

IN THE CIRCUIT COURT OF WASHINGTON COUNTY, ARKANSAS  
CIVIL DIVISION 1

PROTECT FAYETTEVILLE, f/k/a REPEAL 119;  
PAUL SAGAN, PETER TONNESSEN and  
PAUL PHANEUF

PLAINTIFFS

vs.

NO. CV 2015-1510-1

THE CITY OF FAYETTEVILLE, ARKANSAS, et al., DEFENDANTS

FILED FOR RECORD  
2015 SEP 16 AM 8:41  
CLERK OF CIRCUIT COURT  
WASHINGTON COUNTY, ARKANSAS

MOTION TO DISMISS

COME NOW the Separate Defendants, Washington County, Arkansas, the Honorable Renee Oelschlaeger, the Honorable Max Deitchler, and the Honorable Bill Ackerman in their respective capacities as Election Commissioners for the Washington County Election Commission (hereinafter "County"), by and through their undersigned attorney, and for their Motion to Dismiss the Complaint and Motion for Emergency Temporary Restraining Order, as amended, of the Plaintiffs, state as follows:

1. The Plaintiffs filed their original Complaint, Motion, Affidavit and associated documents on Monday, August 31, 2015 at 2:38 pm. The Plaintiffs amended or supplemented their Motion on Tuesday, September 1, 2015.
2. The election in this matter commenced with early voting on Tuesday, September 1, 2015 with eligible voters casting their paper ballots or voting by electronic touchscreen beginning at 8:00 am in the Washington County Clerk's office. The election concluded on Tuesday, September 8, 2015 at 7:30 p.m.
3. This action was therefore filed less than one day before the election began. In fact, in terms of working time, the action was filed 112 minutes before the election started.

4. As alleged in the Complaint, the Fayetteville City Council passed the ordinance in controversy in this matter and referred it to the People of Fayetteville on June 16, 2015. Two and a half months passed between the City Council meeting and the filing of this action.

5. This Court previously and correctly denied the Plaintiffs' Motions for Temporary Restraining Orders on the grounds that the same were moot as untimely.

6. With the prayers for Temporary Restraining Orders disposed of, the only remaining prayers against the County are in the nature of injunctions or, more properly, mandamus. *See* the Plaintiffs' Complaint, Prayer for Relief, ¶¶ B., F. and G.

7. The Plaintiffs have asked this Court, in their Prayer for Relief, ¶ G., to essentially outlaw the use of the word "uniform" in all future ballot titles. The Plaintiffs have alleged no facts that would justify this remedy. In the alternative, the Plaintiffs' request is for the Court to issue an advisory opinion on all future ballot titles. In either case, the Plaintiffs' Complaint fails to state facts upon which relief may be granted, and accordingly, the Court should order it dismissed.

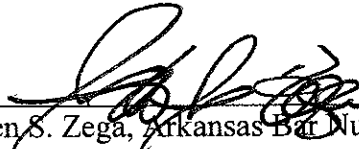
7. The Complaint's prayers for relief as against the County- whether properly characterized as mandamus or injunctions- are moot; there is no justiciable controversy between the Plaintiffs and the County, and the Court should dismiss the Complaint of the Plaintiffs against the County pursuant to A.R.C.P 12(b)(6).

8. A brief in support of this Motion is filed simultaneously herewith.

WHEREFORE, premises considered, the County prays that the Court order the Complaint dismissed as against the County, and for all other relief to which they may be entitled.

Respectfully Submitted,  
Washington County, Arkansas,  
Hon. Renee Oelshlaeger,  
Hon. Max Deichtler and

Hon. Bill Ackerman, Election Commissioners,  
Defendants

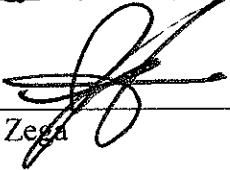
By:   
Steven S. Zega, Arkansas Bar Number 93234  
Washington County Attorney  
280 North College, Suite 500  
Fayetteville, AR 72701  
(479) 973-8415  
(479) 445-6939 (facsimile)  
[szega@co.washington.ar.us](mailto:szega@co.washington.ar.us)

CERTIFICATE OF SERVICE

I, Steven S. Zega, Attorney at Law, hereby certify that I placed a true and correct copy of the foregoing document in the United States Mail with adequate first class postage affixed thereon and addressed to:

Travis Story, Esq.  
Katie L. Freeman, Esq.  
438 E. Millsap, Suite 103  
Fayetteville, AR 72703

On this 16<sup>th</sup> day of September, 2015

  
\_\_\_\_\_  
Steven S. Zega