

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

JIM SORVILLO

PLAINTIFF

V. CASE NO. 60CV-20-6542

**PULASKI COUNTY ELECTION COMMISSION;
EVELYN GOMEZ, Chair, Pulaski County Election
Commission, in her official capacity;
JOSHUA A. PRICE, Member, Pulaski County
Election Commission, in his official capacity;
KRISTI STAHR, Member, Pulaski County
Election Commission, in her official capacity;
JOHN THURSTON, Secretary of State, in
his official capacity**

DEFENDANTS

**DEFENDANT SECRETARY’S RESPONSE TO PLAINTIFF’S
MOTION FOR TEMPORARY RESTRAINING ORDER AND
PRELIMINARY INJUNCTION**

For his Response to Plaintiff’s Motion for Temporary Restraining Order and Preliminary Injunction, separate Defendant Secretary of State John Thurston states:

Plaintiff’s Motion should be denied. Plaintiff’s claims are not ripe, this forum arguably may be improper, and the requested remedy could be a political question decided by the House of Representatives, and not the Court.

Plaintiff brings this suit and his motion under Ark. Code Ann. § 7-5-801¹, which provides a right of action for candidates to “*contest the certification of nomination or the certificate of vote as made by the appropriate officials in any election.*” Plaintiff’s Complaint and Motion are untimely, as the Pulaski County Board of Election Commissioners have yet to certify the results for the House District 32 race.

Furthermore, there is potentially a question as to whether this Court is the proper forum to review Plaintiff’s claims. Plaintiff’s Complaint seeks to enjoin not only the certification of votes for Arkansas House District 32 in the November 3, 2020 general election, but also challenges the election itself, requesting the court to “*declare that the results of the House District 32 election are invalid; to declare that the results for election for House District 32 cannot be cured or corrected; and seeking a new election.*”²

As stated above, A.C.A. § 7-5-801 has applicability to challenging the certification. This statute has limited applicability. Another statute,

¹ Last amended by Act 1126 of 2013

² Plaintiffs Complaint, § 1

A.C.A. § 7-5-805 (“Contest of state legislative offices”)³, states that the proper forum for an election challenge for a State House of Representatives race is the Arkansas Claims Commission.

Any action to contest eligibility, qualification, or *election* to serve as a member of the House of Representatives *shall be* initiated by filing a complaint with the Arkansas State Claims Commission.”

A.C.A. § 7-5-805(b)(1)(A) (emphasis added).

A.C.A. § 7-5-805 provides for its own set of procedures, and indicates that contests are a political question to be decided by the State House of Representatives.

(2) For House of Representatives election contests, the complaint shall be filed within fifteen (15) days after the election returns are certified by the county board of election commissioners. A responsive pleading shall be filed by the House of Representatives contestee within fifteen (15) days after receipt of the complaint unless an earlier or later date is set by the commission for good cause shown. Upon receipt of the complaint, the commission shall establish a schedule for discovery and hearing, which schedule shall allow the commission to take and review evidence presented by the parties and submit a nonbinding recommendation to the House of Representatives no later than five (5) days before the date fixed for the assembling of the General Assembly.

³ Last amended by Act 315 of 2019. Section 1 of Act 452 of 2001 makes clear that the intent of this section is to provide the procedure to contest elections for legislative office in the Arkansas House of Representatives.

(3) For eligibility contests for the House of Representatives pursuant to Arkansas Constitution, Article 5, § 9, a complaint shall be filed at any time after the election of the individual to a seat in the House of Representatives. For action for expulsion from the House of Representatives pursuant to Arkansas Constitution, Article 5, § 12, the complaint shall be filed at any time permitted by law. A responsive pleading shall be filed within twenty (20) days after receipt of the complaint unless an earlier or later date is set by the commission for good cause shown. The commission shall establish a schedule for discovery and hearing, which schedule shall allow the commission to take and review evidence presented by the parties and submit a nonbinding recommendation to the House of Representatives in a timely fashion.

(4) An additional copy of all complaints filed pursuant to this subsection shall be served on the Speaker of the House of Representatives. The Speaker of the House of Representatives shall appoint one (1) member of the chamber from each political party to serve as ex officio, nonvoting members of the commission for the consideration of all matters relating to the complaint.

(5) In those actions concerning a seat in the House of Representatives, the recommendation is to be made to the Speaker of the House of Representatives. The Speaker of the House of Representatives shall present the nonbinding recommendation to the members of the House of Representatives, and the members shall take such actions as they deem appropriate.

A.C.A. § 7-5-805(b)(2)-(5).

A temporary restraining order and preliminary injunction is improper as the Plaintiff has not met the standard for relief under

ARCP 65. Plaintiff has not shown what the irreparable harm would be. Election statutes provide for ways to contest elections and certifications of candidates. As apposite statute raises questions of ripeness of Plaintiff's claims, as well as the proper forum, Plaintiff cannot show the likelihood of success on the merits.

WHEREFORE, Defendant Secretary of State John Thurston prays that the motion be denied and dismissed; and for all other just and proper relief.

Respectfully submitted,

HONORABLE JOHN THURSTON
ARKANSAS SECRETARY OF STATE
Defendant

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CERTIFICATE OF SERVICE

I hereby certify that on November 18, 2020, I electronically filed the foregoing with the Clerk of the Court using the electronic filing system, which shall serve all counsel of record:

/s/ Michael Fincher
Michael Fincher