

IN THE CIRCUIT COURT OF POPE COUNTY, ARKANSAS,
AT RUSSELLVILLE

CITIZENS FOR A BETTER POPE COUNTY,
a Local Option Ballot Question Committee,
JAMES KNIGHT, in his individual capacity

PLAINTIFFS

v.

Case No. 58CV-19-439

POPE CO. FILED
CIRCUIT CLERK
TIME: 8:00 AM
DATE: 11-7-19
[Signature]

BEN CROSS, in his official capacity
as County Judge of Pope County, Arkansas; and
PHILLIP HANEY, CALEB MOORE,
TIM WHITTENBURG, REUBEN BROWN,
JACKIE HEFLIN, JAMIE JACKSON,
BLAKE TARPLEY, DOUG SKELTON,
BILL SPARKS, JAMES KUSTURIN,
RAY BLACK, JOSEPH PEARSON and
ERNIE ENCHELMAYER, in their
official capacities as members of the
Quorum Court of Pope County, Arkansas ,

DEFENDANT'S

CHEROKEE NATION BUSINESSES, LLC

INTERVENOR

**MOTION REQUESTING DISQUALIFICATION PURSUANT TO RULE 6-4 AND
INCORPORATED BRIEF**

COMES NOW the Plaintiffs, by and through undersigned counsel, pursuant to Rule 6-4
of the Rules of the Arkansas Supreme Court, and in support if their Motion Requesting
Disqualification state and allege as follows:

1. That the parties hereto appeared in court for the purposes of argument of Defendants' and Intervenor's Motion to Dismiss, on the 29th day of October, 2019.
2. That the court having heard the arguments of the parties, stated its intent to dismiss Plaintiff's Amended Verified Complaint pursuant to Rule 12(b)(6) of the Arkansas Rules of Civil Procedure.
3. That as of the date of the filing of this motion, a final order has not yet been signed by the Court.

4. That on the day following said hearing, the 30th day of October, 2019, on the “Re-Elect Judge Pearson” Facebook page, appeared an endorsement in support of the Re-Elect Judge Pearson effort made by Ben Cross, identified as the Pope County Judge, and for his endorsement noted the proposed disposition of this case, a copy of the Arkansas Times article reporting said event attached hereto as **Exhibit A** and incorporated herein by reference.

5. That the following day, October 31, pinned immediately above said endorsement by Ben Cross, appeared a timeline entry noting that the Re-Elect Judge Pearson campaign committee was accepting donations, an apparent attempt by said committee to capitalize on popular support within Pope County for the court’s decision made two days earlier, a copy of the Facebook page attached hereto as **Exhibit B** and incorporated herein by reference.

6. That is was only following the hearing on the 29th that Plaintiffs’ became aware of what appears an obvious conflict of interest on the part of the Court.

7. That Plaintiffs filed this Motion at the earliest possible opportunity.

8. That the Arkansas Supreme Court has stated that “As we stated in *Huffman*, both Canons 2A and 3E(1) require a judge to protect the integrity and impartiality of the judiciary. Under Canon 2A, a judge must consider whether any action he or she takes promotes public confidence in the integrity and impartiality of the judiciary. Similarly, Canon 3E(1) requires a judge to recuse when his or her impartiality might reasonably be questioned. *Worth v. Benton Cty. Circuit Court*, 351 Ark. 149, 156, 89 S.W.3d 891, 896 (2002).

9. That sufficient facts exist that the impartiality of this Court can be called into question.

10. That based on the above, Plaintiffs have been prejudiced.

WHEREFORE, Plaintiffs pray for an Order of this Court in which this Court disqualifies itself from any further involvement in the present case and that, therefore, the Court take no

further action, in accordance with the Rules of the Arkansas Supreme Court and the Arkansas Code of Judicial Conduct, denying Defendants' Motion and scheduling Plaintiff's Petition and Motion for hearing at the Court's earliest convenience, and for such other and further relief the Court deems just and proper.

