

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

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

PLAINTIFFS

v. CASE NO. 60CV-21-3138

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

DEFENDANTS

PLAINTIFFS' PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

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I. Introduction

1. On March 15, 2021, Plaintiffs filed suit seeking declaratory and injunctive relief challenging four laws newly enacted by the 93rd General Assembly: Acts 736, 973, 249, and 728 (collectively, the “Challenged Provisions”).

2. Plaintiffs allege that the Challenged Provisions impair and infringe upon their fundamental rights to vote, speak, and assemble, and to equal protection of laws, as guaranteed by the Arkansas Constitution.

3. Plaintiffs are five senior citizens with various medical conditions and two non-partisan, non-profit membership organizations that promote civic engagement and participation in our democracy.

4. Defendants are seven state election officials collectively responsible for administering and ensuring compliance with Arkansas’s election laws and providing statewide guidance and training to local county election officials.

5. Defendants contend the Challenged Provisions merely involve content-neutral time, place and manner regulations of election mechanics and do not infringe upon any fundamental rights.

6. On March 15-18, 2022, the parties tried this matter before the Court. The parties presented evidence through live testimony, documentary exhibits, and deposition recordings. After considering the testimony, documentary evidence, pleadings, legal memoranda, and oral argument, the Court makes the following findings of fact and conclusions of law.

II. Jurisdiction and Venue

7. This Court has subject matter jurisdiction pursuant to 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).

III. Procedural Background

8. The League of Women Voters of Arkansas (the “League”) and Arkansas United (collectively, the “Organizational Plaintiffs”) filed their Complaint for Injunctive Relief and Declaratory Judgment on May 19, 2021. Plaintiffs Dortha Dunlap, Leon Kaplan, Nell Matthews Mock, Jeffery Rust, and Dr. Patsy Watkins (collectively, the “Voter Plaintiffs”) joined the Organizational Plaintiffs in filing an amended complaint on July 1, 2021.

IV. Findings of Fact:

A. The 93rd General Assembly passed the Challenged Provisions in 2021.

9. Act 736 was enacted into law on April 15, 2021, following its passage by the General Assembly. Act 736 requires untrained election officials to examine and verify voters’ absentee ballot applications through the unreliable practice of signature-matching while using only a single comparator: the signature on the individual’s voter registration application. Ark. Code Ann. § 7-5-404 (2021); Pls.’ Ex. 3.

10. Act 973 was enacted into law on April 27, 2021, despite that Governor Asa Hutchinson refused to sign the bill. Act 973 moves the deadline for delivery of absentee ballots in person from the Monday before election day to the close of business of the county clerk’s office on the Friday before election day. *Id.* §§ 7-5-411(a)(3), (4) (2021); Pls.’ Ex. 4. Meanwhile, absentee ballots returned by mail are timely if received by 7:30 p.m. on election day. *Id.* § 7-5-

411(a)(1)(A) (2021); Pls.’ Ex. 4. Act 973 thus reduces the number of days voters have to return absentee ballots in person, and creates separate and arbitrary deadlines that depend on how an absentee ballot is returned. *See* Ark. Code Ann. §§ 7-5-404 (2021), 7-5-411 (2021); Pls.’ Ex. 4.

11. Act 249 was enacted into law on March 3, 2021, following its passage by the General Assembly. Act 249 eliminates a vital failsafe for voters who lack qualifying identification. Previously, a voter without compliant photo identification could cast a provisional ballot that would be counted, without any further action, if the voter completed an affidavit under penalty of perjury at the polls (or, if voting absentee, completed and returned a sworn statement) stating the voter is the person whose registration information was on the ballot. Ark. Const. amend. 51 § 13(b)(4)(A)(i)(a) (amended 2021); Pls.’ Ex. 1. Act 249 removes that option, requiring an individual who does not present a compliant identification, whether in person or enclosed with an absentee ballot, to return to the county board of elections in person within six days after election day to present compliant photo identification. *See id.*

12. Act 728 was enacted into law on April 15, 2021, following its passage by the General Assembly. Act 728 prohibits anyone from entering or remaining within a 100-foot perimeter of a polling place’s main entrance unless doing so for “lawful purposes.” Ark. Code Ann. § 7-1-103(a)(24) (2021); *see also* Pls.’ Ex. 2. Violations of Act 728 are a class A misdemeanor, punishable by a fine of up to \$2,500 and up to one year in county jail. *Id.* §§ 5-4-201(b)(1) (2009), 5-4-401(b)(1) (2019); *see also id.* § 7-1-103(b)(1) (2021); Pls.’ Ex. 2. Any individual convicted of violating Act 728 becomes “ineligible to hold any office or employment in any of the departments in” the State, and if a State employee already, “shall be removed from employment immediately.” *Id.*; Pls.’ Ex. 2.

B. Plaintiffs are Arkansas voters and organizations whose fundamental rights will be impaired or altogether forfeited by the Challenged Provisions.

