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

**11th DIVISION**

**COLT SHELBY** **PETITIONERS**

**V.** **CASE NO. 60 CV-2025-12172**

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

**PETITIONER'S BRIEF IN SUPPORT OF**

**SECOND AMENDED PETITION**

**AND IN SUPPORT OF**

**PETITIONER'S RESPONSE TO**

**RESPONDENT'S MOTION TO DISMISS**

Comes now the Petitioner, by and through his attorney, and for this "Brief in Support" states:

## I. FACTS

Twenty-four (24) days after Senator Gary Stubblefield passed away, leaving his seat representing Senate District 26 vacant, the Governor issued a Proclamation designating the election to fill his vacancy to be held on November 3, 2026, four hundred twenty-six (426) days after his death. The Governor did not list her reasons for setting this election more than a year after his passing; her Proclamation simply stated that it was "impractical or unduly

burdensome to hold the special election within one hundred fifty (150) days after the occurrence of the vacancy".

The same day, she issued an Amended Proclamation moving the election to fill his vacancy up to June 9, 2026, still two hundred seventy-nine (279) days after his death. Again, the Governor gave no recitation of facts to support her delay; only the bold assertion that it was impractical or unduly burdensome to hold it within one hundred fifty (150) days.

Both Proclamations scheduled the special primary election to fill the vacancy in Senator Stubblefield's office for Tuesday, March 3, 2026, one hundred eighty-two (182) days after the Senator's death. Neither Proclamation provides an election schedule that allows Senate District 26 representation in the 2026 Fiscal Session of the Arkansas General Assembly.

## II. ARGUMENT AND LEGAL AUTHORITY

### A. The constitutional authority of the Governor concerning special elections to fill vacancies is minimal and ministerial in nature, while the constitutional rights of Colt Shelby and the people of Senate District 26 are many, fundamental, and well-established.

*1. The Governor has no constitutional discretion concerning special elections; only the duty to schedule them.*

The Arkansas Constitution requires the Governor to issue "writs of election to fill such vacancies as shall occur in either house of the General Assembly."[1] The plain language of the section is clear; this is a duty, not a power. The Constitution says that she "shall" perform this job, not that she "may". She is granted no constitutional discretion and no authority on the matter. She has no power to refuse to call a special election; nor does she have the power to delay an election so long that it deprives Colt Shelby and Senate District 26 of their constitutional rights.

[1] Ark. Con., Article 5, § 6.

*2. The Right to a Representative Government is Guaranteed to Colt Shelby and Senate District 26 under the United States and Arkansas Constitutions.*

"Governments are instituted among Men, deriving their just powers from the consent of the governed." [2] Colt Shelby and all Americans have the right to a representative government. This is constitutionally guaranteed and repeatedly emphasized by the United States Supreme Court. "Legislators represent people, not trees or acres. Legislators are elected by voters, not farms or cities or economic interests. As long as ours is a representative form of government, and our legislatures are those instruments of government elected directly by and directly representative of the people, the right to elect legislators in a free and unimpaired fashion is a bedrock of our political system."[3]

"The right to vote freely for the candidate of one's choice is of the essence of a democratic society, and any restrictions on that right strike at the heart of representative government. And the right of suffrage can be denied by a debasement or dilution of the weight of a citizen's vote just as effectively as by wholly prohibiting the free exercise of the franchise."[4]

Likewise, the Arkansas Constitution guarantees Colt Shelby and all Arkansans a representative government. The U.S. Constitution guarantees "every State in this Union a Republican Form of Government"[5], and as a result the Arkansas Constitution organizes itself into a republic where the people are guaranteed legislative representation by their Senator who is chosen by the qualified electors. [6]

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[2] The Declaration of Independence, 1776.

[3] *Reynolds v. Sims*, 377 US 533 at 562 (1964).

[4] *Reynolds v. Sims*, 377 US 533 (1964).

[5] U.S. Const. Article 4, § 4.

[6] Ark. Con. Article 5, §§ 1 and 3.

*3. The Right to Vote is Guaranteed to Colt Shelby and Senate District 26 under the United States and Arkansas Constitutions.*

Colt Shelby and all Americans have the right to vote in elections whereby they elect their representatives.[7] "Undoubtedly, the right of suffrage is a fundamental matter in a free and democratic society. Especially since the right to exercise the franchise in a free and unimpaired manner is preservative of other basic civil and political rights, any alleged infringement of the right of citizens to vote must be carefully and meticulously scrutinized."[8]

Colt Shelby and all Arkansans are further guaranteed the rights to vote[9] and to "free and equal" elections.[10] The Arkansas Constitution solidifies this protection in stating that "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". [11]

*4. The Right to Equal Protection of Laws is guaranteed to Colt Shelby and Senate District 26 under the United States and Arkansas Constitutions.*

Colt Shelby and the Arkansans residing in Senate District 26 are entitled to equal protection of the laws. [12] "The equality of all persons before the law is recognized, and shall ever remain inviolate; nor shall any citizen ever be deprived of any right, privilege or immunity."[13] Colt Shelby and Senate District 26 are entitled to the same representation that every other resident in Arkansas receives in the Arkansas General Assembly.

