colt Shelby, clearly does not like the date that Governor Sanders has set to fill the vacancy in the state senate seat for District 26, Shelby has failed to identify what he believes the Respondents have done wrong. Therefore, Shelby has failed to state a claim, and this case should be dismissed on sovereign immunity grounds and for failure to state a claim under Arkansas Rule of Civil Procedure 12(b)(6).

**BACKGROUND**

Arkansas State Senator Gary Stubblefield died on September 2, 2025, while the General Assembly was in recess, leaving a vacancy in Arkansas's Senate District 26. *See* Am. Pet. ¶¶ 9, 14. Governor Sanders issued a writ of election, and then an amended writ of election, shortly after Senator Stubblefield's passing, designating June 6, 2026, as the date of the special election to fill the vacancy. *See id.* at ¶¶ 12–13. The writ notes that “[i]t is impracticable or unduly burdensome” to hold an election within 150 days of the vacancy. *Id.*, Ex. C. Thus, the Governor set a detailed, expedited timeline that, among other requirements, allows political parties time to hold primary

elections, provides independent candidates time to gather signatures to make it on the ballot, and finally sets a date for a special general election. *Id.*, Ex. D.

The petition does not allege any facts related to the Governor's determination that holding an election within 150 days of the vacancy would be impracticable or unduly burdensome. *See id.*

#### **LEGAL STANDARD**

“Analytically, a cause of action consists of two components: [1] a body of substantive law and [2] a set of facts which, by virtue of that body of law, entitle the pleader to relief.” 2 Arkansas Civil Prac. & Proc. § 14:7 (5th ed.) (brackets added). A motion under Ark. R. Civ. P. 12(b)(6) that attacks the adequacy of a Complaint (or, here, a Petition) “can be aimed at either component.” *Id.*; *see Jackson v. Nationstar Mortg. LLC*, 2016 Ark. App. 473, at 5, 505 S.W.3d 713, 717 (when the issues presented in the motion to dismiss “do not involve factual questions but rather the application of a legal doctrine,” the court must simply determine whether the movant is “entitled to judgment as a matter of law”).

To survive a challenge to the facts, the complaint must state facts, not mere conclusions, to allege an entitlement to relief. *Worden v. Kirchner*, 2013 Ark. 509, at 6, 431 S.W.3d 243, 247 (citing Ark. R. Civ. P. 8(a)(1)). Only the alleged facts, not the conclusions, are “treat[ed] . . . as true and view[ed] in the light most favorable to [Petitioner].” *Id.* at 5, 431 S.W.3d at 247. And if the alleged facts do not “pertain[] to [every] element of the cause of action,” the case must be dismissed. *Perrodin v. Rooker*, 322 Ark. 117, 120, 908 S.W.2d 85, 87 (1995).

Shelby's Amended Petition fails on both components because (1) it does not present a cognizable legal claim, instead settling for a string cite of statutes; and (2) it does not allege a single fact claiming that Respondents have violated the law.

## ARGUMENT

Petitioner's Amended Petition requests three forms of relief. Am. Pet. ¶¶ 4–6 (writ of mandamus, declaratory judgment, injunction). Petitioner's Amended Petition must be dismissed for three reasons: the Court lacks jurisdiction to issue equitable relief, Petitioner fails to state a cognizable legal theory, and Petitioner fails to allege facts sufficient to entitle him to relief.

### I. THE COURT LACKS AUTHORITY TO ISSUE EQUITABLE RELIEF.

The Court's equitable power does not extend to “issue[s] [that] pertain merely to the procedure to be followed in the conduct of political elections.” *Catlett v. Republican Party of Ark.*, 242 Ark. 283, 284, 413 S.W.2d 651, 652 (1967). Courts may not exercise equity related to a decision to “call[] an election,” *id.* at 285, 413 S.W.2d at 653 (citing *Miller v. Tatum*, 173 Ark. 152, 279 S.W. 1002 (1926)), nor to “direct[] or control[] the mode in which, or determining the rules of law in pursuance of which, an election shall be held.” *Id.* (quoting *Walls v. Brundidge*, 109 Ark. 250, 259, 160 S.W. 230, 232 (1913)); *see Whitley v. Cranford*, 354 Ark. 253, 264, 119 S.W.3d 28, 34 (2003) (“In Arkansas, equity has no jurisdiction of any case involving the right to vote, or any political right ...” (quoting *Files v. Hill*, 268 Ark. 106, 116, 594 S.W.2d 836, 842 (1980))).

Instead, “[i]n all such cases, the remedy, if there is one, must be sought in a court of law.” *Catlett*, 252 Ark. at 285, 413 S.W.2d at 652 (quoting *Walls*, 109 Ark. at 258, 160 S.W. at 232). In other words, the remedy available for election-procedure issues must be “the statutory remedy, if there be such, or the common-law remedy.” *Walls*, 109 Ark. at 264, 160 S.W. at 234 (quoting *Rhodes v. Driver*, 69 Ark. 606, 611–12, 65 S.W. 106, 108 (1901)).

