

CLEMENT *v.* DAVIS.

5-2851

362 S. W. 2d 706

Opinion delivered December 17, 1962.

1. ELECTIONS—STATUTORY REQUIREMENT FOR “WRITE-IN” CANDIDATES.—The section of the statute providing for placing an “X” in a square at the end of the name of each candidate means the name printed on the ballot and has no application to a name written in by a voter.
2. ELECTIONS—VALIDITY OF VOTE FOR “WRITE-IN” CANDIDATE.—It is unnecessary to the validity of a vote cast that a cross mark appear in the square at the end of the name of a candidate whose name is written in by the voter.

Appeal from Grant Circuit Court; *Henry B. Means*, Judge; affirmed.

*Levine & Williams*, for appellant.

*W. Lee Tucker*, for appellee.

SAM ROBINSON, Associate Justice. The only issue involved in this appeal is the validity of eight write-in votes cast for appellee, Homer J. Davis, in an election of School Board Directors wherein appellant, Lavone Clement and Davis were opponents. Appellant contends that the votes are invalid because an X was not placed in the square at the end of the name written in. The trial court held that the write-in votes for Davis are valid, and Clement has appealed.

Ark. Stats. 3-826 provides: "In all elections, except Primary Elections, at the bottom of each list of names for each position or office appearing on the ballot there shall be a blank line, or lines, for possible write-in votes for that position or office. There shall be no write-in votes in Primary Elections." In this section there is nothing said about putting a square at the end of the blank line in which an X could be marked.

Ark. Stats. 3-827 provides: "At the right of the name of each candidate and on the same line there shall be a square. Above each Act, Amendment, or Measure to be voted on there shall be two [2] words 'For' and 'Against'—one above the other with a square to the right of each word and on the same line." This section provides for a square at the end of the name of each candidate. This means the name printed on the ballot and has no application to the name written in by a voter. This is the only reasonable construction to be placed on the statutes.

To hold that a voter must put an X in a square at the end of a name written in would be to say that a voter might take the trouble to go to the polls, obtain a ballot, write in a name that did not appear on the ballot, and then vote for someone else. It cannot be said that the lawmakers anticipated such unreasonable conduct on the part of anyone. In *Brannon v. Perkey*, 31 S. E. 2d 898, the Court held

that it was not necessary to put an X in the box at the end of a name written in. There the Court said: "The statutory provision just quoted is a legislative recognition of the right of a voter to select some person other than those nominated for office and whose name is not printed on the ballot. It is unnecessary to the validity of a vote cast that a cross mark appear in the space to the left of the name so written."

Affirmed.

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