

**IN THE CIRCUIT COURT OF PULASKI COUNTY, ARKANSAS  
FIFTH DIVISION**

**THE LEAGUE OF WOMEN VOTERS  
OF ARKANSAS and ARKANSAS UNITED**

**PLAINTIFFS**

v.

**CASE 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,  
WENDY BRANDON, JAMIE CLEMMER, and  
J. HARMON SMITH, in their official capacities  
As members of the Arkansas State Board of  
Election Commissioners**

**DEFENDANTS**

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**PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW**

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Defendants John Thurston, in his official capacity as Secretary of State, and Sharon Brooks, Bilenda Harris-Ritter, William Luther, Wendy Brandon, Jamie Clemmer, and J. Harmon Smith, in their official capacities as members of the Arkansas State Board of Election Commissioners, by and through their counsel, Attorney General Leslie Rutledge and Assistant Attorney General Brittany Edwards, propose the following findings of fact and conclusions of law in the above-captioned matter:

**Introduction**

1. At the heart of this case is the General Assembly’s power to enact laws providing for free, fair, and secure elections. Specifically, Plaintiffs challenged four voting-related acts of the General Assembly passed during its 93rd term: Act 249, Act 728, Act 736, and Act 973 (hereinafter collectively referred to as “Acts”).

2. Although the 2020 election was successful in Arkansas, the Arkansas electorate showed historic levels of distrust in the outcome of the election. Voters placed record numbers of phone calls and emails to both the Secretary of State's Office and the State Board of Election Commissioners, voicing concerns about the validity of the outcome of the 2020 election.

3. The Secretary of State's Office and the State Board of Election Commissioners each took steps to ease the concerns of voters. Efforts were made to convey to voters that elections in Arkansas are secure, and that Arkansas maintains the integrity of its voting equipment and strives to ensure appropriate conduct at the polls.

4. However, in light of the widespread concern among voters, the State deemed it appropriate to enact additional time, place, and manner laws that would not only increase the security of elections, but would improve the appearance of the integrity of Arkansas elections. The challenged Acts are some of the measures the State enacted to that end.

5. In total, Plaintiffs mounted 12 separate challenges to the Acts under the Arkansas Voter Qualifications Clause, the Arkansas Right to Speech and Assembly Clauses, Amendment 51's germaneness requirement, the Arkansas Free and Equal Elections Clause, and the Arkansas Equal Protection Clause.

6. This matter was heard in a four-day bench trial in Pulaski County Circuit Court before the Honorable Judge Wendell Griffen, beginning March 15, 2022.

7. On March 18, 2022, the Court ordered the parties to file Proposed Findings of Fact and Conclusions of Law based on the evidence before the Court. Defendants submit these Findings of Fact and Conclusions of Law in accordance with the Court's Order.

## Findings of Fact

### Act 249

8. Amendment 51 of the Arkansas Constitution is a “comprehensive regulatory scheme” governing voter registration. *Martin v. Haas*, 2018 Ark. 283, at \*10; 556 S.W.3d 509, 516.

9. After the passage of Amendment 99, which constitutionally imposed certain identification requirements, the General Assembly has the power to create and modify voter identification qualifications. *Id.* at \*11-12 (holding Act 633, requiring proof of voter registration through state or federal photographic identification card when voting was germane to and consistent with the purposes of Amendment 51, and distinguishing from pre-Amendment 99 cases.) Act 249 is an exercise of that power.

10. Under Amendment 51 appropriate photo identification includes a state issued driver’s license, or a state issued identification-only card; a passport; a photo ID issued by a state college or university; a photo ID issued by a government employer; a concealed carry permit; a military ID; or a state-issued voter identification card.

11. Arkansas offers a free voter identification card to any voter who does not have another acceptable form of identification to vote.

12. The ID card requires submission of two documents, one that contains the voter’s name and date of birth, and a second, which requires a voter’s name and residential address.

13. Upon request, clerks can print these documents for a voter free of charge.

14. Plaintiff Dortha Dunlap testified that the free voter identification card alleviated her concerns about Act 249.

15. An individual may use a valid identification card up to four years past its expiration date.

16. Neither of the organizational plaintiffs educated their members on how to obtain the free voter identification card option.

17. Neither of the organizational plaintiffs called the clerks' office to request help with printing off documents for any of their members.

18. Voters who do not present an acceptable form of identification when voting are still permitted to cast a provisional ballot.

19. Previously, Amendment 51 had two ways by which a provisional ballot cast without identification could be cured: either the individual could submit a sworn statement under penalty of perjury stating he or she is registered to vote in the State of Arkansas and is the person registered to vote, or alternatively, go to the county board of election commissioners' office or the county clerk's office by noon on the Monday following the election and present an acceptable form of identification.