1. Ms. Dortha Dunlap

13. Plaintiff Dortha Dunlap is an 86-year-old resident of Springdale. Trial Testimony of Dortha Jeffus Dunlap on March 15, 2022 (“Dunlap Testimony”). She is a retired employee of the United States Census Bureau. *Id.* She has been a member of the League of Women Voters for almost 53 years. *Id.* She first registered to vote in 1957, when she turned 21. *Id.* She last updated her registration in 2017, when she moved to her current residence. *Id.*

14. Ms. Dunlap is an avid voter who tries to vote in every election. *Id.* She voted most recently in a February 2022 special election and the 2020 general election. *Id.* She returned her absentee ballot by mail for the 2020 general election because she had concerns about voting in person. *Id.* She has opted to vote absentee because it is difficult for her to get to the polls because she is older and suffers from various health conditions which affect her mobility. *Id.* She is concerned about voting absentee by mail in the future, however, because of mail delays that she herself has experienced. *Id.* For example, she once mailed a Christmas card in mid-December that did not arrive to her friend in New Orleans until mid-February, and she was shocked it took “two months to travel across two states.” *Id.*

15. Ms. Dunlap is a cancer survivor, experiences arthritis and neuropathy in her hands, and uses a wheelchair or walker to get around. *Id.* The arthritis and neuropathy in her hands makes them stiff and affects her ability to sign her name. *Id.* Onset of her symptoms is unpredictable and can affect her ability to sign documents from day to day. *Id.* Her mobility issues prevent her from walking for any serious distance or standing for any period without extreme discomfort. *Id.*

16. Ms. Dunlap only rarely drives rarely and relies primarily on her family to get around. *Id.* Because she is driving less and less, Ms. Dunlap does not plan to renew her driver’s

license when it expires in August of 2025. *Id.* She last renewed her driver's license on September 23, 2021, to purchase a new car with her daughter. *Id.*

17. Ms. Dunlap believes the Challenged Provisions will impair or forfeit her right to vote. *Id.* More specifically, she believes that under Act 736 her absentee ballot will be rejected because her arthritis affects her ability to sign her name consistently. *Id.* The signatures that Washington County has collected for Ms. Dunlap over the years vary significantly. *See* Pls.' Ex. 80. Ms. Dunlap is concerned Act 973 will affect her ability to vote, because it shortens the time to return her ballot in person. *Dunlap Testimony.* And she is concerned Act 249 will burden her right to vote because four years after her license expires, she will not have the requisite form of identification to cast a ballot. *Id.* Although the state offers a free voter ID, the administrative burdens in tandem with Ms. Dunlap's mobility issues will make it difficult for her to obtain such an ID, particularly because Ms. Dunlap expressed concern about imposing upon the younger members of her household for assistance. *Id.*; Pls.' Ex. 6.

2. Dr. Patsy Watkins

18. Plaintiff Dr. Patsy Watkins, Ph.D., is a 74-year-old Fayetteville resident and a member of the League of Women Voters of Arkansas. *Trial Testimony of Dr. Patsy Watkins on March 15, 2022 ("Dr. Watkins Testimony").* She has lived in Arkansas since 1983 and in Fayetteville for the past 23 years. Dr. Watkins retired from the University of Arkansas in 2017, where she served as a professor of journalism for approximately 34 years. *Id.*

19. Dr. Watkins is passionate about exercising her right to vote. *Id.* Voting is her way of participating in the democratic process. She is an avid voter and tries to vote in every election possible. *Id.*

20. Dr. Watkins first registered to vote in 1969 when she turned 21, which was the first election in which she was eligible to vote.¹ *Id.* She first registered to vote in Arkansas in 1983, and she last updated her voter registration more than 20 years ago, when she moved to her current residence. *Id.* Dr. Watkins's signature has changed since she registered to vote in 1983. *Id.*; Pls.' Ex. 81.

21. Dr. Watkins first joined the League more than 40 years ago, when she lived in Waco, Texas. *Id.* She has been a member of the League of Fayetteville, a local chapter, for approximately three years. *Id.*

22. Dr. Watkins has health conditions that affect her ability to vote absentee and in person under the Challenged Provisions. *Id.* She has arthritis in her right hand, her dominant hand, and a kidney condition that requires she stay hydrated and drink water consistently throughout the day. *Id.* Flareups of her arthritis are unpredictable and uncontrollable and make it difficult for her to type and write. *Id.* Symptoms can be brought on by normal activity, overuse, and even the weather. *Id.* Tasks that require manipulation of small objects, such as holding a pen and writing while signing her name, can be painful and challenging for Dr. Watkins. *Id.*

23. Changes to Dr. Watkins's signature are as unpredictable as her arthritis flareups. *Id.* But the one consistent thing is that signatures written while her hands are cramping do not look similar to her normal signature. *Id.*

24. Dr. Watkins was first diagnosed with arthritis approximately 15 to 20 years ago. *Id.* Since then, Dr. Watkins's arthritis has gotten progressively worse. *Id.* At first it progressed slowly,

¹ The 26th Amendment, which afforded the right of suffrage to those aged 18 through 21 years of age, was not ratified until July 1, 1971.

but in recent years it has progressed more rapidly. *Id.* She has been advised that her symptoms will only get worse as her arthritis advances. *Id.*

25. For the past 10 to 12 years, Dr. Watkins has voted in person. *Id.* Before that, she voted absentee on occasion because her position at the University of Arkansas required her to travel during election season. *Id.* Dr. Watkins is certain she will vote in future elections, and she anticipates voting absentee in at least some elections in the future because of her health condition. *Id.* Dr. Watkins plans to vote in the upcoming primary election in May 2022 and the general election in November 2022. *Id.*, Pls. Ex. 37.