This petition is directly related to the calling, mode of, and rules about the special election. *See, e.g.*, Am. Compl. ¶ 41. The Court therefore lacks authority to enjoin Respondents or issue any declaratory relief arising from Petitioner's equitable claims. *Compare Catlett*, 242 Ark. at 286, 413

S.W.2d at 653 (“Nor was the situation [i.e., a lack of equitable jurisdiction] changed by the passage of our declaratory judgment statute, because that act empowers a court of equity to render a declaratory judgment only when the subject matter is within the jurisdiction of chancery.”), *with Culp v. Scurlock*, 225 Ark. 749, 750–51, 284 S.W. 2d 851, 852 (1955) (stating that a declaratory judgment may issue when tied to a writ of mandamus). Specifically, the Court has no authority to set the timeline for the special election. Am. Pet. ¶ 41(B). It does not have authority to enjoin the Secretary of State. *Id.* ¶ 41(C). And it does not have authority to declare that the special election must occur within 150 days of the vacancy, to the extent that declaration is based on an equitable request for relief. *Id.* ¶ 41(A).

Amendment 80’s merging of the courts of law and courts of equity does not alter the foregoing analysis. That is because the “circuit courts [acquired] only the jurisdiction that chancery courts had prior to the Amendment.” *Ark. Prof. Bail Bondsman Licensing Bd. v. Frawley*, 350 Ark. 444, 453, 88 S.W.3d 418, 423 (2002). In other words, Amendment 80 did not expand the judiciary’s equitable power. And before Amendment 80, the courts of equity had no jurisdiction over election procedures. Therefore, the Amended Petition’s request for equitable relief must be dismissed as beyond the Court’s authority.

## **II. PETITIONER FAILS TO STATE A COGNIZABLE LEGAL THEORY.**

Petitioner’s only non-equitable request is his petition for a writ of mandamus. *See City of N. Little Rock v. Gorman*, 264 Ark. 150, 157, 568 S.W.2d 481, 484 (1978) (explaining “mandamus is a common law writ for a remedy at law which was unknown to equity”). But Petitioner has failed to assert a cognizable legal theory that would entitle him to a writ of mandamus. Similarly, he has failed to assert a cognizable legal claim for equitable relief, even if the Court had authority to issue such relief.

*Discretionary Actions.* Writs of mandamus may not issue “to control or review matters of discretion.” *McArty v. McLaurin*, 2022 Ark. 104, at 4, 643 S.W.3d 777, 780. Only when a public officer has been given “a plain and specific duty ... that requires no exercise of discretion or official judgment” is mandamus appropriate. *Id.* And even then, “a petitioner must show a clear and certain right to relief sought.” *Wyatt v. Carr*, 2020 Ark. 21, at 9, 592 S.W.3d 656, 661.

The Amended Petition has not identified any ministerial legal deficiency (or even a discretionary one) in the Governor’s setting of the date for the special election. Instead, the Amended Petition cites—without more—several provisions of the Arkansas Constitution, one federal statute, and three Arkansas statutes. There is no allegation that these laws were violated. Thus, Petitioner fails to put forth a cognizable legal theory because he does not seek a writ of mandamus related to a ministerial action Respondents must take.

Reading Petitioner’s objection as charitably as possible, it appears that Petitioner may disagree with the Governor’s assessment of whether it is “impracticable or unduly burdensome” under Arkansas Code Annotated § 7-7-105(a)(3)(A)(iii) to hold the election within 150 days. But the statute vests the Governor—not Shelby or this Court—with the authority to make that determination. A writ of mandamus is therefore not a cognizable legal theory to challenge the Governor’s discretionary determination under § 7-7-105(a)(3)(A)(iii).

*Statutory Citations.* Petitioner likewise fails to raise a cognizable legal claim for either a writ of mandamus or equitable relief when he cites three Arkansas statutes—Ark. Code Ann. §§ 7-7-105, 10-2-118, and 10-2-119—but never alleges that the Respondents have violated them.

First, Shelby’s own Amended Petition contains facts showing that the Governor *complied* with § 7-7-105. Under Ark. Code Ann. § 7-7-105(a)(3)(A)(iii), the Governor is authorized to set the

election to occur more than 150 days after the vacancy arises if the Governor “determines it is impracticable or unduly burdensome to hold the election within” the 150 days. The Governor made that determination—a fact clearly shown in the exhibits to Shelby’s own Petition. Am. Pet. Ex. D (“1. It is impracticable or unduly burdensome to hold the special primary election and special election within one hundred fifty (150) days after the occurrence of the vacancy.”).

