

IN THE CIRCUIT COURT OF PULASKI COUNTY, ARKANSAS

**THE LEAGUE OF WOMEN VOTERS
OF ARKANSAS, ARKANSAS UNITED,
DORTHA DUNLAP, LEON KAPLAN,
NELL MATTHEWS MOCK, JEFFERY RUST,
and PATSY WATKINS,**

PLAINTIFFS

V.

60CV-21-3138

**JOHN THURSTON, in his official capacity
as the Secretary of State of Arkansas;
and SHARON BROOKS, BILENDA
HARRIS-RITTER, WILLIAM LUTHER,
CHARLES ROBERTS, BILL ACKERMAN, and
J. HARMON SMITH, in their official capacities
as members of the Arkansas State Board of
Election Commissioners,**

DEFENDANTS

**AMENDED COMPLAINT FOR INJUNCTIVE RELIEF
AND DECLARATORY JUDGMENT**

Plaintiffs The League of Women Voters of Arkansas, Arkansas United, Dortha Dunlap, Leon Kaplan, Nell Matthews Mock, Jeffery Rust, and Patsy Watkins for their Amended Complaint for Injunctive Relief and Declaratory Judgment, allege as follows:

INTRODUCTION

1. In 2020, Arkansas ranked second lowest in the country for voter turnout. Forty-eight states and the District of Columbia all boasted higher turnout rates. This was no anomaly. Arkansas has exhibited a troubling pattern of strikingly low voter turnout for at least the last twenty

years.¹ And when Black voter turnout in Arkansas is isolated, it is even more alarming. In the November 2020 election, the turnout rate for Black voters was more than 11% lower than white voters in Arkansas and it was the third lowest rate among Black voters in the country, according to data from the U.S. Census Bureau.

2. Even compared to its neighboring states, Arkansas stands out for its poor rates of participation by Black voters. For example, in the 2020 general election only 44.7% of Arkansas's eligible Black voter population cast a ballot, while Black turnout in Mississippi exceeded 72%; in Missouri, it was more than 69%; in Tennessee, it was more than 68%; in Texas, it was nearly 61%; and in Louisiana, it was nearly 58%.

3. While low, Arkansas's 2020 turnout rate still represented an increase from previous years. Nearly 67% of all registered voters participated, compared to fewer than 65% in the 2016 presidential election, according to data from the Secretary of State. The reason for the increased voting was clear. The State Board of Election Commissioners (the "Board") allowed individuals concerned about the COVID-19 pandemic to vote with an absentee ballot, and tens of thousands of voters successfully used that process to exercise their right to vote. In Pulaski County alone, Arkansas's most populous county, the number of requests for absentee ballots and actual absentee ballots cast more than tripled compared to 2016. The increase in absentee ballots cast represented 85% of the total increase in ballots from 2016 to 2020.

4. No significant election-administration problems arose in connection with the election, either in general or in relation to the significant increase in absentee voting. To the contrary, Secretary of State John Thurston declared at a press conference held in March of this

¹ The only exception was in 2014, when Arkansas's turnout rate of 51.10% put it 26th in the nation, but that year itself was a notable anomaly for turnout nationwide: it was the lowest that it had ever been since World War II.

year: “Despite the global pandemic, we had one of the most successful elections in state history.” Nevertheless, when the General Assembly convened this year, rather than continue the voting programs that so many Arkansans had just relied upon to vote, to ensure that they would continue to have access to the franchise, the General Assembly took the opposite approach.

5. Among the General Assembly’s top priorities was a series of election bills that *restrict* nearly every form of voting that Arkansans relied on in 2020. These restrictions will exacerbate Arkansas’s long and dismal tradition of abysmally low voter turnout, particularly among the state’s Black voters. Among the newly enacted voter suppression laws (together, the “Challenged Provisions”) are:

- Act 736 (the “Absentee Application Signature-Match”), which requires elections officials to “match” signatures on voters’ absentee ballot applications to the signature on their voter registration applications before issuing an absentee ballot. The error-prone and arbitrary nature of signature matching is well documented. Even the sponsor of other restrictive legislation, Representative Mark Lowery, acknowledged that signature-matching is “ripe with errors” and that Arkansas elections officials receive no training for it. This wholly unnecessary requirement will impede and, in some cases, entirely deny lawful, registered voters who are clearly entitled to receive absentee ballots from obtaining them due to arbitrary decisions by non-expert elections officials who cannot accurately determine whether signatures match.
- Act 973 (the “In-Person Ballot Receipt Deadline”) unjustifiably and arbitrarily further restricts the period during which voters may return absentee ballots, creating confusing competing deadlines that cannot be justified by any legitimate

government interest. Notably, Act 973 specifically targets voters who seek to return their ballots *in person* (as opposed to by mail), declaring that any absentee ballots that are returned this way and are not received in the clerk's physical office by the Friday *before* election day must be rejected. Before Act 973, absentee voters could drop off their ballots by the day before election day. Mail-in ballots, in contrast, will be counted so long as they are received by election day, further highlighting the lack of any foundation for this arbitrary deadline.

- Act 249 (the "Affidavit Prohibition") forces registered voters lacking identification at a polling place to return documentation of identification to the county clerk's office within six days of election day. This is a marked change from Arkansas's existing voter identification laws, which in the past have always allowed voters who lack an accepted form of voter identification at the polls to vote a provisional ballot if they submit a sworn statement under penalty of perjury that they are a registered voter (the "Affidavit Fail-Safe"). Those provisional ballots were counted in prior elections unless the county board of election commissioners "determine[s] that the provisional ballot is invalid and should not be counted based on other grounds." Ark. Const. amend. 51 § 13(b)(4)(B). In other words, Act 249 transforms Arkansas voter identification requirement to a "strict" photo voter identification law by eliminating the only exception.
- Act 728 (the "Voter Support Ban") strictly prohibits anyone except voters from "entering or remaining in an area within one hundred feet" of a polling place's entrance. Act 728 is not intended to prohibit electioneering within that same perimeter, because Arkansas has already prohibited that behavior. Ark. Code Ann.

§ 7-1-103(8)(A). Thus, the only reasonable way to read Act 728's new broad prohibition is to criminalize the practice of providing support to voters who are waiting in long lines to vote. Among other things, Act 728 was intended to and will prohibit providing voters waiting in long lines with snacks or even water; it will further prohibit allowing elderly voters and voters with disabilities to be accompanied by support persons as they wait in line to vote; and it will prohibit providing voters with any other support needed to ensure they are not forced to choose between their health, discomfort, and disenfranchisement due to long waits to vote. Any violation is subject to prosecution as a Class A misdemeanor, which can result in fines of up to \$2,500 and incarceration of up to one year. Ark. Code Ann. §§ 5-4-201(b)(1), 5-4-401(b)(1); *see also* Ark. Code Ann. § 7-1-103(b)(1). Moreover, anyone convicted for violation of this provision is deemed "ineligible to hold any office or employment in any of the departments of" the State of Arkansas, and if anyone violates the Voter Support Ban while employed by the State, "he or she shall be removed from employment immediately." Ark. Code Ann. § 7-1-103(b)(1).

6. The burdens that the Challenged Provisions impose on voters cannot be justified by a compelling or, in many cases, even a legitimate state interest. It is plain, from both their arbitrary nature and their context, that their true purpose is to make it harder for lawful Arkansas voters to successfully exercise their right to vote. These new voter suppression laws will only exacerbate Arkansas's dismal voter-turnout rates—especially among Black voters.

7. The sponsors and supporters of these restrictive laws champion them as necessary to instill confidence in Arkansas's election administration and "protect[] the integrity of the vote,"

either to protect against voter fraud or—given the lack of evidence of any actual voter fraud—the *perception* that voter fraud may have or could occur. But this justification cannot sustain these laws against constitutional challenge.

8. First, to the extent there are concerns about voters’ confidence in Arkansas’s elections, they are the product of a cynical and meritless misinformation campaign that was intended to undermine the results of the 2020 election. The Secretary’s comments at the March 2021 press conference, which described a problem-free general election, directly refute this false and unwarranted narrative.

9. Second, the Challenged Provisions are not necessary to “protect the integrity of the vote” because Arkansas elections are already safe and secure. During the 2020 general election, not a single one of the 75 county-level election commissioners in Arkansas could point to any evidence of voter fraud, according to Pulaski County Election Commissioner Joshua Ang Price. In the past two decades, there have been just *three* criminal convictions of voter fraud in the state out of tens of millions of ballots cast. At a national level, despite an onslaught of post-election litigation based on false accusations about widespread voter fraud, not a single lawsuit resulted in any findings of credible allegations of fraud. Even many of the litigants and lawyers in those cases (and legislators nationwide who have pressed similar voting restrictions on the same justifications) have had to admit that fraud has not posed a real or serious issue in American elections.

10. What is certain is that, if left to stand, the Challenged Provisions will make it harder—and, in some cases, impossible—for lawful voters to exercise their right to vote. Ironically, this will bring about the very harm that the Challenged Provisions were ostensibly meant to prevent: it will *undermine* voter confidence and the integrity of Arkansas’s elections.