26. Dr. Watkins voted in the November 2020 general election. Dr. Watkins Testimony. She heard that early voting turnout had been high and anticipated election day turnout would be even higher. *Id.* She voted in person at the Naturals' baseball stadium during early voting on a weekday around 2:30 or 3:00 p.m. *Id.* She specifically chose that day and time to avoid long lines because of her medical conditions. *Id.* She tried to be strategic in her timing, preparation, and arrival. *Id.*

27. Nevertheless, when Dr. Watkins arrived to vote, she noticed the line extended outside the stadium entrance. *Id.* At first, Dr. Watkins thought the line looked reasonable and waited outside in the heat for approximately 30 minutes. *Id.* She found it difficult to wait and considered leaving. *Id.* Dr. Watkins stayed because she did not think the line would be different on other days. *Id.* The line was even longer once she got inside the stadium. *Id.* She had not anticipated having to wait in line or outside for so long. *Id.* The long wait made Dr. Watkins uncomfortable and caused her severe back pain. *Id.* Had the line been any longer, she would have left. *Id.* The day she voted early was an unexpectedly warm day, and Dr. Watkins was not prepared to endure the heat for an extended period. *Id.* She did not have water to keep her hydrated while

waiting in the heat. *Id.* No one was offering water to voters waiting in line. *Id.* Had someone offered her water, she would have accepted it because of the heat and especially her kidney condition. *Id.*

28. Dr. Watkins believes the Challenged Provisions will impair or forfeit her right to vote. *Id.* Specifically, she is concerned that under Act 736 election officials will reject her absentee ballot application if the officials determine that her signature is not similar to the signature on her registration application from 1983. *Id.* Dr. Watkins never had an absentee ballot application rejected prior to the enactment of Act 736, but she recognizes that a lot is required of people who must do the signature matching and she is concerned that they are not trained. *Id.* Dr. Watkins is concerned that an erroneous rejection will affect her right to vote. *Id.*

29. Dr. Watkins knows she can update her signature by submitting a new voter registration application, but she does not believe this will address the concern because her signature is prone to change—especially because of her health condition. *Id.* She finds it unreasonable that Act 736 could require her to update her signature before every election. *Id.*

30. Dr. Watkins believes Act 728 will burden her right to vote because it is vague. *Id.* She does not understand what “lawful purpose” means and is confused as to whether a friend would be allowed to help her wait in line. *Id.* She is also not sure whether volunteers could offer her water or snacks while she’s waiting in line. *Id.* Given her health conditions, assistance would be essential for Dr. Watkins to endure a line like the one she waited in to vote in the 2020 general election without suffering pain and discomfort. *Id.* She understands that Arkansas law allows disabled individuals to move to the front of a line at a polling place but is unsure how she would prove that and whether she can rely on receiving an accommodation in the future. *Id.*

3. Ms. Nell Matthews Mock

31. Plaintiff Nell Matthews Mock is a 73-year-old resident of Little Rock. Trial Testimony of Nell Matthews Mock on March 15 and 16, 2022 (“Matthews Mock Testimony”).

32. Ms. Matthews Mock is a retired biomedical researcher and a member of the League of Women Voters of Arkansas. *Id.* She has been a member of the League of Women Voters since 1993. *Id.*

33. For Ms. Matthews Mock, voting is a family tradition about which she feels strongly. *Id.* She believes citizens need to be involved in our government through voting. *Id.*

34. Ms. Matthews Mock first registered to vote when she turned 18, shortly after the federal government ratified the 26th Amendment. *Id.* She first registered to vote in Arkansas after she moved to the state in 1992. *Id.* She later updated her registration in 2001, after she moved to her current residence. *Id.* Each time she registered in Arkansas, she completed a new registration form, but her signature has changed since she filled out both of those forms. *Id.*

35. Ms. Matthews Mock suffers from osteoporosis, stenosis, and scoliosis, as well as carpal tunnel, arthritis, and bursa in her hands. *Id.* These conditions all make it harder for her to vote. *Id.* To alleviate the symptoms, she has had to undergo carpal tunnel release surgery. *Id.* She also receives steroid injections, the effectiveness of which wears off over time. *Id.* Even with treatment, these conditions make Ms. Matthew Mock’s hands stiff, swollen, and difficult to use. *Id.* This impacts her writing and the fine motor control she needs to write by hand or even just sign a document. *Id.* The onset and extent of Ms. Matthews Mock’s symptoms are unpredictable, and she cannot always control or manage them. *Id.* Her symptoms can last for hours; if she does have to write or sign documents during these bouts of pain, her signature does not look the same. *Id.* Depending upon the severity of her symptoms, her signature changes from one day to the next. *Id.* These changes are not intentional and not under Ms. Matthews Mock’s control. *Id.*

36. Ms. Matthews Mock last voted in a November 2021 election regarding a library millage increase. *Id.* She was able to vote in person because there were no lines, which she describes as typical for library millage elections. *Id.* Ms. Matthews Mock had to wait in line to vote for several hours during elections in the 2000s but could not do that now because of her health conditions. *Id.* She most recently remembers waiting in line for more than an hour in 2005. *Id.* This was before she was as incapacitated as she is now, yet she still suffered from neck and back pain afterwards. *Id.* She is aware that Arkansas law permits disabled individuals to move to the front of a voting line. *Id.* However, Ms. Matthews Mock does not consider herself disabled and believes that an accommodation is more appropriate for voters who are wheelchair-bound, dependent on a cane, or mothers with young children. *Id.* Although she needs a cane on occasion, she would feel embarrassed to skip ahead of other voters in line. *Id.*