Respectfully submitted,

STORY LAW FIRM, PLLC

by 

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Response to Defendants' Motion to Dismiss was served on counsel for Defendants and CNB all, this 1st day of November, 2019, by email to croe@dailywoods.com; clay@mccalllawpllc.com; dmcdaniel@mrcfirm.com; scott@mrcfirm.com; and bcalhoun@mrcfirm.com respectively.


Travis W. Story

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Judge touts day-old ruling in re-election **UPDATE. Post taken down.**

BY Max Brantley ON October 31, 2019 7:34 am

1 comment



Re-Elect Judge Pearson

16 hrs · 🌐

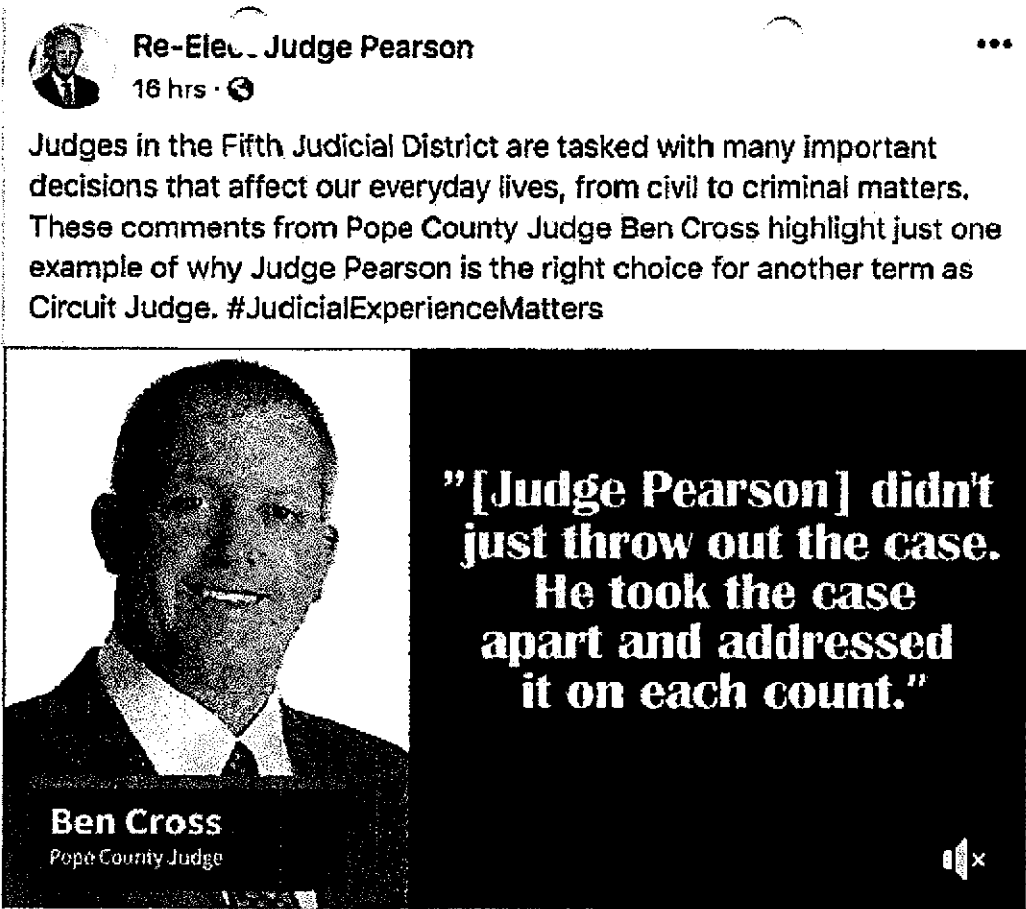


Judges in the Fifth Judicial District are tasked with many important decisions that affect our everyday lives, from civil to criminal matters. These comments from Pope County Judge Ben Cross highlight just one example of why Judge Pearson is the right choice for another term as Circuit Judge. #JudicialExperienceMatters

Ben Cross
Pope County Judge

"[Judge Pearson] didn't just throw out the case. He took the case apart and addressed it on each count."





SCREEN SHOT: Of campaign Facebook page with endorsement of judge's ruling. It has now been deleted.