11. In sum, the Challenged Provisions individually and cumulatively impose an unconstitutional burden on the right to a free and equal election, the right to equal protection of the law, and the right to free speech and assembly enshrined in the Constitution of Arkansas. They should be declared unconstitutional, and Defendants should be enjoined from implementing them.

PARTIES, JURISDICTION AND VENUE

12. The League of Women Voters of Arkansas is a nonpartisan nonprofit membership organization formed under section 501(c)(4) of the Internal Revenue Code that encourages informed and active participation in the political process as part of its mission.

13. To achieve its mission, the League devotes substantial time, effort, and resources to helping Arkansas voters ensure their in-person and absentee ballots are properly cast and counted. Among other activities, the League educates citizens about voting rights and the electoral process and facilitates voting through get-out-the-vote efforts, voter registration drives, and voter support efforts. League members also volunteer outside polling places, often within 100 feet of their entrances, to help direct voters to the correct entrances, provide water, and assist voters as needed. The League engages heavily in voter education and training efforts. The League also devotes substantial time, effort, and resources to assist and encourage voters at their polling locations to achieve its mission of ensuring that lawful voters are able to successfully access the franchise and make their voices heard through the ballot box. Central to the League's mission is expanding voter access and ensuring that all eligible citizens are fully enfranchised and able to exercise their right to vote. The League seeks to increase voter turnout and make elections more free, fair, and accessible for all Arkansans, regardless of race, age, and disability status.

14. The Challenged Provisions run counter to these principles. They will force the League to divert resources toward re-training its members and volunteers, which includes spending

money and time updating training materials and literature. The League will also have to spend significant time and money towards re-educating voters about the new restrictive laws—from the removal of the Affidavit Fail-Safe, to the new in-person absentee ballot drop off, the new signature-matching requirement for absentee applications, and the new Voter Support Ban. These efforts must occur in the coming months because of the time it takes to create and distribute training materials, as well as develop training, in time for the next elections. The League also brings this suit on behalf of its approximately 300 members across Arkansas, including Black and Latino members, many of whom will find it more difficult, if not impossible, to cast their ballots and participate in the democratic process if the Challenged Provisions stand. These include individual Plaintiffs.

15. Arkansas United is a 501(c)(3) membership organization located in Springdale, Arkansas. Its mission is to promote and provide services to Arkansas's immigrant population, including to promote civic engagement and democratic participation. Arkansas United's membership is more than 800 individuals throughout Arkansas, including minority voters. It engages in robust civic engagement programs throughout the state, including voter registration, get-out-the-vote programs, and voter-support programs. As part of its mission, Arkansas United works so that its members can meaningfully and actively participate in and vote in Arkansas's elections. Because civic engagement is crucial to its mission, Arkansas United works to ensure its members and supporters are registered to vote and equipped with the information and resources to make sure their ballots are cast and counted. Arkansas United has been active at polling locations, encouraging voters to vote and handing out food, water, and other resources to voters in line.

16. As a result of the Challenged Provisions, which threaten to undermine the organization's mission, Arkansas United must divert scarce resources, including funds, staff, and

volunteers, away from its other policy priorities, such as maintaining immigrant resource centers, offering family-based legal services, and advocating for immigration reform, toward civic engagement efforts to ensure that voters, and Arkansas's immigrant communities in particular, can navigate the restrictions to in-person and absentee voting that the Challenged Provisions impose, including the removal of the Affidavit Fail-Safe, the new absentee ballot drop-off deadline, and the new signature-matching requirements for even applying for an absentee ballot. Moreover, the Voter Support Ban appears to effectively prohibit the type of civic engagement and assistance that Arkansas United has previously provided to Arkansas voters and intends to provide again in upcoming elections. Arkansas United also brings this suit on behalf of its members across Arkansas, many of whom will find it more difficult to cast their ballots if the Challenged Provisions stands.

17. Plaintiff Dortha Dunlap is a resident of Springdale, Arkansas and member of the League of Women Voters of Arkansas. She is an 85-year-old a cancer survivor and uses a walker to assist with mobility. Voting is extremely important to Ms. Dunlap and she tries to vote in every election. She has voted absentee in the last two general elections, but, because of the Challenged Provisions, her right to vote is impaired and she faces a real threat of disenfranchisement in the next election she votes in. Ms. Dunlap registered to vote at her current address in 2017 and is deeply concerned that the signature on her registration application is different from her current signature because, not only has some time passed since she signed that registration application, she has developed arthritis in her hands. Because of Act 736, which will require officials to match her absentee application's signature to her voter registration, Ms. Dunlap fears she will not receive an absentee ballot, or, if she does, it will be too late for timely return. Making matters worse, Ms. Dunlap is also concerned about the new deadline for dropping off her absentee ballot. She has

experienced mail delays in recent months and prefers dropping off her ballot; for example, a friend received a Christmas card in late February that Ms. Dunlap sent in December. She is also concerned about the new identification restrictions in Act 249 because she plans on not renewing her driver's license when it expires, meaning she will lack a form of acceptable voter identification in future elections. She does not drive often and anticipates it will not be long before she does not drive at all. Finally, because Ms. Dunlap uses a walker and sometimes needs assistance from a family member or friend, waiting in line at a polling place is particularly difficult for her. Because of Act 728, she will be forced to wait in line alone and will even be denied comforts like snacks or water that might otherwise be distributed should she encounter a long wait. All of these acts, individually and cumulatively, will impair or forfeit Ms. Dunlap's right to vote, in violation of the Arkansas Constitution.

18. Plaintiff Leon Kaplan, who is 78 years old, lives in Little Rock after moving from Texas in 2019. Because of COVID-19 and the subsequent restrictions of Arkansas's DMV offices, as well as concerns over his age, health, and ability to wait at the DMV, he was unable to update his driver's license to an Arkansas license in time for the 2020 general election. As a result, Mr. Kaplan lacked an acceptable form of voter identification in that election and relied on the Affidavit Fail-Safe when he voted in person. If he did not have the Affidavit Fail-Safe, his vote would not have counted because of the burdens he would face in obtaining an acceptable form of identification and presenting it at the county clerk's office within days of election day. He still does not have an Arkansas driver's license and remains concerned about obtaining one due to fears over COVID-19, his age, health, and ability to get to the DMV. Without the Affidavit Fail-Safe, Mr. Kaplan's right to vote, which is extremely important to him, will be burdened and he faces a real threat of disenfranchisement in the next election he votes in. Finally, because of his age and

ability to stand for lengthy periods of time, he requires assistance from his daughter or another family member at a polling place. He is concerned that the Voter Support Ban will make waiting in line more difficult and impair or forfeit his right to vote in violation of the Arkansas Constitution.

19. Plaintiff Nell Matthews Mock is a 72-year-old resident of Little Rock and member of the League of Women Voters of Arkansas. She registered to vote at her current address in 2001. She is concerned that her signature has changed since she signed her registration application because of the passage of time and arthritis she has developed her hands. Any perceived change in her signature will make it more difficult to apply for an absentee ballot with enough time to fill it out and return it. Recently, Ms. Mock has voted absentee because of her age and health. In the December 2020 runoff election for local races, she dropped off her absentee ballot at the clerk's office because she was concerned about timely mail delivery. She dropped off her ballot on the day before the election, an option which is no longer available to her because Act 973 moved up the drop-off deadline for absentee voters. If Ms. Mock is forced to vote in person because of these barriers, she is deeply concerned about long lines, which she experienced in the 1990s and 2000s. And because of the Voter Support Ban, she is concerned that long waits will be even more difficult to endure. All of these acts, individually and cumulatively, will impair or forfeit Ms. Mock's right to vote, in violation of the Arkansas Constitution.

20. Plaintiff Jeffery Rust is a 68-year-old retiree from Fayetteville, Arkansas, where he has lived for at least the last 30 years. He has macular degeneration, which has affected his eyesight and how he signs his name. Mr. Rust is worried that the new signature-matching requirement will make absentee voting—the means by which he has previously exercised his right to vote—more difficult by making the application process lengthier and more burdensome. In the 2020 general election, he feared that his absentee ballot would not count if he mailed it because of problems

with the mail. He continues to experience mail delays. Because of these concerns, he dropped off his absentee ballot on a Saturday before the election and is worried that the new drop-off deadline will make dropping off his ballot more difficult in the future. While he prefers not to vote in person—if he had, to he would—he would benefit from someone there helping him because of his macular degeneration. All of these acts, individually and cumulatively, will impair or forfeit Mr. Rust’s right to vote, in violation of the Arkansas Constitution.

21. Plaintiff Patsy Watkins is a 73-year-old resident of Fayetteville, Arkansas, where she has lived since 1984. She is a member of the League of Women Voters of Arkansas. She has not updated her registration since 1984 and is deeply concerned that elections officials will reject any absentee applications because of a perceived signature mismatch in the next election she votes in. Additionally, she has arthritis in her right hand, which affects how her signature now looks. Ms. Watkins voted in person in the 2020 general election and had to wait in line for approximately an hour on a warm day. She is concerned that the Voter Support Ban as well will impair her right to vote in violation of the Arkansas Constitution.