37. Ms. Matthews Mock has voted absentee three times. *Id.* She most recently voted absentee in the November 2020 general election and a consequent runoff, to avoid long lines. *Id.* She plans to vote in the upcoming elections in May 2022 primary election, but her decision whether to vote in person or absentee in future elections will depend on the length of the lines, the state of the COVID-19 pandemic, and her health. *Id.*

38. Ms. Matthews Mock believes the Challenged Provisions will impair or forfeit her right to vote. More specifically, she believes Act 736 will make it more likely that her absentee ballot application will be rejected because she did not suffer from arthritis (and the resulting effects of that condition on her signature) when she registered to vote in 1992 and when she updated her registration in 2001. *Id.* Moreover, during the pendency of this lawsuit, Ms. Matthews Mock submitted a public records request to Pulaski County requesting her voter registration application and any absentee ballot applications. *Id.*; Pls.' Exs. 78-79. Pulaski County did not produce a single

voter registration application for Ms. Matthews Mock, indicating that Pulaski County does not have the signature from her any of her voter registration applications on file. *See* Pls.' Exs. 78-79. Ms. Matthews Mock was never notified that her signature was missing. Matthews Mock Testimony.

39. Because Pulaski County does not have a signature from Ms. Matthews Mock's voter registration form on file, it does not have the only permissible signature comparator for her absentee ballot applications under Act 736. *See* Ark. Code Ann. § 7-5-404. Moreover, the signatures that Pulaski County *does* have on file for Ms. Matthews Mock vary greatly. *See* Pls.' Exs. 78-79. Pulaski County produced records of Ms. Matthews Mock's signatures from her June 2020 absentee ballot application, as well as from pollbooks that she signed for elections on November 9, 2021, November 2, 2021, and August 29, 2005. *Id.* Each of these signatures in her voter record look different from the signature on her June 2020 absentee ballot application. *Id.* In fact, her signatures created on November 9, 2021, and November 2, 2021 – just *one week apart* from one another – appear different. *Id.*; *see also* Pls.' Exs. 78-79.

40. Unfortunately, there is nothing Ms. Matthew Mock can do to fully ensure her signatures will match. Matthews Mock Testimony. She understands that she can update her signature but remains concerned about Act 736 because there is no guarantee she will not be suffering from symptoms of her health conditions that affect her signature when she does so—or when she later applies for an absentee ballot. *Id.*

41. Ms. Matthews Mock also believes Act 973 burdens her right to vote because the new deadline eliminates the window of time in which she previously returned her absentee ballot. *Id.* She returned her absentee ballot in person during the day or two before election day for a runoff election following the 2020 general election. *Id.* She did not mail in her absentee ballot because

she was concerned it would not arrive in time to be counted because of mail delays. *Id.* Ms. Matthews Mock would like the opportunity to consider her voting decisions in the days leading up to election day, because she believes citizens ought to make such decisions with care. *Id.*

42. Lastly, Ms. Matthews Mock believes Act 728 will prevent her from voting in person, especially during general elections, because she cannot wait in line for an extended period without assistance. *Id.* She also believes Act 728 is vague because she does not know what a lawful purpose is or who would decide whether an individual is lawfully present in the 100-foot zone restricted by Act 728. *Id.* In prior elections, when her church was used as a polling place, she has entered the church during an election for reasons unrelated to voting. *Id.* She is unsure if, under Act 728, she would be considered lawfully present—and who would decide whether she is lawfully present—under those circumstances. *Id.*

4. Mr. Jeffrey Rust

43. Plaintiff Jeffrey Rust is a 69-year-old resident of Fayetteville. Deposition Testimony of Jeffrey Rust, played into the record on March 15, 2022 (“Rust Testimony”). Mr. Rust has lived in Fayetteville for about 30 years and has been registered to vote in Arkansas for the past 30 years as well. *Id.*; Pls. Ex. 82. He first registered approximately 50 years ago when the federal government ratified the 26th Amendment. *Id.* Mr. Rust tries to vote in every election and typically voted in person until the 2020 general election, when he voted absentee due to concerns about contracting COVID-19, concerns that are especially acute because he has had lung surgery. *Id.* Mr. Rust found voting absentee easier and more comfortable and would prefer to continue to vote absentee in the future. *Id.* Mr. Rust most recently voted in the 2021 sales tax extension. *Id.* He had to vote in person for this election because he had not applied to vote absentee. *Id.*

44. Mr. Rust prefers to vote as close to election day as possible because he recognizes that circumstances can sometimes change during the voting window that would change how he might cast his ballot. *Id.* For example, he explained that in 2017 there were multiple medical marijuana initiatives on the ballot, and one initiative was later struck down by the courts after early voting had already commenced. *Id.* Voters who supported the stricken initiative over the other competing initiative, rather than supporting both, were as a result disenfranchised on that issue. *Id.*

45. In the 2020 general election, Mr. Rust waited until as close to election day as possible for his wife to take him to drop off his ballot. *Id.* He chose to drop his ballot off in person because he was concerned about mail delays preventing his ballot from arriving on time to be counted. *Id.* Mr. Rust had noticed that sometimes, his mail did not arrive for days at a time and then arrived all at once. *Id.*