20. Act 249 removed the sworn statement option to cure a provisional ballot.

21. After the 2020 election, both the Secretary of State and the State Board of Elections Commissioners received a historical number of calls from voters concerned about the integrity of the 2020 election.

22. The requirement of voter ID was one of the two things that calmed voter's fears.

23. The purpose of Act 249 was to strengthen the integrity of the election process by requiring proof of photographic identification as set out by Amendment 99 as well as strengthening public confidence in the electoral system.

Act 728

24. Arkansas Code Ann. § 7-1-103 governs miscellaneous misdemeanor offenses related to elections. Act 728 amended § 7-1-103 by adding the following language: “A person shall not enter or remain in an area within one hundred feet (100’) of the primary exterior entrance to a building where voting is taking place except for a person entering or leaving a building where voting is taking place for lawful purposes.”

25. Arkansas law already prohibits electioneering and voter intimidation. Prior to the enactment of Act 728, organized presence within the 100’ zone outside a polling place that is *not* for purposes of electioneering was not technically lawful. However, as evidenced by numerous instances during the 2020 election, this presence still caused discomfort and anxiety for voters waiting in line to vote as the voter may be unsure of the intentions of the organization, and may not want to interact with any organization while approaching the polls.

26. After the 2020 election, citizens lodged complaints about non-partisan groups within 100-feet of the polling place, noting such groups were wearing organizational t-shirts.

27. Plaintiffs testified that one of the activities they normally do at polling places is hand out literature.

28. Citizens in El Dorado, Arkansas lodged formal complaints against Mayor Veronica Smith-Creer for doing a Facebook live video within the 100-foot zone during the 2020 elections.

29. In the video, Mayor Creer was discussing the length of the line and other general election-day matters.

30. During the video, Mayor Creer did not interact with any voter.

31. Mayor Creer was not loitering.

32. Mayor Creer was not electioneering.
33. Mayor Creer was not intimidating voters.
34. Mayor Creer did not violate the law.
35. Citizens lodged complaints accusing Mayor Creer of electioneering based on her actions and the video.
36. Act 728 protects organizations and others from being accused of electioneering by requiring them to remain outside the 100-foot zone like all other organizations and individuals.
37. Plaintiffs alleged Act 728 infringes on their right to express support of the right of suffrage.
38. Individuals and organizations may still express support of causes at the polling place, they must do so at 101-feet.
39. Multiple plaintiffs testified that they had witnessed organizations express support for candidates or causes outside the 100-foot zone of a polling place, and that expression does not cease to exist outside 100-feet of the polling place.
40. Nothing in Act 728 prohibits an organization from distributing water or snacks to voters. The organization simply needs to set up its table at least 101' from the entrance to the polling place.
41. Multiple plaintiffs testified they would accept a bottle of water from an organization outside the 100-foot zone and take it with them in line.
42. Nothing in Act 728 prohibits a voter from bringing their own water or snacks with them to the polling place.
43. Multiple plaintiffs testified they could bring their own water if they wanted.

44. Nothing in Act 728 prevents an organization from setting up coolers of water around the polling place.

45. Arkansas law expressly permits a voter to bring an assistor if they need help voting and a disabled voter may skip the line to vote entirely.

46. Arkansas law expressly permits individuals to bring minor children with them to the polling place.

47. Arkansas law permits poll workers to help voters who require assistance.

#### Act 736

48. Arkansas issues absentee ballots 45 days before the election.

49. Plaintiff's expert witness testified absentee voting is a form of convenience voting.

50. Plaintiff Dr. Patsy Watkins testified absentee voting is a choice.

51. When requesting an absentee ballot application, voters identify themselves by signature.

52. Act 736 amended various provisions of Arkansas law concerning absentee ballots. Of relevance, Act 736 requires the signature on a voter's absentee ballot application be similar to that on the individual's voter registration application to receive an absentee ballot. Previously, the law required the signature on a voter's absentee ballot application be similar to that of the signature on the voter's "records."

53. Act 736 does not require the signature to match or be identical, merely be similar to each other.

54. The similarity requirement was not created in Act 736, but has been in effect for some time.

55. Multiple plaintiffs testified they had concerns about Act 736 and “signature matching” because they, or members of their organization, use different versions of their names at different times. Specifically, Ms. Reith testified that the Latinx members of Arkansas United often have five or six names that could be used at any given time.

56. Voter registration records are public documents, and a voter may request to view their signature at any time, at no cost to the voter.

57. A voter may update their signature at any time, including same time he or she requests an absentee ballot application, free of charge.

58. In order to find signatures are dissimilar, the State Board of Election Commissioners requires a clerk have “an abiding conviction” that the signatures were issued by two different people.