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[7] U.S. Const. Article 1 and Amendments 15, 19, 24, and 26.

[8] *Reynolds v. Sims*, 377 US 533 at 562 (1964).

[9] Ark. Con. Article 3, § 1.

[10] Ark. Con. Article 3, § 2.

[11] Ark. Con Article 3, § 2.

[12] U.S. Const., Amendment 14.

[13] Ark. Con., Article 2 § 3.

*5. The Right to Due Process of Law is Guaranteed to Colt Shelby and Senate District 26 under the United States and Arkansas Constitutions.*

Colt Shelby and the Arkansans residing in Senate District 26 are entitled to due process of law.[14] The Arkansas Constitution guarantees that "no person shall be … desseized of his estate, freehold, liberties or privileges; or outlawed in any manner destroyed, or deprived of his life, liberty or property; except by the judgment of his peers, or the law of the land…"[15].

6. Colt Shelby and Senate District 26 have a property interest in how the General Assembly spends their tax dollars in the 2026 Fiscal Session.

The Arkansas and United States Constitutions protect the property rights of Colt Shelby and Senate District 26.[16] They have paid their taxes on earned wages, on the value of the homes and farms, and on the clothes they've bought to care for their family. By the Governor's election schedule, that money is taken from them and spent for them, leaving them no say in how those dollars could be used to help their community, schools, churches, families, farms, and businesses.

Upholding the civil rights and property rights of Arkansans and Americans is essential to preserving this constitutional republic.

**B. The Governor's Proclamations do not evidence or state any facts supporting an impracticability or undue burden, and, therefore, the statutory exception is unenforceable.**

Ark. Con., Article 5, § 6 requires the Governor issue a writ calling a special election to fill a Senator's vacancy, and the General Assembly further required that the election to fill the

[14] U.S. Const., Amendment 14.

[15] Ark. Con., Article 2, §21.

[16] Ark. Con., Article 2, §21 and U.S. Const., 5th and 14th Amendments.

vacancy be held “as soon as possible after the vacancy occurs” and “within one hundred fifty (150) days after the occurrence of the vacancy”.[17] The General Assembly further mandated that if the Governor determines it “impracticable or unduly burdensome” to meet that one hundred fifty (150) day deadline, the Governor could call the election for a later date that is “as soon as practicable after the one-hundred-fiftieth day following the occurrence of the vacancy”.[18] “Impracticable” means “incapable of being performed or accomplished by the means employed or at command.”[19] This special election is capable of being performed before 2026 Fiscal Session. While it becomes more difficult to timely achieve that goal with every day that passes, there can be no question that any such burden, when weighed against the deprivation of constitutional rights for an entire Senate District, cannot be undue; and certainly as here, in a situation in which the Governor herself, through her own delay, is the cause of that burden.

Further, the Governor’s Proclamation states no facts constituting an ‘impracticability or undue burden’; it simply and erroneously states that it is so. The Governor cannot create a incontrovertible legal certainty simply by restating the legal standard within an official document, particularly when that assertion significantly infringes on established constitutional rights reserved by the people. The facts supporting or contradicting that claim are necessary to determining whether a Governor acts capriciously in the exercise of her emergency powers. [20] In *Garrett v. Faubus*, the Governor used his emergency powers to close the Senior High Schools in the Little Rock School District. He gave reasons for his proclamation as follows: “I have determined that domestic violence within the Little Rock School District is impending, and that a general, suitable, and efficient educational system cannot be maintained in the Senior High Schools of the Little Rock School District because of integration of the races in such

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[17] Ark. Code Ann. § 7-7-105(a)(3)(A).

[18] Ark. Code Ann. § 7-7-105(a)(3)(A)(iii).

[19] “impracticable.” Merriam-Webster.com. 2025. https://www.meriam-webster.com (13 Oct 2025).

[20] *Garrett v. Faubus*, 323 SW 2d 877 (1959), (finding there was no record contradicting or challenging the reasons upon which the Governor relied in exercising his emergency powers, and, therefore, the court did not reach the reasonableness of that finding).

schools."[21] In upholding Faubus's use of his emergency powers, the *Garrett* Court specifically relied on this recitation of facts supporting his finding, and the failure of the record to controvert those facts.[22]

By comparison, the Courts have addressed bold and inaccurate statements of law made by governmental entities in official documents without factual justification in the context of emergency clauses enacted by the General Assembly. "The General Assembly is authorized to make an act effective immediately 'if it shall be necessary for the preservation of the public peace, health and safety' by enacting an emergency clause. However, it is necessary that the General Assembly 'state the fact which constitutes the emergency.'"[23] Likewise, it is necessary that the Governor state the fact which constitutes an impracticability or undue burden.