46. Mr. Rust suffers from several medical conditions, including macular degeneration and tremors, that affect his ability to drive, read and write, and stand for long periods of time—and ultimately his ability to vote. *Id.* If he votes absentee in the future, it will be because of his illnesses and physical disabilities. *Id.* Mr. Rust's vision is poor and continues to deteriorate. He cannot read the newspaper without holding it close to his face in good light. *Id.* Mr. Rust must receive injections in his right eye every four to six weeks as treatment for his macular degeneration. *Id.*

47. Mr. Rust's hand tremors are particularly acute when he signs his name, and as a result, he believes his signature is different every time he signs his name. *Id.*; Pls.' Exs. 34, 82. In fact, on a vacation in Mexico a merchant refused to cash Mr. Rust's traveler's check because his signatures were so significantly different. *Id.* Mr. Rust believes his ballot will be similarly rejected under Act 736 because his signature varies so significantly. *Id.*

48. Mr. Rust believes the Challenged Provisions will impair or forfeit his right to vote. *Id.* Specifically, Mr. Rust believes that Act 736 will result in future absentee ballot applications being rejected, given his various conditions which severely impact his signature and handwriting. Mr. Rust also believes Act 973 will burden his right to vote because the earlier deadline means he will not be able to wait as long to return his absentee ballot in person as he has in prior years. *Id.* Additionally, he is concerned that Act 973 reduces opportunities for him to drop off his absentee ballot in person, especially because he is largely dependent on his wife for rides, and she is uncomfortable driving in heavy traffic. *Id.* Finally, he is concerned that Act 728 will burden his right to vote because he relies on a cane to walk and cannot stand for long periods of time without assistance. *Id.* Mr. Rust is unsure whether his wife or daughter would be able to assist him if he votes in person and has to wait in line. *Id.* He believes that under Act 728, he would be forced to leave a line in which he physically cannot wait without their help. *Id.*

5. The League of Women Voters of Arkansas

49. Ms. Bonnie Miller testified on behalf of the League. Remote Trial Testimony of Bonnie Miller on March 15-16, 2022 (“Miller Testimony”). The League is a nonprofit, nonpartisan membership organization with 323 dues-paying members. The League’s mission is to expand and protect voting rights, empower voters, and defend democracy through education and advocacy. *Id.* In furtherance of its mission, the League educates citizens about their voting rights and the electoral process. *Id.* The League has a diverse membership including African-American and Latinx members. *Id.* Plaintiffs Dortha Dunlap and Nell Matthews Mock are members of the League. *Id.*²

² Dr. Watkins is also a member of the League, but Ms. Miller did not recall Dr. Watkins’s name during her testimony.

50. Ms. Miller has served as the League's president since June of 2021.³ *Id.* Before being elected as president, Ms. Miller served on the leadership team for the League. *Id.* Ms. Miller serves as president in a volunteer capacity. *Id.* She devotes approximately 40 hours per month to her work for the League. *Id.*

51. The League has no employees and operates almost solely on volunteer support. *Id.* Besides volunteer support, the League relies on funding from its members' dues and the sale of its book, *Government in Arkansas*. *Id.* The League also sometimes receives gifts that provide additional funding, but in a typical year, the League does not receive significant funds from gifts and does not count on receiving any when it plans its budget. *Id.*

52. Updating the *Government in Arkansas* book requires a significant amount of time and resources that the League does not always have. *Id.* The League's leadership team meets once a year to determine whether it has the resources to do so. *Id.* This year the League could not afford to publish an update. *Id.* Despite not having the funds to publish an updated version of the book, the League felt it necessary to publish addendums summarizing some recent changes in laws related to the government. *Id.* The addendums were published as a less costly alternative to fully updating the book, but the costs associated with publishing the addendums required the League to divert its resources and time from other activities and programs to research, write, and publish the addendums and then try to sell the books with their addendum. *Id.*

53. In addition to its *Government in Arkansas* publication, the League furthers its mission of educating voters by holding monthly training sessions via Zoom. *Id.*

³ Ms. Miller also serves as the president for the League of Women Voters of Washington County, which is not a party to this suit.

54. The League also holds events as needed to educate on specific topics of concern *Id.* These events are often driven by the League's current priorities. *Id.* For example, last year, the League held events regarding redistricting because it was the League's main priority for the year. *Id.* This year, the League is prioritizing legislative process changes. *Id.* In election years, the League conducts an event explaining the ballot initiatives voters will make decisions on and describing what a yes or no vote on those measures means. *Id.*

55. The League's training sessions are resource intensive, and the League devotes a significant portion of its budget, time, and resources to them. *Id.* When the League has to create written materials for events, it takes approximately five to ten hours to do so. *Id.* And when the League holds in-person events—which it plans to resume doing this year—arranging the logistics and planning for the events takes approximately five to ten hours of League time. In-person events are also costly because the League pays for venues, food and drinks, and honorariums. Given the League's resources, it is already unable to hold events about all of the topics it would like, and to hold additional events to educate about the Challenged Provisions would require the League to divert resources away from its other priorities. *Id.*

56. The League also holds a monthly training session to teach members how to assist other people in registering to vote. *Id.* Ms. Miller leads and teaches these training sessions via a PowerPoint presentation. *Id.* These sessions are scheduled to last only an hour. *Id.* Ms. Miller tries to address questions from attendees regarding other topics when she can, but because the training sessions are only scheduled for an hour, doing so can take time away from training attendees how to help other people register to vote. *Id.*

