

IN THE CIRCUIT COURT OF WASHINGTON, ARKANSAS
DIVISION _____

**DEMOCRATIC PARTY OF ARKANSAS;
and TYLER CLARK**

PETITIONERS

vs.

Case No. 72CV-16-_____

**JOHN or JANE DOE;
WASHINGTON COUNTY REPUBLICAN COMMITTEE;
REPUBLICAN PARTY OF ARKANSAS STATE COMMITTEE;
and BECKY LEWALLEN,
in her official capacity
as Washington County Clerk**

**DEFENDANTS/
RESPONDENTS**

**VERIFIED PETITION FOR ISSUANCE OF A WRIT OF MANDAMUS
AND FOR DECLARATORY JUDGMENT**

COMES NOW Petitioners Democratic Party of Arkansas and Tyler Clark, by and through their attorney Chris Burks of Sanford Law Firm, PLLC, and for their Petition for Issuance of a Writ of Mandamus and for Declaratory Judgment, do hereby state and allege as follows:

I.

INTRODUCTION

Petitioners bring this suit to protect the democratic process. Arkansas election law ensures orderly elections. Defendants are circumventing the process put in place by the General Assembly. Defendants are going forward after a candidate did not lawfully withdraw from the Washington County Judge election. Orderly, cost-effective and fair elections matter, this suit seeks no more.

II.

PARTIES, JURISDICTION AND VENUE

A. Democratic Party of Arkansas

1. Petitioner Democratic Party of Arkansas is the minority political party in Arkansas as recognized and defined in Arkansas Code Annotated § 7-1-101(21), with offices located in Little Rock, Arkansas.

2. Petitioner Democratic Party of Arkansas is a necessary party because it has the right for its Washington County Judge nominee to lawfully stand for election under Arkansas Code Annotated § 7-7-104. Arkansas Code Annotated § 7-7-104 must be followed by the Washington County Republican Committee, Republican Party of Arkansas State Committee, John or Jane Doe, and the Washington County Clerk. The Democratic Party of Arkansas thus may have the validity of acts arising under this statute determined and obtain a declaratory judgment under Arkansas Code Annotated § § 16-111-104 *et seq.*

B. Tyler Clark

3. Tyler Clark is a citizen and resident of Washington County, Arkansas and Chair of the Washington County Democrats.

4. Tyler Clark is a necessary party by virtue of his rights to have a declaratory judgment and writ issued that mandates all Respondents follow Arkansas Code Annotated § 7-7-104.

C. Washington County Republican Committee.

5. Respondent Washington County Republican Committee is the county committee of the Republican Party in Washington County as recognized and defined in Arkansas Code Annotated § 7-3-104.

6. Respondent Washington County Republican Committee is a necessary party by virtue of its duties, under Arkansas Code Annotated § 7-7-203, to accept party pledges, filing fees and affidavits of eligibility to issue party certificates for party nominees for county office, as well as its violation of Arkansas Code Annotated § 7-7-104 by unlawfully trying to nominate John or Jane Doe as its nominee for Washington County Judge.

D. Republican Party of Arkansas State Committee

7. The Republican Party of Arkansas State Committee exists under the authority of Arkansas Code Annotated § 7-3-103.

8. The Republican Party of Arkansas State Committee is a necessary party in that it is violating Arkansas Code Annotated § 7-7-104 by unlawfully trying to allow the Washington County Republican Committee to nominate John or Jane Doe as its nominee for Washington County Judge. The Republican Party of Arkansas State Committee has a duty under Arkansas Code Annotated § 7-7-104 to “notify the Governor within five (5) days after the date of death or the date the party was notified of intent to refuse nomination as to whether the party chooses to fill the vacancy in nomination at a special election or a convention;” however, the Republican Party of Arkansas State Committee can only exercise that duty if there is a lawful “vacancy in nomination.”

E. John or Jane Doe

9. Respondent John/Jane Doe is attempting to be appointed as a supposed 2016 Republican Party nominee for Washington Judge by Respondent Washington County Republican Party.

10. Respondent John/Jane Doe is a necessary party by virtue of his or her attempt to receive a certificate for nomination for Washington County Judge in violation of Arkansas Code Annotated § 7-7-104 and will be named pursuant to Arkansas Rule of Civil Procedure 15 once his or her identity is known.

F. Becky Lewallen

11. Washington County Clerk Becky Lewallen, in her official capacity, has the duty under Arkansas Code Annotated §7-7-203 to certify to the county board of election commissioners a full list of all candidates to be voted for in the county as the nominations have been certified or otherwise properly submitted to her.