22. Defendant John Thurston is the Arkansas Secretary of State and the chief elections officer in the State of Arkansas. He is the chairperson and secretary of the Board, which has broad authority under Arkansas law to administer and ensure compliance with state election law. Ark. Code Ann. § 7-4-101(b), (f)(1). Secretary Thurston also serves as the Chair of the State Board of Election Commissioners. Ark. Code § 7-4-101(b).

23. Defendants Sharon Brooks, Bilenda Harris-Ritter, William Luther, Charles Roberts, Bill Ackerman, and J. Harmon Smith are members of the Board. The Board is responsible for providing statewide guidance and training to election officers and county election commissioners, promulgating “necessary rules to assure even and consistent application of voter

registration laws and fair and orderly election procedures,” and assisting county boards of election commissioners on election administration if it “determines that assistance is necessary and appropriate.” Ark. Code Ann. § 7-4-101(f). The Board also has broad investigation, fact-finding, and sanction authority over violations of the election code. *Id.* §§ 7-3-101(f)9), 7-4-120(a)(1). In addition, the General Assembly recently passed S.B. 498, which requires written complaints on alleged election law violations be sent directly to the Board, rather than the county boards or a prosecuting attorney. *Id.* § 7-1-109.

24. This Court has subject matter jurisdiction under Amendment 80 to the Constitution of Arkansas. This Court has personal jurisdiction over the Defendants under Ark. Code Ann. § 16-4-101(B). Venue is proper in Pulaski County under Ark. Code Ann. § 16-60- 104(3)(A).

FACTS

25. Arkansas is in the middle of a decades-long voter turnout crisis especially among Black voters, but Arkansas has not experienced problems with voter fraud or the integrity of its elections.

26. Put differently, if there is a threat to the integrity of Arkansas’s elections, it is the state’s consistently low voter turnout, particularly among Black voters. It is not with voter fraud, or the risk of it.

27. Nevertheless, rather than taking a hard look at why it is so hard for voters to participate in Arkansas’s elections and working to address that very real problem, the General Assembly has done the opposite: it moved swiftly to restrict voter access in multiple ways, through the Challenged Provisions, and it did so based on concocted concerns about voter fraud and the integrity of the state’s elections.

I. Voter turnout in Arkansas has consistently ranked among the worst in the nation, particularly among Black voters.

28. Voter turnout in Arkansas has consistently lagged well behind the national average, with Arkansas repeatedly earning the dubious distinction of having close to the lowest voter turnout rate in the country.

29. For over two decades, Arkansas has ranked among the bottom five states in the country for voter turnout in presidential elections. In 2018, only 41.4% of Arkansans who were eligible to vote cast a ballot, with Arkansas trailing 49 states and the District of Columbia for voter turnout. While voter turnout in Arkansas increased in 2020, it did not keep pace with increases in the rest of the United States. Again, it ranked second to last in the country for voter turnout.

30. Turnout among Black voters was especially low. According to U.S. Census Bureau data, only 44.7% of Arkansas's eligible Black voter population voted in the 2020 general election. This was the third-lowest rate of Black democratic participation of any U.S. state that year.

31. Meanwhile, Black turnout in neighboring Mississippi, according to data from the U.S. Census Bureau, exceeded 72%; in Missouri it exceeded 69%; in Tennessee, it exceeded 68%; in Texas, it was nearly 61%; and in Louisiana, nearly 58% of eligible Black voters cast ballots.

32. Arkansas's strikingly low Black voter turnout in November 2020 was no anomaly. It was consistent with a trend that can be observed in Arkansas dating back at least nearly 20 years.

33. In the November 2018 elections, just 41.6% of Arkansas's eligible Black voters cast a ballot, representing the fourth-worst Black voter turnout for any state. And, as in 2020, Black voter turnout in Arkansas in 2018 noticeably lagged behind Black voter turnout in neighboring states.

34. These stark differences in voter turnout were also present in the 2016 general election, when just 58.8% of Arkansas's eligible Black voter population cast ballots that year. In

contrast, neighboring Missouri and Mississippi saw eligible Black voters turn out at much higher rates—66.2% and 69.1%, respectively.

35. In 2012, only 49.4% of Arkansas's eligible Black voter population voted. Yet, that same year in Mississippi, Black turnout soared past 80%, while more than two-thirds of eligible Black voters in Missouri and Louisiana cast ballots.

36. Arkansas's low Black voter turnout is particularly striking when compared to Arkansas's white voter turnout. In the 2020 general election, while Black voter turnout at Arkansas remained depressed at just 44.7%, a full 56.1% of eligible white Arkansans cast ballots—a turnout gap of 11.4%.

37. No neighboring state saw a racial turnout difference nearly as high. Black turnout in Mississippi, Tennessee and Missouri trailed white turnout by 3.9%, 2.7%, and 1.6%, respectively, while Black turnout actually exceeded white turnout in neighboring Texas and Louisiana.

38. The disparity is also evident when turnout is reviewed at the county level. While nearly 67% of registered Arkansans statewide came out to vote, just over 61% of Arkansans living in the counties where more than one quarter of residents are Black participated in the election, according to data from the Secretary of State.

39. Every county where Black people made up more than 30% of the population lagged behind the already-tepid statewide turnout rate. This included Pulaski County, which saw fewer than two-thirds of its voters come out in both 2016 and 2020; between 2016 and 2020, voter turnout there increased by just 0.04%.

40. Meanwhile, Crittenden County, where 54% of the population is Black, saw barely half of its voters turn out in 2020, a decline from the 52.9% that voted in the 2016 general election,

despite the fact that, nationwide, voter turnout was up about 7 percentage points when compared to that last presidential election.

II. Widespread absentee and provisional voting did not result in irregularities in the 2020 election.

41. In the face of an unprecedented global pandemic, Arkansas election officials professionally administered and conducted the 2020 general election without incident. Instead, state and local elections officials, from the Secretary of State to County Clerks, offered high praise for how smoothly and securely the election went. This was notable given the significant uptick in absentee and provisional ballots, without any instance of alleged fraud or abuse.

42. What the increased use of absentee ballots did do was facilitate voting by lawful Arkansas voters. Even though voter turnout in Arkansas remained depressed when compared nationwide, even this small adjustment allowed for a small but substantial increase in the state's voter turnout.

43. Yet, instead of working to ensure that the state's voters continue to have free and fair access to the franchise in the future, the General Assembly made it harder to vote absentee and in-person, based entirely on unsubstantiated fears of fraud or imagined threats to the state's election integrity.

A. Arkansas saw a dramatic increase in absentee voting in 2020.

44. Since 1995, Arkansas has made absentee voting available only to voters who are overseas, in the military, unavoidably absent from their voting place on election day, or unable to vote on election day because of illness or physical disability. Ark. Code Ann. §§ 7-5-402, 7-5-406.

45. In July 2020, however, the Board adopted a resolution permitting voters to request an absentee ballot under the illness or disability exception if they conclude that in-person voting “raises concerns to their health or the health of others . . . [due to] the COVID-19 pandemic.”²

46. On August 7, 2020, Governor Asa Hutchinson issued an executive order encouraging the Secretary to “design and publish informational materials to notify qualified electors how they may request absentee ballots” for the November 2020 general election.³

47. Absentee ballots were counted if they were (1) sent by mail or delivered by a designated bearer or authorized agent of the absent voter and received by the close of the polls on election day, Ark. Code Ann. §§ 7-5-411(a)(1)(A), 412(c), or (2) dropped off by the voter to the county clerk by the close of regular business hours on the day before election day, *id.* § 411(a)(3).

48. As a result of these efforts, 115,724 voters cast absentee ballots in the 2020 presidential race. This was nearly three times the number in the 2016 general election, when fewer than 43,000 Arkansans cast absentee ballots for president. In Arkansas’s most populous county, Pulaski County, the number of requests for absentee ballots and actual absentee ballots cast more than tripled compared to 2016. The increase in absentee ballots equaled almost 85% of the total increase in ballots.

B. There was no evidence of fraud or irregularities in the 2020 general election.

49. Notwithstanding the dramatic increase in absentee voting, there was no evidence of voter fraud in Arkansas during the 2020 election.

² Resolution No. 4 of 2020, In the Matter of: Absentee Voting Procedures, Arkansas State Board of Election Commissioners, *available at* https://static.ark.org/eeuploads/elections/Resolution_No._4_of_2020_Regarding_Absentee_Voting_Procedures.pdf.

³ AR Exec. Order No. 20-44, Aug. 7, 2020, *available at* https://governor.arkansas.gov/images/uploads/executiveOrders/EO_20-44.pdf.

50. Not one of the members of the state's 75 county boards of election commissioners could cite any evidence of voter fraud.

51. Not a single prosecution for, let alone conviction of, voter fraud has resulted from Arkansas's 2020 general election.

52. In this way, the election was not unique. Over the past two decades, there have been just *three* criminal convictions of voter fraud in the state out of tens of millions of ballots cast.

53. It is also notable that the 2020 election was particularly closely scrutinized. Not only were false claims of voter fraud front and center in the national news for months leading up to the election and in the months that followed, two different Arkansas State Courts and the Arkansas Claims Commission were asked by the loser of a close state legislative race to examine and overturn the results of that election. In both cases, the challenger was unsuccessful.

