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. **No. 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, JAMES SHARP, and J. HARMON SMITH, in their official capacities as members of the Arkansas State Board of Election Commissioners, **DEFENDANTS**

MEMORANDUM ORDER DENYING DEFENDANTS' MOTION TO DISMISS

The League of Women Voters of Arkansas, Arkansas United, Dortha Dunlap, Leon Kaplan, Nell Matthews Mock, Jeffery Rust, and Patsy Watkins filed their Complaint for Injunctive Relief and Declaratory Judgment against John Thurston, in his official capacity as the Secretary of the State of Arkansas, and against the six members of the Arkansas State Board of Election Commissioners, also in their official capacities, on May 19, 2021. Plaintiffs filed an Amended Complaint on July 1, 2021. Their lawsuit alleges that newly-enacted Acts 736, 973, 249, and 728 (the

"Challenged Provisions") violate various provisions of the Arkansas Constitution and seeks declaratory and injunctive relief.

Defendants moved to dismiss on July 20, 2021 under Rule 12(b)(6) of the Arkansas Rules of Civil Procedure, contending that (1) the Amended Complaint fails to state a claim for which relief can be granted, (2) Plaintiffs lack standing and the county clerks and county election commissioners are necessary parties, and (3) sovereign immunity bars Plaintiffs' claims.

The Court heard arguments from counsel for Plaintiffs (Alexi M. Velez, admitted *pro hac vice*, and Jess Askew III) and Defendants (Michael Mosley) on October 1, 2021. After consideration of the papers and argument presented by the parties, the Court holds that Defendants' Motion to Dismiss is denied.

DISCUSSION

Plaintiffs seek declaratory judgment that (1) the Challenged Provisions violate the Free and Equal Elections Clause, Ark. Const. art. 2 § 3, and Equal Protection Clause, Ark. Const. art. 2 § 3; (2) Act 736 and Act 973 violate the Voter Qualifications Clause, Ark. Const. art. 2 § 1; and (3) Act 728 violates the rights to freedom of speech and assembly guaranteed by Ark. Const. art. 2 §§ 4, 6. *See* Am. Compl. ¶¶ 135-181.

Arkansas Rule of Civil Procedure 8 requires that a pleading setting forth a claim for relief contain "a statement in ordinary and concise language of facts

showing the court has jurisdiction of the claim" and "a demand for the relief to which the pleader considers himself entitled." Ark. R. Civ. P. 8. On a motion to dismiss, all reasonable inferences must be resolved in favor of the complaint, and all pleadings liberally construed. *See* Ark. R. Civ. P. 12(b)(6); *Baptist Health v. Murphy*, 2010 Ark. 358, 373 S.W.3d 269 (2010).

First, Plaintiffs have sufficiently pled standing, and county officials are not necessary parties. The general rule is that one must have suffered injury or belong to a class that is prejudiced to have standing to challenge the validity of a law. *Ghegan & Ghegan v. Weiss*, 338 Ark 9, 991 S.W.2d 536 (1999). Dortha Dunlap, Leon Kaplan, Nell Matthews Mock, Jeffrey Rust, and Pasty Watkins each have standing to bring their claims by virtue of their status as registered voters; nothing more is required. *See e.g.*, *Martin v. Haas*, 2018 Ark. 283, 8, 556 S.W.3d 509, 515 (2018). The League of Women Voters and Arkansas United have also sufficiently pled standing in two ways. First, they have associational standing based on the harm they allege the Challenged Provisions impose on their members. Am. Compl. ¶¶ 13–15. Second, they have direct standing based on the harm the Challenged Provisions impose on their organizations and resources. *See e.g.*, *id.* at ¶¶ 13–16 (alleging they must spend significant time and money to re-train members and volunteers, update training materials and literature, educate voters about the new laws, including the new deadline for absentee ballots, and work with voters to correct perceived

mismatched signatures); *id.* ¶ 15–16 (alleging they will have to reformulate their programming, can no longer hand out food, water, and other resources to voters within 100 feet of a polling place because of Act 728, and must train their volunteers not to do so to avoid criminal prosecution). Additionally, county clerks and county election commissioners are not necessary parties in this action for injunctive and declaratory relief challenging the constitutionality of Acts 736, 973, 249, and 728 of 2021 General Assembly. *See Martin v. Kohls*, 2014 Ark 427, 444 S.W.3d 844.

Second, sovereign immunity does not bar Plaintiffs' claims. The Supreme Court has long "recognized an exception to the defense of sovereign immunity when the State is acting illegally, unconstitutionally, or if a state-agency officer refuses to do a purely ministerial action required by statute." *Williams v. McCoy*, 2018 Ark. 17, 3, 535 S.W.3d 266, 268 (2018) (citing *Ark. State Claims Comm'n v. Duit Constr. Co., Inc.*, 2014 Ark. 432, 7, 445 S.W.3d 496, 502 (2014)); *see also Cammack v. Chalmers*, 284 Ark. 161, 163, 680 S.W.2d 689, 689 (1984) ("We view our [sovereign immunity] cases as allowing actions that are illegal, are unconstitutional or are *ultra vires* to be enjoined."). Here, Plaintiffs allege that the Challenged Provisions are unconstitutional, satisfying the exception to sovereign immunity.

Finally, Plaintiffs have sufficiently alleged facts that, if proven true, would entitle them to the relief they seek. The purpose of the declaratory judgment statute is "to settle and afford relief from uncertainty and insecurity with respect to rights,

status and other legal relations." *McCutchen v. City of Fort Smith*, 2012 Ark. 452, 14, 425 S.W.3d 671, 680 (2012) (quoting Ark. Code Ann. § 16–111–102(b)). Declaratory relief will lie when (1) there is a justiciable controversy; (2) it exists between the parties with adverse interests; (3) those seeking relief have a legal interest in the controversy; and (4) the issues involved are ripe for decision. *Williams v. City of Sherwood*, 2019 Ark. App. 487, 586 S.W.3d711.

Whether the validity of the challenged legislative enactments is governed by rational basis or strict scrutiny review is a question of law that requires consideration of the facts pertinent to the challenged enactments. Plaintiffs allege that the Challenged Provisions burden their fundamental rights to vote, speak, and assemble, and that strict scrutiny applies. "When a statute infringes upon a fundamental right," it is subject to strict scrutiny and "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) (quoting *Thompson v. Arkansas Social Servs.*, 282 Ark. 369, 374, 669 S.W.2d 878, 880 (1984)). The Amended Complaint alleges how Plaintiffs are burdened or impaired in their exercise of their fundamental rights under the Challenged Provisions, that in certain circumstances their fundamental rights and those of others who are similarly situated will be outright denied, and that the threat of harm is imminent. The Amended Complaint also alleges that Defendants lack any

compelling state interest in the Challenged Provisions, and that they are not the least restrictive method available to carry out any such interests. Because these are questions of fact, the issue of which legal standard applies is not ripe for determination and will be addressed when the case is considered on the merits. However, the Court holds that the Amended Complaint contains sufficient factual allegations to withstand dismissal at this stage as to those assertions.

CONCLUSION

Based on the legal standard under Arkansas Rules of Civil Procedure 8 and 12(b)(6), Plaintiffs' Amended Complaint sufficiently pleads facts upon which relief can be granted. For the reasons set forth herein, along with all reasons set forth during my bench ruling on October 1, 2021, Defendants' Motion is denied. Defendants shall have ten (10) days from the filing of this Order to file their Answer.

IT IS SO ORDERED, this 1st day of November 2021.

Hon. Wendell Griffen
Circuit Judge