"It is a matter of legislative determination whether an emergency exists that requires the enactment of an emergency clause, but pursuant to Amendment 7, it is a judicial determination whether facts constituting an emergency are stated.... An emergency clause which does not state a fact that constitutes an emergency is invalid.... There must be some statement of fact to show that a "real emergency existed."[24] The Governor made no such statement of fact constituting an impracticability or undue burden, and therefore her finding is invalid.

"The test for determining if a real emergency has been stated is whether reasonable minds might disagree as to whether the enunciated facts state an emergency. If so, the emergency clause is upheld; if not, then the emergency clause is invalid. Emergency is defined as 'some sudden or unexpected happening that creates a need for action.'"[25] The Courts have further held that the "academic declaration of a known governmental requirement" is not a

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[21] *Id* at 878.

[22] *Id.*

[23] Priest v. Polk, 912 SW 2d 902, 322 Ark. 673 (1995) citing

[24] *Priest v. Polk*, 912 SW 2ds 902 (1995) citing *Burroughs v. Ingram*, 319 Ark. 530, 893 SW 2d 319 (1995) quoting *Gentry v. Harrison*, 194 Ark. 916, 110 SW 2d 497 (1937).

[25] *Id* at 907 citing *Burroughs*, 319 Ark. 530, 893 SW 2d 319.

statement of a real emergency, and the statement of some "administrative truism" is not the statement of a real emergency.[26]

**C. Any perceived impracticability or burden was created by the Governor's delay.**

It would not have been "impracticable or unduly burdensome" to hold the special election to fill the vacancy in Senate District 26 within one hundred fifty (150) days had the Governor not already delayed calling a timely special election. Arkansas statutes requires the Governor to issue the Proclamation to fill a vacancy in office "without delay" after the death of any member of the General Assembly if the General Assembly is in recess[27], and yet it took twenty-four (24) days after the Senator's passing to schedule the special election. Neither the Proclamation nor the Amended Proclamation even attempted to schedule the special primary election within one hundred fifty (150) days; they both scheduled that preliminary election one hundred eighty-two (182) days after the vacancy occurred. Ozark has an election scheduled for November 18, 2025. On September 26, 2025, when the Governor issued her proclamation, she could have designated the special primary election simultaneously with that election in Ozark or set it for the second Tuesday in December. Neither of those dates can now be met in compliance with federal law, because the Governor's Proclamation is running the clock out on efficient and earlier elections at the cost of the constitutional rights of Senate District 26.

Determining that it is "impracticable or unduly burdensome" to hold the election within one hundred fifty (150) days is only the first part of the Governor's obligation. She is also then required to set the election "as soon as practicable".[28] She did not do so, and every day that passes makes it more difficult to hold an election soon enough to ensure Senate District 26 has representation in the 2026 Fiscal Session.

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[26] *Cunningham v. Walker*, 198 Ark. 928, 132 SW 2d 24 (1939).

[27] *Ark. Code Ann*. 10-2-118.

[28] *Ark. Code Ann.* 7-7-105(a)(3)(A)(iii).

**D. The Governor's failure to call a special election in time for Senate District 26 to have representation in the 2024 Fiscal Session dilutes the votes of that district compared to those of the rest of the state.**

By failing to call a timely election, the Governor ensures that Senate District 26 will not have representation in the 2026 Fiscal Session, when the General Assembly designates a budget, spending billions of dollars in taxpayer funds. The district will have no vote on any expenditure of their tax dollars, and no voice any policy that directly effects their life, liberty, and property. Conversely, thirty-four (34) other Senate Districts will have a voice and a vote. The Courts have repeatedly held that apportionment schemes which dilute the weight of votes based on where voters reside are unconstitutional[29], and the United States Supreme Court has recognized the fundamental policy goal of "achieving fair and effective representation for all citizens".[30] By failing to call a timely special election, the Governor is denying Senate District 26 equal protection of the laws.

**E. "Impracticable or unduly burdensome" is an unconstitutional standard, and an unlawful delegation of authority made by the General Assembly to the Governor.**

As discussed at length above, Colt Shelby and the residents of Senate District 26 enjoy fundamental, constitutional rights to vote, representative government, equal protection, due process of law, and free and fair elections. The General Assembly's chosen standard of "impracticable or unduly burdensome" was adopted by Act 210 of the 2014 Fiscal Session, and is a broad grant of statutory discretion to the Governor which she argues allows her to designate an untimely election because a timely election will be inconvenient. There is no circumstance where denying a timely election because it is inconvenient to the government can be constitutionally applied.[31] Inconvenience to the government is not a compelling

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[29] *Reynolds v. Sims*, 377 US 533 (1964); *Gray v. Sanders*, 372 U.S. 368.