54. The cases arose following an exceedingly close race between successful Democratic challenger Ashley Hudson and Republican State Representative Jim Sorvillo, in which the margin of victory was a mere 24 votes out of more than 16,000 cast. Sorvillo challenged the results, alleging "irreparable" counting errors and seeking a new election. After two Pulaski County judges dismissed the lawsuits, the Arkansas Claims Commission considered Sorvillo's specious claims of errors and irregularities and a voluminous record related to the election, and unanimously recommended that Hudson be seated.

55. Contestants alleging voter fraud in prior Arkansas elections have fared no better over the years. Over and over again, their challenges have failed for lack of factual support.

56. In 2018, for example, an unsuccessful mayoral candidate in Helena-West Helena filed a federal lawsuit insinuating that voter fraud had impacted his race, but failed to assert "that his vote was not fairly counted" and did "not identify a single other voter whose vote was not

counted, a fraudulent provisional vote that was not counted, or any specific allegations of known fraud.” *Librace v. Thurston*, No. 2:18-CV-164-JM-BD, 2019 WL 2035525, at *2 (E.D. Ark. Apr. 23, 2019). The court dismissed the lawsuit both for lack of standing and for failing to state a claim because his amorphous claims of fraud were “devoid of any factual support.” *Id.* at *4.

57. In 2010, some voters challenged the results of local races in Helena-West Helena. They filed an election contest alleging the existence of fraud. The circuit court dismissed the complaint, finding there was “insufficient information” for the court to have “grounds to believe that any fraud existed” and, as a result, “the court cannot say that there are grounds to support the allegation of fraud.” *Wilson v. Phillips Cnty. Election Comm’n*, 2011 Ark. 223, 2011 WL 1896779, at *3 (May 19, 2011) (internal quotation marks omitted). The Arkansas Supreme Court affirmed. *Id.* at *5.

58. It is also notable that *none* of the over fifty lawsuits that were brought in multiple different jurisdictions nationwide challenging the results of the presidential election in 2020 based on allegations of irregularities and fraud met with even the smallest bit of success.

59. Instead, the claims that drove those lawsuits were found to be false; independent experts, governors and state election officials from both parties (as well as former President Trump’s own Attorney General, William Barr) repeatedly rejected and debunked claims of fraud; and the 2020 presidential election has been deemed by U.S. election security officials “the most secure in American history.” *Joint Statement from Elections Infrastructure Government Coordinating Council and Sector Coordinating Council Executive Committees*, National Association of State Election Directors (Nov. 12, 2020), available at <https://www.nased.org/news/jointstatement111220>.

III. The Challenged Provisions

60. In the wake of an election in which Arkansas's turnout rate lagged behind nearly every other state, despite successful widespread usage of early voting and absentee voting, Republican majorities in the General Assembly swiftly crafted and passed a series of laws that work together to dramatically restrict voting rights by imposing individual and cumulative burdens on the franchise.

A. Absentee Application Signature-Match Requirement

61. On April 13, the General Assembly passed Act 736.

62. Act 736 requires the rejection of absentee ballot applications if an untrained elections official determines that the voter's signature on the application does not "match" the signature on their voter registration application.

63. The error-prone and arbitrary nature of signature matching is well documented and this entirely unnecessary additional hurdle to voting in Arkansas will impede and, in some cases, entirely deny lawful voters their right to vote absentee as a result of arbitrary decisions by non-expert elections officials who are ill-equipped to accurately determine whether two signatures were in fact made by the same person. Given that, aside from the 2020 election, absentee voting is only available to people who are overseas, in the military, unavoidably absent from their voting place on election day, or unable to vote on election day because of illness or physical disability, and who therefore cannot vote by any other method, Act 736 will result in the complete disenfranchisement of many voters. Ark. Code Ann. § 7-5-402, § 7-5-406.

64. Before the enactment of Act 736, elections officials who processed applications for absentee ballots had to match the voter's name, address, date of birth, and signature against registration "records."

65. There were no reports of any voter fraud associated with this process, even in 2020 when the use of absentee ballots in Arkansas skyrocketed as a result of expanded access to absentee voting in response to the COVID pandemic.

66. Act 736 creates an entirely unnecessary and burdensome barrier to obtaining an absentee ballot that is likely to result in the disenfranchisement of voters due to arbitrary decisions by election officials with no expertise or training in matching signatures.

67. The sponsor of the bill, Representative Lowery, admitted at a February 1 hearing of the State Agencies and Governmental Affairs Committee that Arkansas has *no* training for election workers to analyze and verify signatures.

68. But even if the state were to implement some form of “training” program, signature-matching is an inherently flawed art, and non-experts are particularly bad at doing it with any accuracy.

69. Studies conducted by experts have repeatedly found that non-experts are significantly more likely to misidentify authentic signatures as forgeries than they are to identify actual forgeries.

70. As one federal court put it, signature-matching is inherently “a questionable practice” and “may lead to unconstitutional disenfranchisement.” *Democratic Exec. Comm. of Fla. v. Lee*, 347 F. Supp. 3d 1017, 1030 (N.D. Fla. 2018).

71. One of the most significant problems with signature matching is that, despite popular lore, signatures can and do change—often significantly and even over a short period of time—for a variety of reasons.

72. Factors that can affect a person’s signature include physical factors such as age, illness, injury, medicine, eyesight, alcohol, and drugs; mechanical factors such as the pen type,

ink, surface, position, and paper quality; and psychological factors such as distress, anger, fear, depression, happiness, and nervousness.

73. Ironically, Representative Lowery justified another Challenged Provision—the Affidavit Prohibition in Act 249 (discussed below)—by explaining how signature matching is a deeply flawed process “ripe with errors.”

74. Representative Lowery admitted that it was deeply problematic to “ask[] our election workers, many of them who are not trained in verifying signatures, . . . to do it in seconds,” while some forensic analysts say it sometimes takes “hours” to verify a signature. Meanwhile, through Act 736 Representative Lowery and others in the General Assembly have required untrained election officials to do exactly that with regard to absentee ballot applications, now with even *fewer* comparator signatures at their disposal than before.

75. The Absentee Application Signature-Match Requirement is also wholly unnecessary to prevent the General Assembly’s favored boogeyman of voter fraud. This is because applications for absentee ballots must include a sworn statement for voters “stating that the voter is registered to vote and that he or she is the person who is registered” and must be executed under penalty of perjury, thereby strongly deterring any would-be fraudsters under the threat of serious criminal sanctions. Ark. Code Ann. § 7-5-404(a)(3)(A)–(B). Applications also must inform voters of the penalties of providing false information of the form. *Id.* § 7-5-404(a)(2)(A). And, the vast majority of voters include a copy of identification when returning their absentee ballots. If they do not they must present their photo identification when delivering their absentee ballots in person or within the cure window for their ballots to count, which provides *another* layer of identity-verification. *Id.* § 7-5-412(1)(2)(A).

76. Finally, while Arkansas law allows a voter to resubmit an application for an absentee ballot, Ark. Code Ann. § 7-5-404(a)(2)(B)(ii), the resubmitted application will nonetheless *again* be matched against the signature on the voter registration application. This undermines the ability to cure any perceived signature mismatch and removes precious time for the absentee voter to obtain and then return their absentee ballot before the applicable deadline.

77. In fact, Arkansas law does not even allow the election official to rely on the signature on a copy of the voter's identification in determining the validity of a signature on a voter's absentee ballot application, even if the identification is much more recent than the registration. And if the voter's signature has in fact changed over time, then the renewed application, which election officials must now compare *only* to the voter's oftentimes old registration application, is likely to once again be rejected.

78. This process also imposes particularly severe barriers for absentee voters who request their absentee ballot close to the deadline for such requests, which is a week before election day. Ark. Code Ann. § 7-5-404(a)(3)(A)(ii). For these voters, even a single perceived signature mismatch could mean the inability to obtain an absentee ballot on time, which is likely to result in disenfranchisement for would-be absentee voters, who are necessarily unable to vote in person. *See supra* ¶¶ 17, 19–21. This timing issue is made worse by recent delays in mail delivery, which appear likely to persist over time.

79. This timing problem is further exacerbated by the new In-Person Ballot Receipt Deadline, discussed below. If an election official arbitrarily decides that the voter's absentee application's signature does not match their voter registration application's signature, the voter must scramble to re-submit an absentee request and meet a now-even-*earlier* receipt deadline or rely on the beleaguered U.S. Postal Service. *See infra* ¶¶ 89–90. For voters requesting absentee

ballots a week before election day, a perceived mismatched-signature from elections officials will result in almost certain disenfranchisement.

B. In-Person Ballot Receipt Deadline

80. Even if an absentee voter can navigate Act 736's heightened signature-matching requirement for their absentee-ballot application, the General Assembly also arbitrarily and unjustifiably moved up the deadline for returning an absentee ballot *in-person* when it enacted Act 973.

