

D.M. COX, Diane Davis, Luke Moorman, and Charlene Hardcastle v. Sharon D. PRIEST, Mayor of Little Rock, City of Little Rock, et al. v. Dale Charles, Jim Finch, Jean Gordon, Tommy Hudson, Rev. Delton JONES, et al.

92-944

835 S.W.2d 884

Supreme Court of Arkansas
Opinion delivered September 17, 1992

ELECTIONS — APPEAL OF RULING STRIKING INITIATED PROPOSAL FROM A SPECIAL CITY ELECTION BALLOT — APPEAL ADVANCED — SIMULTANEOUS BRIEFING ORDERED — PARTIES ORDERED TO ADDRESS CERTAIN ISSUES. — As requested, the appeal was advanced and expedited briefing was ordered in the form of simultaneous opening briefs within six days and reply briefs two days after that; because briefs are to be submitted simultaneously, the court ordered the parties to address three issues and any others they deem appropriate.

Appeal from Pulaski Circuit Court; *John Ward*, Judge; appeal advanced and expedited briefing ordered.

John I. Purtle, for appellants.

No response filed.

[1] PER CURIAM. The trial court struck an initiated proposal from the August 11, 1992, special city election ballot. The proponents of that proposal have appealed, have asked that the appeal be advanced, and have asked this court to order that the proposal be placed on the November 3, 1992, general election ballot. We have granted the motion to advance the appeal and have ordered an expedited briefing schedule because, even if we have the authority to grant the relief asked by the appellants, the statutory notice provisions might be applicable, and preparation of the ballots and programming of the voting machines would have to be completed before absentee voting starts. Since this is not an original action in this court under the Initiative and Referendum Amendment, but instead is a direct appeal, we need not appoint a master and can proceed forthwith on the trial court record. Thus, we order the interested parties to submit simultaneous opening briefs in the office of the Clerk of the Court before 5 p.m., September 23, 1992. Reply briefs may be filed before 5

p.m., September 25, 1992. The Clerk of the Court is directed to immediately notify by telephone all of the attorneys of record for the various parties, and it shall be the duty of the various attorneys for each party to determine which one of them will file the brief for that party and to see that the briefing deadlines are met.

Because the briefs will be submitted simultaneously, we order that the parties address the following issues in their opening briefs in addition to any others they deem appropriate:

1. Whether Amendment 7 to the Constitution of Arkansas governs this issue and, if it does, whether this court on appeal can order relief not asked in the trial court.
 2. Whether statutes control this issue and, if so, whether this court can grant the relief asked on appeal.
 3. Whether a court upon an initiative has the power under either Amendment 7 or the statutes to mandate an election at a time other than the date specified in the initiative petition and whether a court in this state has the power to mandate an election at some time other than specified by statute and, if such power exists, can it be exercised by an appellate court when it was not asked in the trial court.
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