The committee working to elect **Bill Pearson** to a third term as circuit judge in Russellville posted a testimonial Wednesday from the winner of a hotly controversial local case the judge had decided barely 24 hours before — the lawsuit seeking to enforce an ordinance requiring an election before the Quorum Court could back a casino application in Pope County.

UPDATE: After my post this morning the tout was taken down.

Pearson said the local election ordinance was an unconstitutional addition to the state amendment authorizing a casino in Pope County. That ruling was expected by most legal experts. Somewhat unexpected was his wholesale clearance of **County Judge Ben Cross** and members of the Quorum Court of allegations that they'd met secretly with representatives of the Cherokee tribe to work out the \$38 million payments the tribe will make to the county in return for support of their casino proposal. The deal was approved in a public meeting (with scant prior notice and no debate) so the decision itself was legal. But Pearson verged into new territory — and what many legal experts saw as a departure from state Supreme Court precedent — in saying public bodies can be forgiven for certain

types of private conversations. They can meet privately, he said, as long as they don't come to a decision. I think the courts have held otherwise, particularly when — as may have happened here — public bodies have effectively reached a decision in private without benefit of public observation and then perfunctorily approved it in public.

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But put that aside. Pearson ruled in the county's favor Tuesday and barely 24 hours later he has a testimonial up on his campaign Facebook page from the winner as an illustration of his good work? It is not a good look.

It's another example of why electing judges is not such a hot idea. This casino issue is fiercely controversial in Pope County, but a majority of the Quorum Court apparently thinks the politics of a promised major casino development outweigh voters' resistance to casino gambling at the 2018 election — both against casinos generally and in favor of a required local option election specifically.

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Appearances do count. Or so the Supreme Court has said at least in the case of Wendell Griffen.

PS: This is a reminder, too, of why the Arkansas legislature changed state law this year so that cases against state agencies, once exclusively tried in Pulaski County, may be transferred to affected localities for the more tender mercies of

hometown judges. ...s was not a state agency case. Pear ...n, give him credit, sent another casino suit, against the state Racing Commission, back to a Little Rock court.

UPDATE: I received an e-mail this morning from Kristin Foster who called my attention to the campaign's Facebook post in response:

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Max Brantley

Editor of the Times since it became a weekly in May 1992.

Previous article

< **LRSD high school students denied meeting with governor**

Next article

Mayor Scott says he'll ask for charter school moratorium >

Tags

Ben Cross Bill Pearson Elected Judges Political Advertising Pope County Casino

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Silverback66z

0 points · 3 hours ago

Charlie Pierce has often said that electing judges is the second-worst idea in American politics.

The first-worst, of course, is the balanced budget amendment to the Constitution.