57. Ms. Miller has been asked questions about each of the Challenged Provisions by attendees at the monthly training sessions. *Id.* Most often she receives questions regarding how the

Challenged Provisions work. *Id.* Many of the League's members and other trainees express "fear or confusion" about what the Challenged Provisions mean and how the Challenged Provisions will change their ability to vote. *Id.*

58. Ms. Miller receives the most questions about Act 736. *Id.* Many of the League's members are older and afraid their signatures will not match their registration applications. *Id.* Most of the older members registered to vote many years ago and have since developed medical conditions that affect their signature sporadically. *Id.* Ms. Miller shares these concerns because she suffers from a degenerative neurological disease that attacks her motor skills and her ability to sign. *Id.*

59. The League is concerned about how Act 736 will affect its members, especially given that many of the League's members are older and have health conditions that impact their signatures. *Id.* The League is worried that their members will not be able to obtain absentee ballots because the signatures on their voter registration form will be deemed not similar to the signatures on their absentee ballot applications. *Id.* Although Ms. Miller is unaware of any members who have reported having their absentee ballot applications rejected due to their signatures in the past, Ms. Miller and the League remain concerned that erroneous rejections will occur under Act 736 because now clerks can use only one point of comparison rather than the entire record of signatures. *Id.* Despite the cure provision, Ms. Miller believes that the additional steps voters must take within such a short window of time will force members to forego the opportunity to cure. *Id.* Many members, like Ms. Dunlap, have transportation and mobility limitations that make this a difficult task. *Id.*; *see also* Dunlap Testimony. Nor does Ms. Miller believe that the ability for members to update the signatures on their voter registration form by reregistering will help avoid the negative effects of Act 736. Miller Testimony. Registering to vote in Arkansas is burdensome

because it cannot be done online and must be done in person. *Id.* Furthermore, telling the public and its members that they can update their signature by reregistering to vote to attempt to avoid erroneous rejections under Act 736 is likely to cut against the League's mission of registering voters and expanding the franchise because individuals will choose not to register or vote at all if they think they need to take additional steps like reregistering every year. *Id.*

60. The League is also concerned about Act 973's effects on League members and the public. Act 973's varying absentee ballot deadlines are confusing to League members. *Id.*; Pls. Ex. 37. Many League members prefer to hand-deliver their ballot because mail delays make them fearful their ballots will not arrive on time. *Id.* If they miss this deadline they will be completely disenfranchised and no longer allowed to vote in person. *Id.* The League will do its best to educate voters and make sure they understand which deadlines apply to them and how the new deadlines affect their plans to vote. *Id.* But doing so will likely affect the League's success in encouraging less engaged members of the public to vote and will therefore detract from its mission of expanding the franchise. *Id.* In Ms. Miller's experience dealing with less engaged members of the public, any time the League educates the public about new steps or complications in the voting process, people who are not as engaged in voting as League members will react to the new steps or complications by deciding not to vote at all. *Id.*

61. The League is also concerned about how Act 249 will affect its members and the public. Some League members live in rural areas, and some do not have driver's licenses. *Id.* Without the option to complete an affidavit, members who live in remote rural areas will have to incur additional time and transportation costs if they do not bring their ID to the polling location. *Id.* And if members do not have one of the accepted forms of ID, they will have to incur even more time and transportation costs to obtain one. *Id.* Members who vote by absentee ballot will also be

affected by Act 249 because they, too, now lack the option to complete an affidavit in lieu of sending a copy of their qualifying ID with their absentee ballot, an option members may have used in the past. Members who must return a copy will incur additional costs associated with locating and using a photocopier machine to make and return a copy of their ID with their ballot. *Id.* In the past, the League has provided photocopying and printing services and has also provided services transporting members. *Id.* If resources permit, the League may provide these services to assist members in obtaining copies of their IDs or in traveling to obtain a qualifying ID; however, doing so will be resource-intensive and will put additional strain on the League's already limited budget and resources. *Id.*

62. The League believes Acts 736, 973, and 249 are antithetical to its mission and bad for Arkansas's voters. *Id.* If these laws remain in effect for the 2022 general election, the League will take steps to educate its members and the public about these laws. But given the League's limited resources, it cannot educate members and the public about these laws without taking resources away from the League's other activities and priorities. *Id.*

63. The League is likewise concerned about how Act 728 will affect its activities. Expanding voter access, ensuring that all eligible citizens are fully enfranchised and able to exercise their right to vote are all central to the League's mission. *Id.* Act 728 is antithetical to the League's mission and impairs the League's ability to support voters or fulfill its mission. *Id.* The League accomplishes its mission through various activities and its get-out-the-vote programs, voter registration drives, and voter support efforts before, on, and after election day. *Id.* In this respect, election day is the League's most important day because it spends substantial time, effort, and resources helping Arkansans ensure their ballots are properly cast and canvassed. *Id.* Volunteers offer a wide range of assistance including transportation assistance, physical assistance

with waiting in line, and helping voters figure out how to navigate the polling location. *Id.* The League does not organize polling place volunteer efforts on election day, but it encourages its members to engage in these activities and the League's members do so in the League's name.