Second, under Ark. Code Ann. § 10-2-118, when a vacancy arises while the General Assembly is in recess, after receiving notice, the Governor “shall without delay issue a writ of election to support the vacancy.” Ark. Code Ann. § 10-2-118(b). Governor Sanders has already issued the writ of election to support that vacancy and thus has already fulfilled her duty under that statutory provision.

Third, Ark. Code Ann. § 10-2-119(b) provides that when a vacancy arises *while the General Assembly is in session*, after receiving notice, the Governor “shall *immediately issue a writ of election* to fill the vacancy.” Ark. Code Ann. § 10-2-119(b) (emphasis added). This statute does not apply here for two reasons. One, the vacancy did not arise while the General Assembly was in session. Two, the statute requires the Governor to “immediately issue” the writ to fill the vacancy—not to “fill a vacancy in office ‘immediately’” as the Amended Petition egregiously misquotes the provision. Am. Pet. at 4, ¶ 22. Since Shelby is challenging the timeliness of the election—not the timeliness of the writ’s issuance—section 10-2-119 has no bearing on this case.

Finally, Shebly cites a federal statute and several provisions of the Arkansas constitution but never explains or even alleges that the Respondents have done anything in violation of them. The failure to even attempt to allege a cognizable legal claim—let alone state a claim—means the Amended Petition must be dismissed under 12(b)(6).

### **III. PETITIONER HAS FAILED TO STATE FACTUAL ALLEGATIONS OF ILLEGAL ACTION.**

The Amended Petition must also be dismissed because Shelby has not attempted to allege facts that, if coupled with a cognizable legal theory and if assumed to be true, would entitle Shelby to relief. The closest the Amended Petition comes to even a single allegation of ultra vires conduct are found in the final sentences of paragraphs 14 and 15, which allege that “The Governor’s designated election schedule prevents the people of Senate District 26 from having representation” at committee meetings that occur between now and the election date and at the 2026 Fiscal Session. Am. Pet. at 3, ¶¶ 14–15. Even assuming those claims to be true, the Amended Petition never even attempts to allege why that is unlawful. Given the complete absence of factual allegations that Respondents have done anything wrong, the Amended Petition must be dismissed under 12(b)(6). And at the very least, Petitioner should be ordered to provide a more definite statement. Ark. R. Civ. P. 12(e).

### **IV. BECAUSE PETITIONER HAS FAILED TO OVERCOME RESPONDENTS’ SOVEREIGN IMMUNITY, HIS AMENDED PETITION SHOULD BE DISMISSED.**

Article 5, § 20 of the Arkansas Constitution provides that “[t]he State of Arkansas shall never be made a defendant in any of her courts.” And this immunity extends to “state agencies and state employees sued in their official capacities.” *Williams v. McCoy*, 2018 Ark. 17, at 3, 535 S.W.3d 266, 268; *see Harris v. Hutchinson*, 2020 Ark. 3, 4, 591 S.W.3d 778, 781 (“If a judgment in favor of a plaintiff would operate to control the action of the State or subject it to liability, the suit is one against the State and is barred by the doctrine of sovereign immunity.”).

To be sure, the sovereign-immunity defense “is inapplicable in a lawsuit seeking only declaratory or injunctive relief and alleging an illegal, unconstitutional, or ultra vires act.” *Ark. Dev. Fin. Auth. v. Wiley*, 2020 Ark. 395, at 4–5, 611 S.W.3d 493, 498. But “to surmount sovereign

immunity,” plaintiffs must satisfy the “fact-pleading requirements.” *Id.*; see *Brizendine v. Dep’t of Hum. Servs.*, 2025 Ark. 34, 3, 708 S.W.3d 351, 353 (“A plaintiff seeking to surmount sovereign immunity under this exception is not exempt from complying with our fact-pleading requirements.”). That means they must “assert facts, that if proven, would demonstrate a legal violation.” *Rutledge v. Remmel*, 2022 Ark. 86, at 5, 643 S.W.3d 5, 8; see *McCoy*, 2018 Ark. 17, at 4, 535 S.W.3d at 269 (concluding “the exception to the sovereign-immunity doctrine for unconstitutional acts is not applicable” where the complaint did not contain “facts that, if proven, would demonstrate a due process violation”). Petitioner has failed to assert facts, that if proven, would demonstrate a legal violation, so this Court must dismiss this suit on sovereign-immunity grounds.

#### **CONCLUSION**

This case should be dismissed on sovereign immunity grounds and under Arkansas Rule of Civil Procedure 12(b)(6) for failure to state a claim.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I, Ryan Hale, certify that the foregoing has been filed on October 13, 2025, using the Court's eFlex electronic filing system, which notifies all counsel of record.

*/s/ Ryan Hale*

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Ryan Hale