59. The State Board of Election Commissioners provides guidance that signatures can change, and should not be found dissimilar for minor issues such as spacing, slanting, speed of writing, electronic signatures comparison, and other forms of signature variances.

60. The State Board of Election Commissioners’ guidance clearly states that when in doubt, issue the ballot to the voter.

61. Act 736 provides clarity for both clerks and voters as to which documents will be used for signature comparison.

62. Act 736 aids voters by isolating the document that their absentee ballot application signature is compared against so that the voter knows which document should be updated if their signature changes.



63. If a clerk believes a signature is dissimilar, Arkansas law requires the clerk to provide prompt notice by whatever means provided by the voter, including email, phone, and mail.

64. A voter may cure a dissimilar signature if a clerk contacts them with concerns.

#### Act 973

65. Absentee ballots may be returned in one of three ways: by mail, in-person, or by third-party bearer.

66. Some voters use a third-party bearer to submit their absentee ballot. When this happens, the voter designates a third-party to submit their ballot and identifies that person on their ballot. The third-party bearer submits the absentee ballot in person at the clerk's office. At that time, the clerk must identify the bearer, compare the bearer's identity with that of the individual identified by the voter, and a log must be signed. This means the clerk or the clerk's designee must take time, apart from whatever they are doing, to ensure the law is followed during the drop-off process. Importantly, the clerk's office is continuing its regular business activities during the election—including probate matters and receiving court filings.

67. Act 973 also amended regulations regarding absentee ballots by moving the in-person absentee ballot drop-off deadline from the Monday before Election Day to the Friday before Election Day. Act 973 applies to third-party bearers and individuals dropping off their own ballots.

68. Even when an individual is dropping off their own absentee ballot in person, it is not as simple as dropping the ballot in a box. Instead, that individual must still interact with the clerk and allow the clerk to verify his or her identity.

69. Dropping off an absentee ballot must be done at the clerk's office, not at the polls.

70. Clerk's offices are not open for regular business on weekends.

71. Absentee voting increased exponentially in 2020.

72. Absentee voting is expected to remain at a much higher level than it was in any election predating 2020.

73. At no point, did any Plaintiff state that in-person absentee ballots should be returned on Election Day, the same day as mailed-in absentee ballots must be received.

74. If a voter misses the Friday deadline, they may still mail in their absentee ballot, early vote---which would be occurring in the same building that receives in-person absentee ballots, or vote on Election Day.

#### Evidence regarding discrimination

75. No evidence of racial animus was presented with regards to any challenged act.

76. No evidence of intent to racially discriminate was presented with regards to any challenged act.

77. Neither organizational plaintiff maintains or possesses demographic information on its members.

#### **Conclusions of Law**

78. Voting is a fundamental right.

79. Absentee voting is not a fundamental right.

80. The State of Arkansas has a compelling interest in preventing voter fraud and the integrity of elections.

81. The State of Arkansas has a compelling interest in maintaining public confidence in the electoral system and in maintaining the appearance of integrity of the electoral system.

82. The State of Arkansas has a compelling interest in the orderly administration of elections.

83. The State of Arkansas has a compelling interest in avoiding voter confusion.

84. The State of Arkansas does not have to wait for fraud to happen before it may regulate it.

#### Voter Qualification Challenges (Acts 736 and 973)

85. Ark. Const. art. 3 § 1 permits any person who has attained the age of 18-years of age, a U.S. citizen, an Arkansas resident, and who provides identification to vote in Arkansas.

86. Because voters identify themselves by signature when requesting an absentee ballot application, Act 736 does not add any additional “penmanship” qualifications to Ark. Const. art. 3 § 1. Act 736 does not violate the Arkansas Voter Qualifications Clause.

87. Act 973 does not violate the Arkansas Voter Qualification Clause (Ark. Const. art. 3 § 1) because it does not add a temporal qualification on the right to vote.

#### Right to Speech/Assembly Challenge (Act 728)

88. Act 728 is a content-neutral regulation.

89. Act 728 leaves open alternative channels of communication for Plaintiffs’ to express their support for the right of suffrage.

90. By limiting non-partisan groups to the same 100-foot threshold that governs other election-related activities, Act 728 goes no further than necessary to achieve the government’s interest in maintaining the appearance of election integrity.

91. Act 728 does not violate Plaintiffs’ First Amendment rights to speech or assembly.

### Amendment 51 Germaneness and Policy Challenge (Act 249)

92. Amendment 51 of the Arkansas Constitution is a “comprehensive regulatory scheme” governing voter registration. *Martin v. Haas*, 2018 Ark. 283, at \*10; 556 S.W.3d 509, 516.