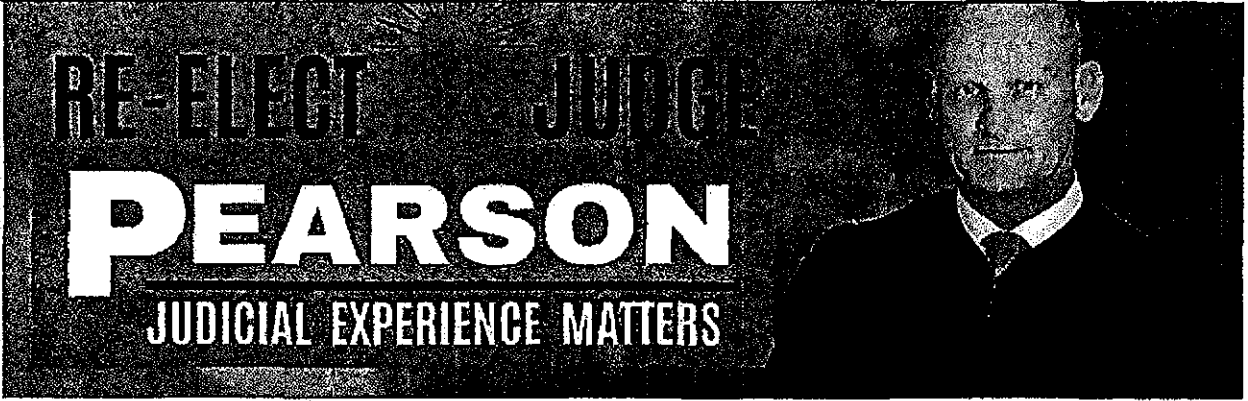
Re-Elect Judge Pearson



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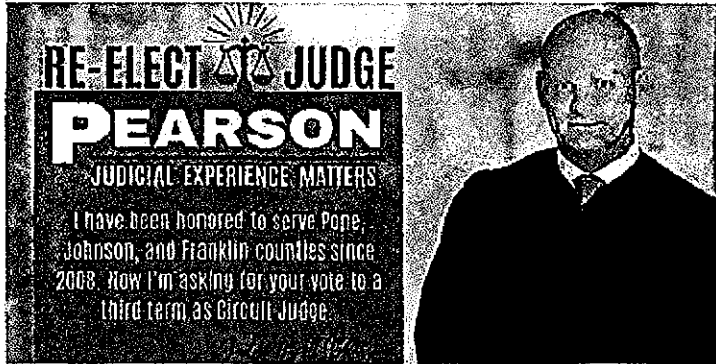
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Re-Elect Judge Pearson
October 18 at 11:43 AM ·

Our campaign committee can now accept donations via Paypal. Please visit the link to support the campaign to re-elect Judge Bill Pearson to a third term as Circuit Judge in Pope, Johnson, & Franklin counties.
#JudicialExperienceMatters



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27

2 Comments 7 Shares

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Re-Elect Judge Pearson
19 hrs ·

Judges in the Fifth Judicial District are tasked with many important decisions that affect our everyday lives, from civil to criminal matters. These comments from Pope County Judge Ben Cross highlight just

Political Candidate in Clarksville, Arkansas

Ask Re-Elect Judge Pearson

"Can you tell me more about yourself?" Ask

"Can I learn more about your background?" Ask

"Are you available to chat?" Ask

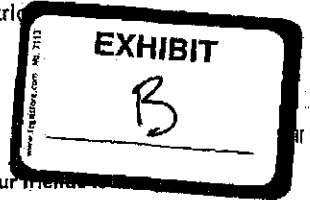
Type a question...

ABOUT RE-ELECT JUDGE PEARSON

Announcement for Re-Election of Judge William ...

I am announcing my plans for re-election as Circuit Judge, Division One, of the 5th Judicial District

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850 people like this

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Typically replies within a day
Send Message

judgepearson.com

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Facebook is showing information to help you better understand the purpose of a Page. See actions taken by the people who manage and post content.

one example of why Judge Pearson is the right choice for another term as Circuit Judge. #JudicialExperienceMatters

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Judicial Experience Matters

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Videos

What a fun day we had at Ozona today! The old school.

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Dedicated to all who are fed

Justin singing "Gust Gust A."

32 5

10 3

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Photos

Page created - July 14, 2019

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Hope Aaron Adair

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Recommendations and Reviews



Andrea and Bill have three sons, one of whom is the same age as my Joel. They were on the same T-bal... See More
October 13



I have been in the courtroom before when Judge Pearson was dealing with the inmates from the jail. W... See More
October 16



True, strong leaders of community are rarely flawless, however they approach life challenges humbly ... See More
July 25

Do you recommend Re-Elect Judge Pearson?

Yes

No

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Posts



Re-Elect Judge Pearson
October 29 at 6:33 PM

Hope to see you Monday evening at the Russellville Downtown Train Depot! Stop by and meet the Pearsons while enjoying live acoustic music and local food.

RE-ELECT JUDGE PEARSON
JUDICIAL EXPERIENCE MATTERS

The Pearson family invites you to
 a drop in campaign reception

RUSSELLVILLE TRAIN DEPOT
 320 West C Street

November 4, 2019
4:30 pm - 6:30 pm

Follow the campaign on

www.reelectjudgepearson.com

Paid for by the Committee to Reelect Judge Pearson.

Re-Elect Judge Pearson

[Learn More](#)

Political Candidate

57

3 Comments 18 Shares

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Write a comment...



Tim Nichols Good man !!