64. To provide this level of meaningful assistance, League members must operate within the 100-foot perimeter because some forms of voter support, like handing out water or snacks or assisting voters in line, require the volunteers to be in close proximity to voters. *Id.* As a result, the League and its members' election day activities will be affected by Act 728. The League is unlikely to encourage its members to engage in these activities if Act 728 remains in effect because it is unclear who is permitted in the 100-foot zone, and the League does not want its members to face Act 728's criminal penalties if these polling place support activities are not permitted by the law. *Id.*

65. The League is also concerned about how Act 728 will affect members and the public who are waiting in line to vote. *Id.* Voting can be overwhelming for some, especially those voting for the first time, and the League is unsure whether voters will be able to wait in line with family members there to support them, as Ms. Miller has observed in the past. *Id.* Furthermore, some voters are simply unable to wait in line to vote without physical assistance, and the League is concerned that this assistance is not permitted under Act 728. *Id.*

6. Arkansas United

66. Mireya Reith testified on behalf of organizational plaintiff Arkansas United. Trial Testimony of Mireya Reith on March 16, 2022 ("Reith Testimony"). Arkansas United is a non-profit organization located in Springdale, Arkansas. *Id.* Ms. Reith is Arkansas United's founder and Executive Director. She has served in this capacity since 2012. *Id.* Her duties include fundraising and managing staff at Arkansas United's offices throughout the state. *Id.* Arkansas

United employs 13 individuals who work on a full or part-time basis. *Id.* Their duties include reaching Arkansas United's programmatic goals and coordinating its activities. *Id.*

67. Arkansas United's mission is to empower immigrants and their communities to be agents of change. *Id.* Arkansas United's membership is approximately 80% Latinx and 20% Asian and Pacific Islander, African American, and Caucasian. *Id.* Approximately 90% of its members are first- or second-generation immigrants. *Id.* Arkansas United's mission includes providing services to Arkansas's immigrant population such as advocacy, promoting civic engagement, connecting immigrants with services so they can become better integrated with their community. *Id.* Arkansas United operates civic engagement programs throughout the state that include voter registration drives, get-out-the-vote programs, and voter-support programs. *Id.*

68. Grants make up 90% of Arkansas United's funding, and donations cover the remaining 10%. *Id.* Arkansas United primarily relies on two types of grants: general support and project-specific. *Id.* Its project-specific grants are tied to specific projects and require specific deliverables. *Id.* Its general support grants can be used for other projects associated with its overall mission. *Id.* If Arkansas United does not have a project-specific grant for a project, it must fund it through its general support grants. *Id.* Arkansas United does not have funding to do all of the projects that it would like to do to serve its mission, and it must pick and choose which activities it will be able to fund. *Id.* Arkansas United must prioritize fulfilling project-specific grant supported activities, which it sometimes must use general support grant funds to complete. *Id.* If Arkansas United does not meet a deliverable required by a project-specific grant, its ability to obtain funding in the future will be affected. *Id.* Arkansas United has never received a project-specific grant for educating voters about election laws. *Id.*

69. As part of its mission, Arkansas United also works to help its members to participate in Arkansas's elections meaningfully and actively by ensuring its members and supporters are registered to vote and equipped with the information and resources to make sure their ballots are cast and counted. *Id.* This includes translation services for non-English speaking voters. *Id.* Because Arkansas' official language is English, *see* Ark. Code Ann. § 1-4-117, it is an English-only state that does not provide official non-English translations of government forms; accordingly, Arkansas United's members are required to translate these materials into Spanish and Marshallese so Arkansas United's members can read them. *Id.* Arkansas United provides a glossary of common election terms but is also called upon to provide translations of ballot initiatives and different election day materials as well. *Id.* Translations are particularly complicated and draining on Arkansas United's resources as they require more than just direct translation or interpretation to ensure accuracy and comprehension. *Id.* Terms often do not translate directly and are not easily understood regardless of an individual's education, background, or country of origin. *Id.* Even after translating materials itself, Arkansas United sends the translations to coalition partners to review and ensure the correct messages are conveyed. *Id.*

70. Most of Arkansas United's community leaders work with it on a volunteer basis. *Id.* The community navigators serve as Arkansas United's boots on the ground and liaisons between its members and service providers. *Id.* They assist with everything from obtaining a driver's license, translating materials, to transporting members who lack transportation. *Id.* These services are extremely time-consuming and costly for the navigators. *Id.* For example, one of Arkansas United's volunteers covers the Arkansas Delta which can require her to drive five to six hours to serve members. *Id.*

71. Arkansas United has been active at polling locations as part of its voter-support programs, providing translation services, educating voters on civic engagement and voting, and offering transportation and support to voters in need. *Id.* Arkansas United has also worked with coalition partners to provide food, water, and other resources to voters, especially at polling places where voters experience the longest lines. *Id.*

72. Arkansas United is gravely concerned about the impact the Challenged Provisions will have on its members and the larger immigrant community that the organization serves. *Id.* When the Challenged Provisions were initially introduced, Arkansas United testified against them and urged the General Assembly not to enact them. *Id.* Arkansas United believes each of the Challenged Provisions, whether considered in isolation or collectively, will impair or disenfranchise its members. *Id.*