93. Section 19 of Amendment 51 allows the General Assembly to amend certain sections of Amendment 51, including section 13, which pertains to voter identification. Any amendments made by the General Assembly to Amendment 51 must be germane to Amendment 51, consistent with its policy and purposes, and receive a two-thirds majority vote in both houses of the General Assembly.

94. Nothing in Amendment 99, which governs voter identification, mandates a non-photographic identification card option.

95. The Arkansas Supreme Court has previously found that the addition of the sworn statement provision is germane to Amendment 51 and consistent with its policy.

96. The removal of the sworn statement provision is germane to Amendment 51 and cannot be clearly stated to be against the policy of Amendment 51. Act 249 does not violate Amendment 51’s germaneness and policy requirements.

### Free and Equal Elections Challenges (Acts 249, 728, 736, 973)

97. The *Anderson-Burdick* test, used by federal courts to evaluate election-related challenges, is the appropriate standard to review election-related challenges in Arkansas. *Anderson v. Celebrezze*, 460 U.S. 780 (1983); *Burdick v. Takushi*, 504 U.S. 428 (1992).

98. Act 249 does not violate the Arkansas Free and Equal Elections Clause. The requirement for a voter to obtain a photographic identification card provided by the state free of

charge is not a severe burden on the right to vote, but part of the “usual burdens of voting.” *Crawford v. Marion Cty. Election Bd.*, 553 U.S. 181, 198, 128 S. Ct. 1610, 1621 (2008).

99. Act 249 serves a compelling government interest in preventing fraud and maintaining public confidence in the integrity of elections.

100. Act 728 does not violate the Arkansas Free and Equal Elections Clause.

101. The implication of a 100-foot perimeter for all purposes does not severely burden the right to vote.

102. Arkansas law permits those with physical limitations to skip the line, bring someone with them for assistance, or request help from poll workers.

103. Arkansas law permits individuals to bring minor children in their care with them to the polling place.

104. There is no constitutional right to water or food while voting. Even so, nothing in Act 728 prevents individuals from bringing their own water or food, or prevents organizations from handing out water at the 101-foot line that voters may then take with them.

105. Act 728 serves the government’s compelling interest in maintaining the appearance of integrity of the electoral process by avoiding voter confusion and the appearance of electioneering.

106. Act 736 does not violate the Arkansas Free and Equal Elections Clause.

107. Act 736 does not impose a severe burden on the right to vote by requiring similar signatures on a voter’s absentee ballot application and voter registration.

108. Voters may update their registration signature, at any time, free of charge—including at the same time the voter submits an absentee ballot request.

109. Act 736 has an aggressive and mandatory cure provision. A clerk may not reject a voter's absentee ballot application without mailing the voter a notice *and*, if the voter has provided additional contact information such as a phone number or email, attempting to contact the voter in those additional ways. A voter may cure any concerns about a dissimilar signature with the clerk.

110. Act 736 serves a compelling government interest in avoiding voter confusion and creating a uniform electoral system by informing voters and clerks specifically which documents should be used to verify an absentee ballot application.

111. Act 973 does not violate the Arkansas Free and Equal Elections Clause.

112. Act 973 does not impose a severe burden on the right to vote by moving an existing deadline for in-person absentee ballots one business day.

113. Act 973 serves the government's compelling interest in orderly elections by requiring the most administratively cumbersome ballots, absentee ballots submitted in-person, be submitted prior to the last day of early voting. The General Assembly reasonably concluded that the number of absentee ballots cast would continue to be higher than the state's previous average, and that counties needed more time to process such ballots.

#### Equal Protection Clause Challenges (Acts 249, 728, 736, and 973)

114. None of the four challenged acts violate the Arkansas Equal Protection Clause.

115. Each of the four challenged laws are facially neutral and generally applicable.

116. No evidence of racial animus or an intent to discriminate was presented.

117. Mere evidence of disparate impact is not sufficient to strike down Acts 728 or Act 249, or any otherwise valid statute under Arkansas law.

118. The classifications regarding the timing of a submission of an in-person absentee ballot application pre-date Act 973. Striking down Act 973 would leave such classifications in place, with in-person absentee ballots due on the Monday before Election Day and mailed ballots due on Election Day itself.

119. Legitimate reasons exist for treating in-person absentee ballots differently than mailed-in absentee ballots, namely the administrative measures that must be taken with the submission of an in-person absentee ballot.

120. Act 736 is the least restrictive way of verifying a voter's identity at the ballot request stage.

121. Each of the 12 challenges fails as a matter of law. Plaintiffs' request for injunctive and declaratory relief are hereby denied.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I, Brittany Edwards, certify that on March 21, 2022, I filed the foregoing document with the Clerk of the Court via the E-flex filing system, which shall send notification of the filing to all parties of record and their counsel.

*Brittany Edwards*  
BRITTANY EDWARDS

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