81. The General Assembly passed Act 973 on April 20, and it became law without the Governor's signature. It creates an even earlier In-Person Ballot Receipt Deadline, which requires voters who return their ballots in person to return them to the county clerk's physical office by no later than the Friday before election day. Ark. Code Ann. § 7-5-411(a)(3). Under the prior law, absentee voters who returned their absentee ballots in person were already needlessly required to return their absentee ballots on the Monday before election day, and Act 973 only exacerbates this hardship by pushing that deadline back an additional three days. Under Act 973, any voter who attempts to return a ballot in person after that date, including now on the day before election day, will have their ballot rejected.

82. In fact, the Governor refused to sign the bill because it "unnecessarily limits the opportunities for voters to cast their ballot prior to the election." And the Governor is right; where the prior law was already unduly burdensome, Act 973 only increases those burdens without any legitimate justification.

83. This new In-Person Ballot Receipt Deadline gives Arkansas the unfortunate and telling distinction of having the earliest ballot receipt deadline in the United States. That fact alone undermines its necessity.

84. But the arbitrariness of this new restriction is further underscored by the fact that absentee ballots sent by mail are considered timely and will be counted if they are received by 7:30 p.m. on election day. Ark. Code Ann. § 7-5-411(a)(1)(a).

85. Thus, the General Assembly has created a confusing and wholly unjustifiable regime, whereby absentee voters are subject to entirely different deadlines depending on whether they place their ballots in the mail or return them in person.

86. Nonsensically, Arkansas now *forbids* voters who are voting their absentee ballots from returning them in person after the last Friday before election day, which would ensure that they are received in time to be counted, and instead requires that they put them in the mail and hope for the best, ensuring that some number of voters will then be disenfranchised when mail delays keep their ballots from arriving in time.

87. This law is especially burdensome for absentee voters who request or wait to vote their absentee ballots nearer to the election, which voters might do if they are still learning about the candidates or issues or want to be able to consider any late breaking information in casting their votes.

88. Moreover, voters can lawfully apply by mail for absentee ballots up to the Tuesday, or seven (7) days before election day. Ark. Code Ann. § 7-5-404(a)(3)(A)(ii). This gives those voters only three days or less to both receive by mail and return their ballots in person before an election.

89. Unlike the specter of fraud that has no basis in fact, the disenfranchising impact of such a deadline is tethered to objective reality. Even less restrictive deadlines (remember, Act 973 makes Arkansas's the most restrictive in-person return deadline in the nation) resulted in tens of thousands of ballots being rejected as untimely in states across the country in the November 2020

election, due in part to ever-extending and increasingly unreliable U.S. Postal delivery windows. If the only surefire way to avoid disenfranchisement as a result of mail delays in returning an absentee ballot on time is to return an absentee ballot in person, Act 973 accomplishes nothing other than to make that more difficult.

90. In fact, in July 2020, the Postal Service’s general counsel sent a letter to the Secretary of State highlighting how Arkansas’s laws are “incongruous with the Postal Service’s delivery standards” which “creates a risk that ballots requested near the deadline under state law will not be returned by mail in time to be counted.” This new law only exacerbates that problem.

C. Voter ID Affidavit Prohibition

91. The Arkansas General Assembly has a long history of trying, and failing, to enact “strict” voter identification laws.

92. The National Conference of State Legislatures (“NCSL”) classifies voter identification laws that go beyond the minimum voter registration identification requirements set forth in the federal Help America Vote Act, *see* 52 U.S.C. 20901 *et seq.*⁴ in two ways. First, NCSL considers whether state law requires a voter to show a form of photo identification. Second, if the state law requires photo identification to vote, NCSL considers whether a voter without proper ID is required to cast a provisional ballot *and* take some additional steps after election day to have that ballot counted. If the answer to both questions is “yes,” then the NCSL considers that law to be a “strict” voter identification law.⁴

93. The General Assembly’s first attempt to enact a strict voter identification law in 2013, under Act 595 of 2013, was found by the Arkansas Supreme Court to violate the state

⁴ National Conference of State Legislatures, *Voter Identification Requirements*, <https://www.ncsl.org/research/elections-and-campaigns/voter-id.aspx> (last visited June 26, 2021); *see also* MIT Election Data + Science Lab, *Voter Identification*, <https://electionlab.mit.edu/research/voter-identification> (last visited June 26, 2021).

constitution in *Martin v. Kohls*, 444 S.W.3d 844 (2014), because it imposed an additional qualification on voters, without exception, that the Arkansas Constitution did not require. Like Act 249, Act 595 (2013) required voters to present identification to cast a ballot without any failsafe for voters who did not possess, or could not produce, acceptable identification.

94. In 2017, the General Assembly passed Act 633, which again required voter identification but, importantly, also created the Affidavit Fail-Safe for voters lacking the required identification. Because of the Affidavit Fail-Safe, Act 633 was not a “strict” voter identification law.

95. In a plain attempt to avoid another constitutional challenge to Act 633, the General Assembly also amended Act 51 of the Arkansas Constitution. Amendment 51, originally passed in 1964, “abolished the poll tax” and “provides a comprehensive regulatory scheme governing the registration of voters.” *Martin v. Haas*, 556 S.W.3d 509, 516 (2018). Under Act 633, the General Assembly amended Amendment 51 under the process outlined in Amendment 51 Section 19, which permits the General Assembly to modify Amendment 51 “so long as such amendments are germane to this amendment, and consistent with its policy and purposes.” Ark. Const. amendment 51 § 19.

96. An Arkansas voter challenged Act 633, arguing that its voter identification requirements were not “germane” to Amendment 51 and that the law, therefore, was an improper modification to the amendment governing voter registration. The voter obtained a preliminary injunction in this Court, but the Arkansas Supreme Court declined to find that Act 633’s non-strict voter identification requirements were not germane to Amendment 51 and inconsistent with its policy and purposes. *Haas*, 556 S.W.3d at 517.

97. As a result, Act 633's non-strict voter identification provisions were in effect since 2018. Again, however, Act 633 was a non-strict voter identification law because it included the Affidavit Fail-Safe to protect from disenfranchisement voters who either lacked any form of photo identification or who were unable to return in time to provide it. Act 633's Affidavit Fail-Safe applied not only to in person voters, but also to absentee voters who were otherwise required to "[e]nclose a copy of valid photographic identification with his or her ballot when voting by absentee ballot." Ark. Const. art. 3, § 1; *see also* Act 633 of 2017. For absentee voters, the Affidavit Fail-Safe was enclosed with their absentee ballot either in addition to or in lieu of a photocopy of the voter's acceptable photo identification.

98. Specifically, under Act 633's Affidavit Fail-Safe, voters who either lacked any form of acceptable photo identification or who were unable to produce such identification while voting in person *or absentee* were permitted to cast a provisional ballot, which would be counted if voters: (1) completed a sworn affidavit under penalty of perjury at the polls (or, if voting absentee, completed and returned a sworn statement) stating they are a registered voter and elections officials fail to determine the provisional ballot is invalid (i.e., the Affidavit Fail-Safe); *or* (2) returned to the county board of elections officials the required documentation or identification, which must contain a photograph of the voter, must be issued by a federal, state, or postsecondary educational institution, and cannot be expired for more than four years. Ark. Const. amend. 51 § 13(b)(4). This important exception was embedded not simply in Act 633, but in the Arkansas Constitution itself. *See id.*

99. As a result, while Arkansas has required voter identification since 2018, it has never before required strict voter identification, because both in-person and absentee voters who lacked an acceptable form of identification could use the Affidavit Fail-Safe to avoid disenfranchisement

by signing a statement swearing to their identity under penalty of perjury. Their votes counted without requiring any further action, so long as the county board of election commissioners could subsequently confirm the voter was eligible.

100. What's more, the Affidavit Fail-Safe already successfully prevented voter fraud, which makes sense given that the affidavit itself required that voters sign the sworn statement under penalty of perjury.⁵ And there can be no real question whether the threat of criminal sanctions was enough to prevent voter fraud, where county election officials were unable to point to a single instance of voter fraud. *See supra* ¶ 9.

101. But the Affidavit Fail-Safe did more than *successfully* prevent fraud and thereby uphold the integrity of Arkansas elections, also it ensured that the voter identification law did not disenfranchise eligible Arkansan voters. Since 2017, thousands of Arkansas voters have successfully cast a provisional ballot using the Affidavit Fail-Safe. There is no evidence that the availability or use of the Affidavit Fail-Safe has resulted in any instances of voter fraud.

102. In the November 2020 election alone, more than 5,300 Arkansas voters used provisional ballots to vote. And Black voters, in particular, appear to have benefited most from the Affidavit Fail-Safe's important exception.

103. A full 42% of all the provisional votes cast in the 2020 elections came from the 14 counties with the largest Black populations in Arkansas, even though those counties collectively cast just 22% of all votes cast in the 2020 presidential election.

104. For example, in Pulaski County alone, where 38% of the population is Black, more than 1,200 voters cast provisional ballots using Affidavit Fail-Safe due to a lack of acceptable

⁵ See Arkansas State Government, *Processing Absentee Ballots* (2020), 2020_Processing_Absentee_Ballot_Exercises.pdf (ark.org) (last visited June 27, 2021) (showing Voter Statement, which included an "Optional Verification of Identity" for voters "unable to verify their voter registration" by enclosing a copy of photo identification that was sworn and signed "under penalty of perjury.").

photo identification. When compared to the county's voter population, the rate of voters who had to cast a provisional ballot to vote was almost twice the statewide average.