[30] *Reynolds v. Sims*, 377 U.S. 533 (1964) and *Gaffney v. Cummings*, 412 U.S. 735 (1973).

[31] *Linder v. Linder,* 348 Ark. 322 (2002).

government interest, and “impracticable or unduly burdensome” is not narrowly tailored to achieve any compelling government interest which they may attempt to evidence in a hearing on the merits. This legislative grant of authority is both unconstitutional on its face and as applied by the Governor.

An Act which burdens a fundamental right “must be analyzed under strict or heightened scrutiny, which means it cannot pass constitutional muster unless it provides the least restrictive method available that is narrowly tailored to accomplish a compelling state interest.”[32] The restriction does not pass this test. This statutory grant of power to prevent timely special elections for impracticability or undue burden is unconstitutional. Conversely, the restriction requiring holding them within one hundred fifty (150) days is constitutional. “Those portions of statutes found to be invalid could be severed from the remaining valid provisions of such enactments”.[33] Therefore, the special election to fill the vacancy is Senate District 26 is required to be held within one hundred fifty (150) days of the occurrence of the vacancy.

## III. PETITIONER’S RESPONSE TO RESPONDENT’S BRIEF IN SUPPORT OF MOTION TO DISMISS

Respondent’s ‘Motion to Dismiss' and ‘Brief in Support’ note that Petitioner has provided an exhaustive list constitutional rights enjoyed by the people of Senate District 26 while simultaneously ignoring that the Constitutions are substantive law granting civil and property rights to taxpayers, voters, and citizens, and further ignoring that the government is obligated to observe those rights. Respondent’s assertion that filling a vacancy in office is merely a matter of “procedure to be followed in the conduct of political elections” ignores the

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[32] *Arkansas Dept. of Human Services v. Cole*, 380 SW 3d 429 (2011).

[33] Spa Kennel Club, Inc. v. Dunaway, 406 SW 2d 128 (1966) and Matthews v. Byrd, 187 Ark. 458 (1933).

*Catlett* Court's limitation of that language to cases "where no civil or property right is involved".[34] In citing other cases to support its rationale, the *Catlett* Court stated: "It was merely a political matter, not involving any property rights or any matters of public taxation, and the chancery court had no power to interfere either by inductive process or otherwise."[35] Again, Colt Shelby and the people of Senate District 26 are being systematically denied a bevy of constitutional rights including the rights to vote, to representative government, to equal protection, to free and fair elections, to due process of law, and a property interest in their tax dollars that will be spent by the 34 Senators who are not from their district during the 2026 Fiscal Session.

Further, Colt Shelby and the people of Senate District 26 have no other remedy at law. With each day that passes, it becomes more difficult for the election officials to meet an expedited schedule. The purpose of a writ of mandamus is to enforce an established right or to enforce the performance of a duty.[36] Colt Shelby and the people of Senate District 26 need this court to enforce their established rights and soon; they have no other recourse as the Governor is acting in violation of the law under a broad assertion of discretion that was never legally granted to her.

Further, "the defense of sovereign immunity is inapplicable in a lawsuit seeking only declaratory or injunctive relief and alleging an illegal, unconstitutional, or ultra vires act."[37] By claiming sovereign immunity, Respondents claim that none of these laws listed in the "Petition" or "Brief in Support" restrict the Governor in any way; that the executive office she holds and the power she yields by holding it, is superior to the United States and Arkansas Constitutions themselves. Respondents argue that the executive head of the state has unfettered, plenary authority over all Arkansans. However, there is no legal basis for this political assertion, and it

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[34] *Catlett v. Republican Party of Arkansas*, 413 SW 2d 651 at 652.

[35] *Id* at 643 quoting *Hester v. Borland*, 80 Ark. 145, 95 SW 992 (1906).

[36] *Arkansas Democrat Gazzette v. Zimmerman*, 20 SW 3d 301 (2000); *Manila Sch. Dist. No. 15 v. White*, 338 Ark. 195.

[37] *Harris v. Hutchinson*, 591 SW 3d 778; *Martin v. Haas*, 2018 Ark. 283.

does not render the Petition insufficient under procedural rules. To the contrary, Courts have held that when exercising gubernatorial emergency powers, the constitutional limitations of those and whether an emergency ceases to operate or exist "is always open to judicial inquiry, notwithstanding the legislative declarations."[38]

Respectfully submitted,

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[38] *Garrett v. Faubus*, 232 SW 2d 877 at 886, Harris concurring, quoting *Pouquette v. O'Brien*, 55 Ariz. 248, 100 P.2d 979.