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Cody Alan Cunningham GL Judge Pearson

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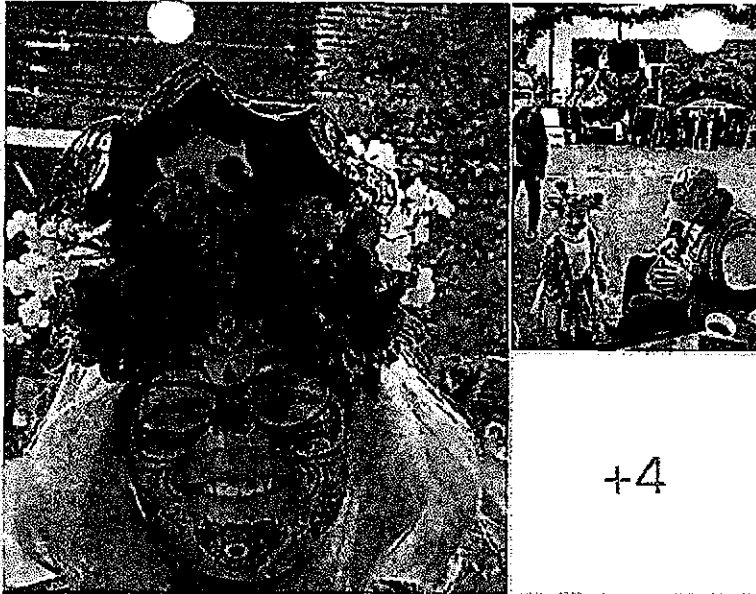
Most Relevant is selected, so some comments may have been filtered out.



Re-Elect Judge Pearson

October 28 at 9:52 AM ·

Wanted to share a few more pictures from the Russellville Downtown Fall Fest. Thank you to everyone who stopped by to visit and for the words of encouragement! Your support sure did brighten a rainy day!



26

1 Share

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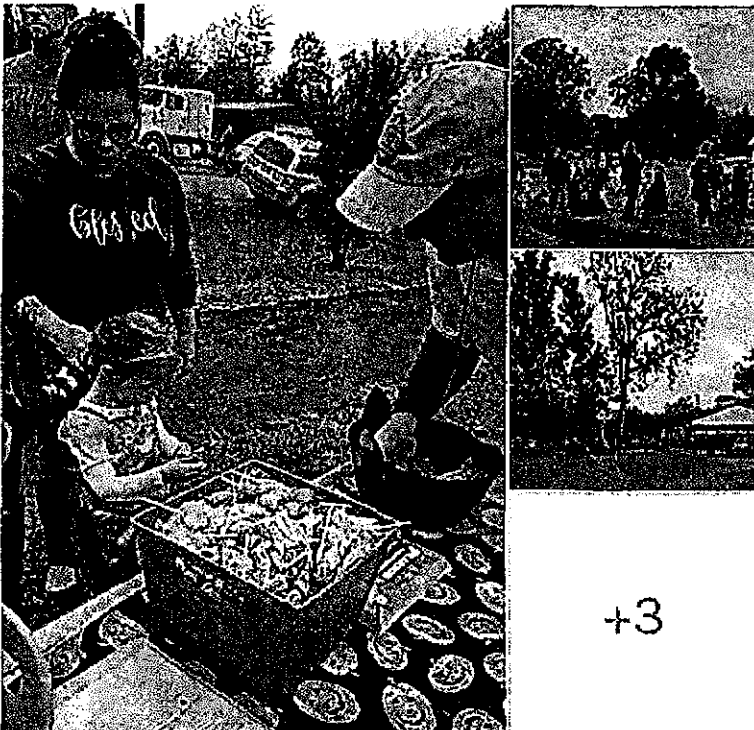
Write a comment...



Re-Elect Judge Pearson

October 27 at 8:56 PM ·

The Trick or Treat Trail at Lamar was a huge success! We enjoyed seeing so many cute goblins. Thank you Lamar for providing a fun and safe event for our community!



Recipient Information

To: Circuit Clerk
Company: Pope County
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fax

Sender Information

From: Travis W. Story Esq
Company: Story Law Firm PLLC
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