105. In Phillips County, which has a Black population of 62%, nearly 1.4% of voters relied on the Affidavit Fail-Safe to cast provisional ballots—more than three times the statewide average rate of provisional voting.

106. In Crittenden County, where 54% of its residents are Black, 1.52% of voters relied on the Affidavit Fail-Safe to vote provisionally—constituting nearly four times the state's provisional rate.

107. And in Ouachita County, which is more than 40% Black, nearly four percent of its voters relied on the Affidavit Fail-Safe to cast provisional ballots—nearly *ten times* the state's provisional rate.

108. The Affidavit Fail-Safe remained both a popular and necessary means for successfully casting a ballot in Arkansas even after the general election.

109. During runoff elections for local races in Pulaski County held in December 2020—which saw voter turnout plummet to just 18%—more than 600 voters relied on the Affidavit Fail-Safe to cast provisional ballots due to a lack of identification, accounting for more than five percent of all votes cast during that election.

110. Despite the crucial role that the Affidavit Fail-Safe has played to ensure that Arkansans can vote under the 2018 voter identification requirements, the General Assembly passed Act 249 on February 24 to remove the Affidavit Fail-Safe from the Constitution, making Arkansas a strict voter identification state for the first time.

111. As a result of Act 249's new Affidavit Prohibition, voters who cast provisional ballots because they lack the required photo identification may no longer rely on the Affidavit Fail-

Safe. Instead, they must return with acceptable photo identification, to the county clerk's office by noon on the Monday after election day, or their ballots will be rejected.

112. Even worse, voters who lack any forms of permissible photo identification (or who have lost or misplaced it) are particularly at risk of disenfranchisement. While the state must provide free voter identification to voters, *see* Ark. Const. art. III § 1(c), voters who have depended on voting provisionally with a sworn statement for the most recent two general elections will now be forced to take additional steps to obtain this identification. This requires them to rearrange their schedules, take time off of work, and secure transportation to the county clerk's office—all of this within fewer than six days of election day.

113. The Affidavit Prohibition will also disproportionately harm specific classes of voters, including but not limited to voters of color. That is because “individuals who lack government-issued identification are more likely to be younger, less educated, and impoverished, and—most notably—nonwhite.” Sarina Vij, *Why Minority Voters Have Lower Voter Turnout: An Analysis of Current Restrictions*, Vol. 45 American Bar Association Human Rights Magazine No. 3 (June 6, 2020).⁶ In addition, the Affidavit Prohibition will disproportionately limit access to the franchise for people who lack transportation to travel to each county's single clerk's office, and people who work full-time jobs and would be burdened by being forced to take time off of work. While all those in need of free voter identification will face burdens in traveling to the county clerk's office to verify their identity with documentation, the prohibition is also particularly onerous for voters who live in rural areas and live far from their county's clerk's office.

⁶ Available at https://www.americanbar.org/groups/crsj/publications/human_rights_magazine_home/voting-in-2020/why-minority-voters-have-a-lower-voter-turnout/.

114. While there can be no question that the Affidavit Prohibition carries attendant burdens, which disproportionately affect certain groups, there is no legitimate government interest in imposing its hardships and barriers to the franchise.

115. Indeed, during a committee hearing, the legislative sponsors of the Affidavit Prohibition could not name a single instance of fraud brought about by allowing voters to rely on the Affidavit Fail-Safe. Instead, Representative Lowery justified the restrictive law by claiming that it led to untrained elections officials engaging in problematic signature-matching efforts to match the voter's signature on the sworn statement "with whatever record it was being matched against"—ignoring that *no Arkansas law or constitutional provision requires signature-matching for sworn statements*.

116. In other words, the Affidavit Prohibition's primary legislative sponsor offered a rationale for the ban that had no basis in Arkansas law.

D. Voter Support Ban

117. Last year, despite the temporary expansion of absentee voting in response to COVID-19, Arkansas voters across the state encountered hours-long lines at polling places.

118. These problems were particularly pronounced in areas with sizeable Black populations. For example, there were reports of voters waiting in line for four hours in Pulaski County. Voters in Jonesboro waited for more than an hour to cast their ballots, and hundreds of people crowded into Fayetteville polling places even before they opened.

119. Organizations that work to promote voter participation and get out the vote worked hard to support voters faced with long lines and long wait times to vote, by attempting to make the burdensome and difficult experience more bearable, and to help guard against voters leaving the lines and being disenfranchised as a result of the wait times.

120. One of the more popular ways that organizers have supported voters in this and prior elections in Arkansas is to show up and provide support to individuals through free food and water as they wait in long lines (most commonly, bottles of water and small snacks like bags of potato chips or pizza).

121. This new blanket prohibition includes no exceptions for even offering basic sustenance. In fact, Senator Kim Hammer, the primary sponsor of the Ban, acknowledged in House State Agencies and Government Affairs Committee hearing on April 12 that that Ban grew out of concerns about groups “handing out bottled waters and other things. Some were wearing T-shirts that identified the group that they were with, and it’s just common opinion of this Senator . . . that that hundred-foot zone ought to be considered sacred for all purposes, nobody camping out inside that.”

122. These organizers, like everyone else, are otherwise prohibited from electioneering in this process; they simply offer some comfort to help the voters better endure long lines so that they may successfully cast their ballot.

123. In addition to organizers, the Voter Support Ban prohibits family members and friends from accompanying individuals seeking to vote, including elderly voters and voters with disabilities who could benefit greatly from having support from friends, family members, or others, or individuals who require translation assistance.

124. On its face, Act 728’s Voter Support Ban also prohibits voters from bringing their children with them when exercising their right to vote, something that is permitted in every other state and Washington, D.C., and which fosters the importance of voting and civic participation in future generations. There is no reason to ban this time-honored tradition or burden this aspect of family life.

125. The Voter Support Ban’s vague prohibition on “a person” from “enter[ing] or remain[ing]” within the 100-foot threshold of a polling place eliminates all of these important activities, and it does so without furthering any legitimate state interest.

126. Despite the persistent presence of long lines in this and prior elections in Arkansas, and all of the important activities that are now needlessly foreclosed, the General Assembly moved on April 13 to enact Act 728, which broadly prohibits these efforts. With the return of limited absentee voting after the 2020 elections, long lines and wait times to vote are expected to get even longer and more burdensome.

127. Now, anyone other than voters (and people entering and exiting the building for a “lawful purpose”) who comes within an arbitrary 100-foot threshold of a polling place commits a class A misdemeanor under Arkansas law, which can result in a fine of up to \$2,500 and incarceration of up to one year. Ark. Code Ann. §§ 5-4-201(b)(1), 5-4-401(b)(1); *see also* Ark. Code Ann. § 7-1-103(b)(1).

128. In addition, anyone convicted for violation of this provision is deemed “ineligible to hold any office or employment in any of the departments of” the State of Arkansas, and if they violate the Ban while already employed by the State, they “shall be removed from employment immediately.”

129. The Voter Support Ban will directly harm voters who are forced to wait in long lines at polling places and impact how volunteers at organizations, like plaintiffs’ members, make the electoral process easier for voters, especially those forced to wait in unreasonably long lines at polling places.

130. The Voter Support Ban does not advance any election administration goal and instead adds to the burden of waiting in long lines, as well as imposing other burdens (like

prohibiting voters from bringing their children to their polling place) due to its extreme overbreadth and vague terms. It is also wholly unnecessary, as Arkansas law already bans electioneering within 100 feet of a polling place, *see* Ark. Code Ann. § 7-1-103(8)(A). The Ban therefore serves no purpose except to make voting more difficult for voters waiting in line.

131. The Ban will result in further depressing voter turnout in a state already holding the dishonorable marker of some of the lowest turnout rates in the nation. And it is hard to imagine that the burdens here are not intentional when considered in conjunction with Arkansas's other restrictive voting laws, such as, for example, those limiting absentee voting to a discrete subset of voters.

132. In fact, some elections officials have gone on record to point out the needlessness of the Ban, such as Pulaski County election commissioner Joshua Price, who stated: "You're telling me I can't even bring bottled water while they're waiting in line to vote. That's just cruel and unnecessary."

133. Individually and collectively, the Challenged Provisions make access to the franchise more difficult. And the individual and collective consequences of the Challenged Provisions are not a mistake or some collateral consequence of neutral acts of election administration. Instead, the burden on access to the franchise *is the point*.

134. Individually and collectively, the Challenged Provisions violate the rights to Free and Equal Elections, Equal Protection of the Law, and Free Speech and Assembly under the Arkansas Constitution.

COUNT I

Absentee Application Signature-Match (Ark. Const. art. 2 § 3; art. 3 §§ 1-2)

135. Plaintiffs incorporate by reference the allegations of all preceding paragraphs.

136. The Absentee Application Signature-Match Requirement subjects Arkansas's absentee voters like Plaintiffs Dortha Dunlap, Nell Matthews Mock, Jeffery Rust, Patsy Watkins, and members of the League of Women Voters of Arkansas and Arkansas United to an arbitrary and error-prone verification that will result in the substantial burdens to voters and in some cases effectively deny them their right to vote.