12. Washington County Clerk Becky Lewallen is a necessary party by virtue of her duties under Arkansas Code Annotated §7-7-203 to only certify those candidates that have been properly submitted to her.

13. This is an action for declaratory judgment pursuant to the Arkansas Declaratory Judgment Act, A.C.A. § 16-111-101, *et. seq.*

14. This is an action in mandamus pursuant to Ark. Code Ann. § 16-115-101, *et seq.*

15. This Court has subject matter jurisdiction and personal jurisdiction over the issues and persons before it.

16. Venue is proper in this Court pursuant to Ark. Code Ann. § 16-60-101, *et. seq.*

III.

BACKGROUND FACTS

17. The preceding paragraphs are incorporated herein as if set forth word for word.

18. Micah Neal filed as a Republican candidate and was given a party certificate for the office of Washington County Judge in the March 1, 2016, primary.

19. Micah Neal was unopposed in the primary and was thus elected as the 2016 Republican Nominee for Washington County Judge.

20. On Thursday, June 30, 2016, Neal informed Northwest Arkansas Journalist Larry Henry that he was dropping out of the Washington County Judge race to focus on the family business, Neal's Café in Springdale. On Twitter and Facebook, Henry quoted Neal as saying, "It is a family/business decision." In a Facebook post at 9:28 p.m. on June 30, Henry reported that Neal told him "that with his dad nearing the age of 65, he wants to focus on the family business, Neal's Café in Springdale." See the Facebook and Twitter posts attached and hereby incorporated as Exhibit "A." June 30, 2016, Confirmation, Exhibit A.

21. Also on June 30, in an article written by Reporter Doug Thompson and posted online at 10:59 p.m., the Northwest Arkansas Democrat-Gazette reported that Neal "is dropping out of the race for family and business reasons, he said Thursday night." See the article attached and hereby incorporated as Exhibit "B." June 30, 2016, Northwest Arkansas Democrat-Gazette article, Exhibit B.

22. In the same June 30 online article, the Northwest Arkansas Democrat-Gazette reported that Tyler Clark, Chairman of the Washington County Democratic Party, “said the law doesn’t allow replacement of a candidate this soon before the Nov. 8 general election unless the candidate in question dies, moves out of the county or district his office represents, or suffers an incapacitating illness.” Exhibit B.

23. The same information appeared in the print edition of the Northwest Arkansas Democrat-Gazette on July 1.

24. After the June 30 online and July 1 print articles were published, in Facebook posts on July 1 at 12:27 p.m. and 12:29 p.m., Neal said that he was suspending his campaign for Washington County Judge and “will return to the private sector. This is a business decision that I’ve reached with my family. I will be moving and unable to fulfill the requirements of the office.” See the post attached and hereby incorporated as Exhibit “C.” July 01, 2016, post, Exhibit C.

25. In a Facebook post at 2:37 p.m. on July 1, Journalist Henry reported that Neal told him “he is moving to Benton County in a northern part of Springdale near his family business, Neal’s Café.” See the post attached and hereby incorporated as Exhibit “D.” July 01, 2016, post, Exhibit D.

26. As of July 1, according to the Arkansas Secretary of State’s website, Neal was registered to vote at 3625 W. Huntsville Avenue, Springdale, Arkansas 72762, located in Washington County. See the voter record attached and hereby incorporated as Exhibit “E.” Voter record, Exhibit E.

27. On July 2, 2016, the Northwest Arkansas Democrat-Gazette reported in a print article by Reporter Scarlet Sims that Lance Johnson, Chairman of the Washington County Republican Party, was aware of Neal's refusal of his party's nomination as of Friday, July 1. The article quoted Johnson as saying, "We had no warning that this was coming," and that he did not have any names of potential replacement candidates as of Friday, July 1. See the article attached and hereby incorporated as Exhibit "F." July 02, 2016, Northwest Arkansas Democrat-Gazette article, Exhibit F.

28. The Republican Party of Arkansas State Committee did not notify the Governor of Neal's intent to refuse nomination within five (5) days of July 1, 2016.

29. In a letter dated July 8, 2016, to Washington County Clerk Becky Lewallen, Neal asked that his name be removed from the ballot. The letter said "I regret that I will not be able to meet the criteria to keep my name on the ballot for Washington County Judge. I will be moving to Benton County at the beginning of August 2016." See the letter attached and hereby incorporated as Exhibit "G." July 08, 2016, Micah Neal letter, Exhibit G.

