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# Act 975

## Original Jurisdiction in the Court of Appeals

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Act 975 of 2025 grants the Arkansas Court of Appeals exclusive original jurisdiction over all facial challenges under the United States Constitution and Arkansas Constitution to acts passed by the General Assembly, provisions of the Arkansas Code, and administrative rules and regulations.<sup>1</sup> This legislation has the potential to dramatically change the landscape of constitutional litigation in state court—if it stands. This change is set to take effect on November 1, 2025,<sup>2</sup> which gives us time to consider three main questions. First, why the shift? Second, is Act 975 constitutional? And third, assuming this law will go into effect, what would that mean for a lawsuit with both a facial and an as-applied challenge?

### Why?

The “why” for Act 975 depends on who you ask, but we’ll settle for the reasons offered by its sponsors: Representative Matthew Shepherd and Senator Bart Hester.

During the floor debate in the House of Representatives, Rep. Shepherd focused on fairness for Arkansas voters—Pulaski County receives an outsized number of constitutional challenges to statutes, and therefore, Pulaski County voters receive an outsized influence on who has the power to enjoin the enforcement of laws passed by the General Assembly.<sup>3</sup> Senator Hester echoed these points during Senate floor debate, and he also stated his belief that the Court of Appeals would be less likely to have its rulings overturned by the Arkansas Supreme Court.<sup>4</sup>

### Is Act 975 Constitutional?

Maybe. But the weight of the arguments seems to lean toward “no.”

Article 4, Section 2 of the Arkansas Constitution ensures the separation of powers by prohibiting the legislative, executive, and judicial “departments”<sup>5</sup> from exercising “any power belonging to either of the others except in the instances hereinafter expressly directed or permitted.” Amendment 80 draws the line between the legislative and judicial branch—and a few provisions stick out as applicable here.

### Sections 5 and 10

Amendment 80, Section 5 states that “[t]here shall be a Court of Appeals which may have divisions thereof as established by Supreme Court rule. The Court of Appeals shall have such *appellate* jurisdiction as the Supreme Court shall by rule determine and shall be subject to the general superintending control of the Supreme Court.”<sup>6</sup> The term “appellate” plays a key role.

On one hand, Section 5 could be read as a constitutional requirement that the Court of Appeals have only *appellate* jurisdiction. After all, *expressio unius est exclusio alterius*, right? The expression of one term may be interpreted to exclude others. The Arkansas Supreme Court recently applied this canon of construction when it determined that Amendment 91’s specific provision



to fund “four-lane” highways meant the money could not be used for six-lane highways.<sup>7</sup> Similarly, Amendment 80 uses the terms “appellate” and “original” with intention. Section 2 provides the Supreme Court with “[s]tatewide appellate jurisdiction,” “original jurisdiction” over various matters, and “[o]nly such other original jurisdiction as provided by this Constitution.”<sup>8</sup> Section 6(a) establishes Circuit Courts as “the trial courts of original jurisdiction of all justiciable matters not otherwise assigned pursuant to this Constitution.”<sup>9</sup> Section 7(a) establishes the district courts as courts of “limited jurisdiction,” and Section 7(b) provides:

The jurisdictional amount and the subject matter of civil cases that may be heard in the District Courts shall be established by Supreme Court rule. District Courts shall have original jurisdiction, concurrent with Circuit Courts, of misdemeanors, and shall also have such other criminal jurisdiction as may be provided pursuant to Section 10 of this Amendment.<sup>10</sup>

The designations of “original” and “appellate” seem carefully chosen and Section 5 is not a likely exception. Perhaps, then, the Court of Appeals has only appellate jurisdiction as a constitutional matter.

On the other hand, Section 10 states that “[t]he General Assembly shall have the power to establish jurisdiction of all courts and venue of all actions therein, unless otherwise provided in this Constitution.”<sup>11</sup> The General Assembly’s ability to assign “jurisdiction” may be broadly interpreted to include original and appellate jurisdiction, if not otherwise allocated. And Section 5 does not *explicitly prohibit* the Court of Appeals from having original jurisdiction. This might open the door for Act 975 to take effect.