137. The Absentee Application Signature-Match Requirement violates the Free and Equal Elections Clause of the Arkansas Constitution, which declares: "Elections shall be free and equal. No power, civil or military, shall ever interfere to prevent the free exercise of the right of suffrage; nor shall any law be enacted whereby such right shall be impaired or forfeited, except for the commission of a felony, upon lawful conviction thereof." Ark. Const. art. 3 § 2.

138. The Absentee Application Signature-Match Requirement will arbitrarily disenfranchise thousands of Arkansas absentee voters for reasons outside of their control, contributing to an already-dismal history of low voter turnout in Arkansas. "The right to vote includes the right to have the ballot counted." *Reynolds v. Sims*, 377 U.S. 533, 555 n.29 (1964) (citation and quotation omitted).

139. Tying an absentee voter's ability to timely receive an absentee ballot to the arbitrary signature-matching skills of an elections worker will "impair[] or forfeit[]" the right to vote by making an arbitrary, error-prone process and making it even more difficult, unpredictable, and random for voters to even obtain an absentee ballot. Ark. Const. art. 3 § 2.

140. The Absentee Application Signature-Match Requirement also violates the Equal Protection Clause of the Arkansas Constitution, which recognizes "[t]he equality of all persons before the law" and "shall ever remain inviolate." Ark. Const. art. 2 § 3.

141. When a law infringes on a fundamental right, like the right to vote, “it cannot survive unless a compelling state interest is advanced by the statute and the statute is the least restrictive method available to carry out the state interest.” *Jegley v. Picado*, 349 Ark. 600, 632, 80 S.W.3d 332, 350 (2002). When a fundamental right is at stake, the state must “prove a compelling state interest.” *Pritchett v. City of Hot Springs*, 2017 Ark. 95, 514 S.W.3d 447, 450 (2017).

142. The Absentee Application Signature-Match requirement makes arbitrary classifications between similarly-situated applicants whose signatures are deemed to match their original voter registration application and applicants whose signatures do not, based on the error-prone assessments of laypeople who are untrained in signature comparison. Because of the arbitrary nature of signature-matching itself, particularly by non-experts under the circumstances here, the Absentee Application Signature-Match Requirement also will create arbitrary and unjustifiable classifications between similarly-situated voters based on age, disability, passage of time, handwriting, and any other factor that contributes to a changing signature.

143. The Absentee Application Signature-Match Requirement is not reasonably related to a compelling government interest because there are less restrictive means of confirming voter identification and registration. Arkansas law already requires absentee applicants to swear to their identity under the penalty of perjury, and the vast majority of absentee voters include a copy of their identification with their ballot. In fact, viewing all of the Challenged Provisions together, an absentee voter who is subject to signature matching is also *required to* include a copy of their identification when returning their ballot under the Affidavit Prohibition. Indeed, none of the Challenged Provisions exist in a vacuum, and each works together and builds on all others to carry out only one thing: making it harder for eligible Arkansans to vote.

144. Additionally, the new signature-matching scheme needlessly forces applicants' signatures to match a potentially decades-old signature on their voter registration application, rather than *any* more recent signatures on file. In the case of Plaintiff Nell Matthews Mock, for instance, her registration application is two decades old.

145. Nor does any law require signature verifiers to engage in any signature-matching training. Moreover, while Arkansas law allows applicants to resubmit their absentee request, any second or subsequent application's signature is nonetheless still compared against the original voter registration's signature, which is likely to lead to the same signature-mismatching issue.

146. Arkansas law does not even allow the election official to rely on a copy of the voter's identification instead of a new signature in connection with a resubmission of an application rejected due to a mismatched signature, even if the identification confirms the identity of the applicant and is more recent than the registration.

147. The Absentee Application Signature-Match Requirement also violates the Voter Qualification Clause, which states that "any person" can vote so long as they are at least 18 years old, a U.S. citizen, an Arkansas resident, and provide identification. Ark. Const. art. 3 § 1.

148. Qualifications that "fall[] outside the ambit of article 3, section 1, of the Arkansas Constitution" are unconstitutional. *Kohls*, 2014 Ark. 427, 444 S.W.3d at 853.

149. To even obtain an absentee ballot, voters must hope their application's signature is deemed by a non-expert to "match" the signature on their voter registration application. Even though voters can resubmit an application, they must still match their current signature against the older one, an arbitrary and meaningless comparison for many voters whose signatures have changed over the years or decades. Thus, Arkansas's absentee voters are subject to a signature-matching qualification contrary to the state constitution.

COUNT II

In-Person Ballot Receipt Deadline (Ark. Const. art. 2 § 3; art. 3 §§ 1–2)

150. Plaintiffs incorporate by reference the allegations of all preceding paragraphs.

151. The In-Person Ballot Receipt Deadline requires a voter who chooses to deliver their ballot in person to deliver it to the county clerk's office no later than the Friday *before* election day—days earlier than before the General Assembly enacted this new requirement, under what is now the earliest and most restrictive absentee ballot deadline in the Nation. This new deadline will harm voters like Plaintiff Nell Matthews Mock, who in the December 2020 runoff election dropped off her absentee ballot on the day before election day (an option no longer available to her because of the new law), as well as other plaintiffs and members of the League of Women Voters of Arkansas and Arkansas United who drop off their ballots.

152. The In-Person Ballot Receipt Deadline violates the Free and Equal Elections Clause because it “impair[s] and forfeit[s]” the free exercise of the right of suffrage. Ark. Const. art. 3 § 2. Arkansas allows voters to apply for absentee ballots so long as requests are received by the Tuesday before election day. Election officials must then mail out absentee ballots to these voters—who then must return them—all within as few as *three* full days. For all absentee voters who submit timely applications for absentee ballots, the new Friday receipt deadline significantly impairs the franchise. For many, it will forfeit access to the franchise. Members of the plaintiff organizations, and many Arkansans who vote absentee, will face an impermissible risk of arbitrary disenfranchisement, in violation of their constitutional rights.

153. The In-Person Ballot Receipt Deadline also violates the Equal Protection Clause by creating arbitrary distinctions between groups of voters that serve no compelling government interests.

154. The Deadline establishes the Friday before election day as a separate, earlier deadline for absentee voters dropping off their ballots in-person. For absentee voters who return their ballots by mail, their ballots will be counted if they are received by 7:30 p.m. on election day.

155. This earlier deadline for in-person delivery is arbitrary and serves no compelling government interest. Elections officials already have the capacity to process absentee ballots, as evidenced by their receipt of mailed absentee ballots, through the end of election day.

156. The Deadline also violates the Voter Qualification Clause by requiring absentee voters delivering their ballots in-person to meet a temporal qualification that does not appear in Article Three Section One. Such voters are uniquely required to deliver their absentee ballots to a county clerk on the Friday before election day or face disenfranchisement, even if they meet all of the qualifications spelled out in the text of the Voter Qualification Clause. Instead, these voters must abide by a calendar-based qualification that has no basis in the Clause's text, history, or purpose.

COUNT III

Affidavit Prohibition (Ark. Const. art. 2 § 3; art. 3 § 2; amend. 51 § 19)

157. Plaintiffs incorporate by reference the allegations of all preceding paragraphs.

158. The Affidavit Prohibition amends Arkansas statutes and Amendment 51 Section 3 of the Arkansas Constitution to remove the critical Affidavit Fail-Safe for thousands of Arkansans. Voters who lack the necessary identification no longer have the ability to sign a sworn statement under penalty of perjury as to their identity and registration status. Instead, these voters must return to a county clerk's office with acceptably photo identification by noon on the Monday following election day. If the voter does not, their provisional ballot will not count. There is no other process, and no exception to Arkansas's newly-enacted strict voter identification law.

159. The Affidavit Prohibition will harm members of the League of Women Voters or Arkansas and Arkansas United, as well as voters like Plaintiff Leon Kaplan. Mr. Kaplan used the sworn statement in the 2020 general election because of a lack of acceptable form of voter identification. If not for that option, he would not have voted. He faces an imminent risk of disenfranchisement if the Affidavit Prohibition because he has been unable to obtain an acceptable form of voter identification and would use the sworn statement option if it remained available.

160. As an initial matter, the Affidavit Prohibition did not effectively amend Amendment 51 Section 3, because it does not meet the amendment requirements set out in Amendment 51 Section 19. This constitutional provision allows the General Assembly to amend Section 5 through 15 of Amendment 51 “in the same manner as required for amendment of laws initiated by the people, . . . so long as such amendments are germane to this amendment, and *consistent with its policy and purposes.*” (emphasis added). Ark. Const. amend. 51 § 19.