30. As of July 8 and still continuing through at least July 13, 2016, Neal was still registered to vote at the Huntsville Avenue address in Washington County, according to records from both the Arkansas Secretary of State's office and the Washington County Clerk's office.

31. According to Washington County Assessor records, the JE Lindsey Family Limited Partnership owns the property on Huntsville Avenue. See the

records attached and hereby incorporated as Exhibit "H." Assessor records, Exhibit H.

32. Upon information and belief, Neal and his wife, Cindy, lease the property on Huntsville Avenue from the Lindsey Partnership and live there with their minor child.

33. Upon information and belief, as of July 8 and continuing through at least July 13, Neal has not moved from the Huntsville Avenue address and was, therefore, still a Washington County resident at the time he submitted the letter to the County Clerk asking that his name be removed from the ballot.

34. Neal owns real property in Washington County, a partial interest in Neal's Café and a residence on Oxford Place in Springdale. The only real property Respondent Neal owns in Benton County is located in Gentry. Respondent Neal co-owns the Gentry properties with Lance and Kimberly Eads, and, upon information and belief, they are investment properties, and Respondent Neal has never lived there.

35. Respondent Neal assessed for personal property taxes for 2016 in Washington County. His 2016 Washington County personal property tax assessment is associated with a post office box for Neal's Café located in Washington County. Personal Property Assessment. Exhibit I.

36. Further, Neal is the current State Representative for District 89 in Washington County. The people of District 89 elected him to serve through the end of 2016. District 89 is entirely within Washington County. Neal has not

resigned as the District 89 Representative and has given no indication he intends to abandon the people of his district or his legislative duties.

IV.

COUNT I:

DECLARATORY JUDGMENT

37. The preceding paragraphs are incorporated herein as if set forth word for word.

38. Ark. Code. Ann. § 7-7-104(c)(1) states that a vacancy in nomination is created when a party nominee dies or refuses nomination due to serious illness, moving out of the area from which he or she was nominated, or filing for another office.

39. Ark. Code. Ann. § 7-7-104(d)(1) *et. seq.* provides that the state committee of the political party must notify the Governor within five (5) days of death or receipt of a notice of intent to refuse nomination and that the Governor will issue a proclamation allowing another primary or a special convention to fill the vacancy.

40. Respondent Neal's refusal of nomination does not meet the express statutory conditions of Ark. Code. Ann. § 7-7-104(c)(1) because he refused nomination due to "family" and "business" reasons, not serious illness, moving out of the area, or filing for another office.

41. Although Neal subsequently attempted to supplement – or even alter – the reason for his refusal, citing a possible future move out of Washington

County, this is a mere pretext for the real reason for his refusal, which was “family” and “business” reasons.

42. Not only did Neal originally declare to at least two journalists that the reason for his refusal was due to “family” and “business” reasons, but Neal reportedly contemplated the conflict between his family and business obligations at Neal’s Café and his desire to be Washington County Judge for many weeks, if not months, prior to his refusal of nomination.

43. Neal mentioned the possible future move to Benton County only after it was publicly reported that his original reason for refusal was legally insufficient to allow the Washington County Republican Party to nominate a replacement candidate.

44. This after-the-fact attempt to cover up the real reason for Neal’s refusal is inconsistent with the democratic process and must be rejected as violating both the letter and spirit of Arkansas election law pertaining to vacancies in nomination.

45. Moreover, as of the date of his refusal of nomination, Neal had not moved out of Washington County. A possible move at an unspecified future date does not satisfy the requirements of Ark. Code. Ann. § 7-7-104(c)(1).

46. As of the date of his refusal of nomination, Neal was a legal resident and domiciliary of Washington County, Arkansas. Not only did he remain physically present in Washington County, but he remained registered to vote in Washington County, and he remained the State Representative for District 89 within Washington County.

47. Respondent Washington County Republican Party cannot select another candidate using the vacancy in nomination process because Respondent Neal's refusal does not satisfy the conditions required to invoke such a process.

48. Further, Respondent Washington County Republican Party cannot nominate or appoint another candidate because the five (5) day notice requirement has not been satisfied.

49. Pursuant to the Arkansas Declaratory Judgment Act, Ark. Code Ann. § 16-111-101, *et seq.*, this Court should enter a declaratory judgment that:

- a. Respondent Washington County Republican Committee is not permitted to select a candidate for County Judge using the vacancy in nomination process because no valid vacancy in nomination yet exists under the plain meaning of Ark. Code. Ann. § 7-7-104(c);
- b. the Washington County Clerk shall not certify the name of any County Judge candidate submitted to her under Arkansas Code Annotated § 7-7-203 using the vacancy in nomination process started by Micah Neal on July 01, 2016; and
- c. the Washington County Board of Election Commissioners shall not accept the name of any County Judge candidate on a list certified under Arkansas Code Annotated § 7-5-203 that was submitted using the vacancy in nomination process started by Micah Neal on July 01, 2016

V.