Nevertheless, it may be legally significant that the provision creating district courts’ original jurisdiction over criminal matters specifically invokes the General Assembly’s authority to expand it under Section 10. Such an invocation could be required when altering the original or appellate jurisdiction

of a court mentioned in Amendment 80. Otherwise, why would the drafters have mentioned it there?

### Section 3

Amendment 80, Section 3, provides that “[t]he Supreme Court shall prescribe the rules of pleading, practice and procedure for all courts.”<sup>12</sup> However, Act 975 provides that the procedure of facial challenges in the Court of Appeals “will conform to that prevailing in bench trials in circuit court.”<sup>13</sup> It also states additional requirements related to pleadings, fees, summons, and time to file a responsive pleading.<sup>14</sup> While Amendment 80 allows the General Assembly to amend or annul Supreme Court rules made pursuant to Section 5, 6(B), 7(B), 7(D), and 8 with a two-thirds vote of each house, it allows no similar power to alter rules made pursuant to Section 3.<sup>15</sup> So the purely procedural rules are almost certainly unconstitutional.<sup>16</sup> However, they may be severable from the rest of the statute, in which case, the law would survive.<sup>17</sup>

Section 3 does beg one more question, though: If the Arkansas Supreme Court is the sole source of procedural rules, can the General Assembly use Section 10 to alter jurisdiction in a way that forces the Arkansas Supreme Court to make new procedural rules? Doing so could present additional separation of powers issues under Article 4.

### Constitutional Conclusion

This is certainly not an exhaustive constitutional analysis, and the outcome of a constitutional challenge is not immediately clear to me. Nevertheless, I find it compelling that Section 5 mentions only appellate jurisdiction for the Court of Appeals.

### Where Do I File?

Under Act 975, if a client wants to challenge a statute with both facial and as-applied claims, it seems like the case would have to split in half, with the as-applied challenge going to circuit court and the facial challenge going to the Court of Appeals. Act 975 is silent on original jurisdiction for as-applied challenges, and Amendment 80, Section 5 only permits the Arkansas Supreme Court to make rules related to the appellate jurisdiction of the Court of Appeals. Therefore, it seems that

the Court of Appeals is left without the original jurisdiction to hear as-applied challenges, and the Arkansas Supreme Court is without authority to grant it.

So where would you file constitutional challenges to Arkansas laws and regulations? Until there is more guidance, probably federal court, if possible.

### Endnotes:

1. Act 975, §§ 2, 5.
2. Act 975, § 6.
3. Ark. H.R. Deb. on H.B. 1832, 95th General Assemb. (Apr. 9, 2025), <https://sg001-harmony.sliq.net/00284/Harmony/en/PowerBrowser/PowerBrowserV2/20250409/-1/31050?mediaStartTime=20250409141207>.
4. Ark. S. Deb. on H.B. 1832, 95th General Assemb. (Apr. 15, 2025), <https://sg001-harmony.sliq.net/00284/Harmony/en/PowerBrowser/PowerBrowserV2/20250415/-1/31106?mediaStartTime=20250415153305>.
5. ARK. CONST. art. IV, § 1 divides Arkansas government into “departments” rather than “branches.”
6. ARK. CONST. amend. LXXX, § 5 (emphasis added).
7. *Buonaiuto v. Gibson*, 2020 Ark. 352, at 8, 609 S.W.3d 381, 386.
8. ARK. CONST. amend. LXXX, § 2(d).
9. ARK. CONST. amend. LXXX, § 6(a).
10. ARK. CONST. amend. LXXX, § 7(a), (b).
11. ARK. CONST. amend. LXXX, § 10.
12. ARK. CONST. amend. LXXX, § 3.
13. Act 975, § 2.
14. Act 975, § 2.
15. ARK. CONST. amend. LXXX, § 9.
16. *See Johnson v. Rockwell Automation, Inc.*, 2009 Ark. 241, at 6–7, 308 S.W.3d 135, 140.
17. *See U.S. Term Limits, Inc. v. Hill*, 316 Ark. 251, 268–69, 872 S.W.2d 349, 358 (1994), *aff’d sub nom. U.S. Term Limits, Inc. v. Thornton*, 514 U.S. 779 (1995) (conducting a severability analysis that considered whether an unconstitutional portion of a provision was functionally independent from the constitutional portions and whether the provision would have been enacted without the unconstitutional portion). ■