161. The Affidavit Prohibition violates Section 19 of Amendment 51 because it is neither “germane to” nor “consistent with [Amendment 51’s] policy and purposes.” Ark. Const. amend. 51 § 19.⁷ Amendment 51 has been part of the Arkansas Constitution in 1964 and its purpose it to abolish poll taxes and to “establish a system of permanent personal registration as a means of determining that all who cast ballots in general, special and primary elections in this State are

⁷ Plaintiffs recognize that, in *Martin v. Haas*, 2018 Ark. 283, 556 S.W.3d 509 (2018), the Arkansas Supreme Court held that a law adding a *non-strict* voter identification requirement to Amendment 51 is germane to and consistent with the policy and purposes of Amendment 51. Here, Plaintiffs allege a policy and purpose argument that is, in part, on different grounds than those set forth in *Haas*, because Act 249 imposes a *strict* voter identification requirement. To the extent that this court finds it is bound by *Haas*, Plaintiffs are including this argument for preservation purposes and intend to argue to the Arkansas Supreme Court that *Haas* does not control, because it did not involve a strict voter identification requirement, or, in the alternative, because it was wrongly decided.

legally qualified to vote in such elections, in accordance with the Constitution of Arkansas and the Constitution of the United States.” Ark. Const. amend. 51 § 1.

162. The Affidavit Fail-Safe has undeniably been successful at preventing fraud and ensuring that only legally qualified voters cast ballots in any Arkansas election, *supra* ¶¶ 100–101, and therefore removing it could not possibly be “not germane” to Amendment 51’s purpose. Instead, the Affidavit Prohibition merely imposes a more restrictive and burdensome—and, in many cases, disenfranchising—method of carrying out what the Affidavit Fail-Safe *already* did.

163. Reading Amendment 51 as a whole shows that removing the affidavit option is inconsistent with the Amendment’s goal of abolishing a poll tax and merely creating a system whereby voter eligibility is in some way verified. The Affidavit Fail-Safe allowed Arkansas’s election officials to do exactly that, without fraud or other incident.

164. Instead, the Affidavit Prohibition creates additional barriers for qualified voters to make their votes count by removing the sworn statement option used by thousands of Arkansas voters. While acceptable photo identification itself may not cost money, the time and travel involved in returning to the clerk’s office with identification, and, in many cases, obtaining the identification needed to obtain a free voter identification card, imposes a significant burden on the right to vote. Furthermore, the Affidavit Provision is not related to registration. The Affidavit Provision is therefore not consistent with the purposes of Amendment 51 and its purported amendments are void under Amendment 51 Section 19.

165. The Affidavit Prohibition’s statutory amendments also violate the Arkansas Constitution.⁸ Specifically, the Affidavit Prohibition violates the Free and Equal Elections Clause

⁸ The statutory changes cannot be saved by the Act 249’s amendments to Amendment 51, because, as set out above, those amendments did not comply with Amendment 51 Section 19.

because it “impair[s] and forfeit[s]” the free exercise of the right of suffrage. Ark. Const. art. 3 § 2. Many voters who lack the required photo identification will be unable to vote and have their vote counted. If such voters possess valid photo identification but did not have it with them on election day, they will be disenfranchised unless the return to their county clerk’s office with acceptable photo identification within six days after election day. If they do not possess acceptable photo identification, they will have to overcome additional burdens to obtain acceptable photo identification as a first step, or else they will have no option, exception, or alternative method of accessing the franchise. They might be registered, and may have been for a very long time, but they can no longer vote.

166. This is true despite how Arkansas purports to provide “free” voter identification cards to voters, obtaining such a voter identification comes with its own obstacles. While the Secretary’s website notes that identification is required, it provides no indication that free photo identification is available, let alone how an eligible voter might go about obtaining one. <https://www.sos.arkansas.gov/elections/voter-information/voter-registration-information>.

167. And voters who only discover they lack the requisite voter identification when they present to vote (and learn they no longer can use the Affidavit Fail-Safe) will be unable to obtain the necessary identification to present them at the county clerk’s office by noon the following Monday. Their free exercise of the right of suffrage will be totally “forfeited” because of the Affidavit Prohibition. Ark. Const. art. 3 § 2.

168. The Affidavit Prohibition also violates the Equal Protection Clause because it creates arbitrary distinctions between those voters who lack identification and are forced to return to the county clerk’s office to present documentation in order for their provisional ballots to count and those voters who do not face these unnecessary hurdles.

169. The Affidavit Prohibition serves no compelling government interest, let alone a legitimate government purpose. No election official could point to *any* instance of voter fraud that resulted from a voter swearing under penalty of perjury as to their identity under the Affidavit Fail-Safe, and it was therefore entirely effective at ensuring that only legally qualified voters were permitted to vote. Instead of preventing voter fraud, which did not occur under the prior and less restrictive regime at all, the Affidavit Prohibition works independently and in concert with the other Challenged Provision to carry out only one unsavory goal: making it harder for eligible Arkansas citizens to vote. In fact, the primary sponsor of the Affidavit Prohibition claimed that it led to signature-matching problems—a process “ripe with errors”—even though no law requires the sworn statement be matched against any signature on record. In other words, the stated justification for the Prohibition rests on a fiction. The Prohibition unjustifiably creates a whole new class of voters who will face extra obstacles in voting for no governmental purpose.

COUNT IV

Voter Support Ban

(Ark. Const. art. 2 §§ 3, 4, 6; art. 3, § 1)

170. Plaintiffs incorporate by reference the allegations of all preceding paragraphs.

171. Arkansas voters forced to wait in long lines at polling places are prohibited from receiving any food or water if they are within 100 feet of a polling place—an arbitrary distance that poses a significant issue for those voters who must wait in long lines at the polls. In 2020, for example, voters in Pulaski County had to wait in line to vote for as long as four hours.

172. Voters are also forced to wait in long lines without support from friends or family members, and they are even prohibited from bringing their children with them when they cast their votes.

173. The Voter Support Ban will harm all the individual plaintiffs, who range between the ages of 68 and 85 and to varying degrees have difficulty waiting in line because of various age, health, and mobility issues. Moreover, members of the League of Women Voters of Arkansas and Arkansas United will be harmed because those organizations have engaged—and if not for the Ban *would* engage—in voter support efforts within the arbitrary 100-foot perimeter.

174. The Voter Support Ban disproportionately affects communities with significant populations of Black voters, where long lines at polling places are persistent. By targeting activities that support voters waiting in long line, the Ban will result in suppressing turnout in areas with significant Black voters.

175. The Voter Support Ban violates the Free and Equal Elections Clause because it “impair[s] and forfeit[s]” the free exercise of the right of suffrage. Ark. Const. art. 3 § 2. Voters forced to wait in line can no longer be offered even the most basic sustenance, like a bottle of water, while they wait patiently to exercise the franchise and participate in our democracy. Now, voters will be forced to choose between leaving a long line or risking their health and safety while they wait, sometimes for hours at a time. It is no legislative accident that many such voters will no longer be able to endure the long lines they face, and that, as a result, they will be forced to attempt to return to the polling place or not vote at all. Neither are acceptable options in light of the protections against any laws that “impair[] and forfeit[]” voting rights. Ark. Const. art. 3 § 2.

176. The Voter Support Ban also violates the Equal Protection Clause because it creates arbitrary classifications between voters who are forced to wait in long lines at polling places and could benefit from the kindness of a snack or water offered by some nonpartisan group or friendly fellow Arkansan, and voters who are not forced to wait for extended periods of time. Indeed, it is well documented that Arkansas polling places that have the longest lines are disproportionately

located in poorer or minority communities. Thus, the Voter Support Ban will disproportionately affect poor and minority communities, which already suffer the longest wait times to vote in the State.

177. Additionally, the Voter Support Ban will disproportionately impact elderly voters and voters with disabilities who are more likely to require assistance in voting, or in standing in line and waiting to vote, especially when facing long lines.

178. The Voter Support Ban serves no compelling government interest, let alone a legitimate government purpose. It serves no election administration goal and instead will make the voting experience more difficult and burdensome, if not impossible, for voters in regions where long lines are endemic.

179. The Voter Support Ban also violates the right to speech and assembly protected in the Arkansas Constitution, which declares that the right of the people to peaceable “assemble, consult for the common good; and to petition . . . shall never be abridged.” Ark. Const. art. 2 § 4. The Constitution confirms that “[t]he free communication of thoughts and opinions, is one of the most invaluable rights of man.” Ark. Const. art. 2 § 6.

180. Nonpartisan organizations and individuals who distribute food and drink to voters waiting in line engage in protected core political communication and assembly by encouraging those voters to stay in line.

181. The Voter Support Ban unconstitutionally criminalizes protected speech and expression by prohibiting any person except a voter from “enter[ing] or remain[ing] in an area within one hundred feet (100’) of the primary exterior entrance to a building where voting is taking place.”

WHEREFORE, Plaintiffs respectfully request that this Court enter judgment:

- (a) Declaring that the Challenged Provisions violate the Free and Fair Elections Clause, Equal Protection Clause, the Voter Qualification Clause, and the Free Speech and Assembly Clauses of the Arkansas Constitution; and that the Affidavit Prohibition violates Section 19 of Amendment 51;
- (b) Enjoining Defendants, their respective agents, officers, employees, and successors, and all persons acting in concert with each or any of them, from enforcing any of the Challenged Provisions; and
- (c) Granting any such other and further relief as this Court deems just and proper.

Respectfully submitted, this 1st day of July, 2021.

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**Motions for Pro Hac Vice Forthcoming*

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