COUNT II:
MANDAMUS

50. The preceding paragraphs are incorporated herein as if set forth word for word.

51. A writ of mandamus is the only practical method of enforcing Ark. Code Ann. § 7-7-104(c).

52. Under Arkansas Code Annotated § 16-115-101 *et seq.*, this Court shall determine petitions for mandamus and enjoin an act by an officer that violates the law. *See also, Stilley v. Markris*, 343 Ark. 673, 38 S.W.3d 889 (2001).

53. By virtue of Arkansas Code Annotated § 7-7-104, Respondents Washington County Republican Committee, the Washington County Clerk, and the Republican Party State Committee have a mandatory obligation to ensure that they follow Arkansas Code Annotated § 7-7-104.

54. Arkansas Code Annotated § 7-7-104 requires that the Washington County Clerk exercise non-discretionary duties to certify names of nominees to the Board of Election Commissioner to then place such certified names on the ballot.

55. As a result, mandamus is an appropriate remedy to compel Respondents to not certify and remove any name from the ballot named or certified as a result of the illegal vacancy in nomination process started by Micah Neal on July 01, 2016 in violation of Arkansas Code Annotated. §7-7-104.

56. A writ must issue to ensure Arkansas Code Annotated. § 7-7-104 is followed.

57. Petitioner requests that this Court set an immediate hearing on this matter in accordance with Rule 78(d) of the Arkansas Rules of Civil Procedure which provides:

(d) Mandamus and Prohibition. Upon the filing of petitions for writs of mandamus or prohibition in election matters, it shall be the mandatory duty of a circuit court having jurisdiction to fix and announce a day of court to be held no sooner than 2 and no longer than 7 days hereinafter to hear and determine the cause.

58. Additionally, after an expedited hearing as contemplated in Rule 78(d) above, this Court should issue an Order for expedited discovery and a temporary injunction enjoining the Respondents from further action until the Court issues the declaratory judgment and writ.

59. An injunction should issue because: (1) Petitioners will succeed on the merits of the declaratory judgment action and writ (2) Petitioners will be irreparably harmed by the illegal process in violation of § 7-7-104; (3) granting the injunction will not inflict harm on other interested parties; and (4) the issuance of an injunction is in the public interest because the public has a right to a lawful election process.

VI.

RELIEF SOUGHT

WHEREFORE, Petitioner Democratic Party of Arkansas prays that this Court issue summons against Respondents John or Jane Doe, Washington County Republican Committee; Republican Party of Arkansas State Committee, and Becky Lewallen in her official capacity as Washington County Clerk enter an temporary injunction and then judgment to the effect that:

- a. Respondent Washington County Republican Committee is not permitted to select a candidate for County Judge using the vacancy in nomination process because no valid vacancy in nomination yet exists under the plain meaning of Ark. Code. Ann. § 7-7-104(c);
- b. the Washington County Clerk shall not certify the name of any County Judge candidate submitted to her under Arkansas Code Annotated §7-7-203 using the vacancy in nomination process started by Micah Neal on July 01, 2016; and
- c. the Washington County Board of Election Commissioners shall not accept the name of any County Judge candidate on a list certified under Arkansas Code Annotated § 7-5-203 that was submitted using the vacancy in nomination process started by Micah Neal on July 01, 2016;

to issue a writ of mandamus ordering the Respondents to follow the law in the declaratory judgment above; to set a hearing in this matter within seven (7) days of the filing of this Petition; grant Petitioner fees and costs in pursuing this matter; and grant all other just and proper relief, whether prayed for specifically herein or not.

Respectfully submitted,

**DEMOCRATIC PARTY OF
ARKANSAS and TYLER CLARK,
PETITIONERS**

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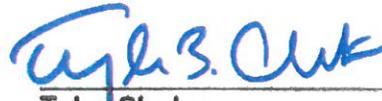


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VERIFICATION

STATE OF ARKANSAS)
COUNTY OF WASHINGTON)

I, **Tyler Clark**, Petitioner herein, do hereby state under oath that the allegations set forth in the foregoing pleading are true and correct to the best of my knowledge and belief.



Tyler Clark

SUBSCRIBED AND SWORN to before me this 18th day of July, 2016.


Notary Public