73. Act 736 is of particular concern for Arkansas United, its members, and the immigrant community because they often have multiple names and surnames. *Id.* In the immigrant community there is cultural significance to maintaining multiple family names and surnames. *Id.* For example, many South American immigrants retain their maternal *and* paternal surnames. *Id.* In some South American Latin cultures, individuals even add “they” or “of” to their names as well. *Id.* These additional surnames can cause confusion in the United States, so immigrant citizens will frequently reduce or rearrange their names or chose a completely different Americanized name altogether. *Id.*

74. Arkansas United’s members and immigrant citizens already experience difficulty with poll workers mismatching voters’ names and surnames, which puts the immigrant community at a distinct disadvantage when trying to cast a ballot. *Id.* Arkansas United is concerned that Act 736 will create similar problems for its members and immigrant citizens applying for absentee

ballots because those voters may use different iterations of their names in signing their voter registration form and their absentee ballot application. *Id.* Allowing poll workers to review an immigrant citizen's entire record, with multiple signatures potentially using different iterations of their names on file, increases the likelihood of a match between their absentee ballot application and a previous signature. *Id.* By limiting county officials to reviewing only the voter's registration form signature in determining whether the signature on their absentee ballot application is genuine, Act 736 is likely to result in erroneous rejection of absentee ballot applications of immigrant voters. *Id.*

75. Ms. Reith believes that Act 736 unfairly targets Arkansas United's members and the immigrant community it serves and puts them at an increased risk of disenfranchisement. *Id.* Some of Arkansas United's members and the immigrant community have been voting for the past 20 to 30 years and will not remember how they signed their registration application. *Id.* She is also concerned that Arkansas United's members and the immigrant community will find the additional step of curing the rejection intimidating. *Id.* Because Arkansas is an English-only state, any rejection notice would come in English and likely require translation for immigrant and non-English speaking voters to understand that their application has even been rejected and why. *Id.*

76. Act 973 is of particular concern for Arkansas United because it eliminates a crucial window of time that it uses to communicate with low propensity voters and encourage them to vote. *Id.* The weekend before an election is often Arkansas United's busiest weekend: members and volunteers typically go door knocking, do phone banking, and assist voters with making their election day plans. *Id.* Arkansas United finds this is the best time to reach its Asian and Latinx voters who are often finalizing their voting plans in the weekend before election day because it is likely they will not know their work schedule until then. *Id.*

77. Voters who previously relied on the Monday before election day deadline to return their absentee ballots in person will need to be advised that the new deadline is now three days earlier. *Id.*

78. Act 249 will negatively impact Arkansas United's members and the immigrant community it serves. *Id.* Arkansas United's members and the immigrant community regularly used the Affidavit Fail-Safe to cast their ballot. *Id.* Arkansas United knows this because it regularly fields calls from its members and the community reporting as much or requesting help with the process. *Id.*

79. The Affidavit Fail-Safe is a particularly important resource for immigrant voters who, as Dr. Mayer testified, are less likely to have the requisite forms of ID. *Id.*; see also Trial Testimony of Dr. Kenneth Mayer on March 16-17, 2021 ("Dr. Mayer Testimony"). Even if immigrant voters have qualifying ID, they may not have an ID that contains the same iteration of the name under which these voters registered. In Arkansas United's experience, sometimes immigrant voters dictate their names in a specified order to ensure that their ID contains a specific iteration, but the Department of Motor Vehicles ("DMV") will use a different iteration from what they requested. Reith Testimony. Thus, even if immigrant voters have a qualifying ID to bring with them to the polls or send in a copy of with their absentee ballot, the names on their IDs might not match the name on their registration forms. *Id.* Without the Affidavit Fail-Safe, these voters will be disenfranchised. *Id.*

80. The option for Arkansas United's members and immigrant voters without qualifying ID to obtain a free voter verification ID does not lessen the burden on these voters. To get a voter verification ID, these voters must be able to communicate with employees at the county

clerk's office, and, in Arkansas United's experience, many of these offices do not have bilingual staff.

81. Arkansas United's members and immigrant voters who vote absentee will be affected by Act 249 in other ways as well. *Id.* Most Arkansas United members do not have access to the equipment necessary to make a physical copy of their ID. *Id.* Arkansas United does its best to inform voters that they can come to one of its offices to make a copy and even holds events where its members and the community can make copies using Arkansas United's equipment. *Id.* But in addition to staffing and funding the event, Arkansas United must devote time and resources communicating with its members about the event. *Id.* This is a very resource-intensive process and cannot be done without diverting resources from other activities and programs. *Id.* And while Arkansas United has been able to provide these services in the past, eliminating the Affidavit Fail-Safe will require it to scale up these services in a way that will put strain on its resources. *Id.*

82. Assisting voters who need to obtain a qualifying ID is a similarly resource-intensive service. *Id.* As explained earlier, Arkansas United relies on volunteers for most of its community outreach; if its volunteers accompany a voter member to the DMV or any ID other issuing agency, that takes away time from the volunteer's paying job to assist with translating, explaining, and completing the process. *Id.*

83. Arkansas United devotes a great deal of volunteer and financial resources to its voter support services and other activities at the polls on election day. *Id.* Arkansas United does this to convey its message that every vote matters and voting is a welcoming activity for all citizens, including immigrants. *Id.* Its "Party at the Polls" event conveys this message by removing the language barrier for its members and the community it serves. *Id.* During this event, Arkansas United sets up tables with welcoming signs written in Spanish and staffed with navigators who

provide translation services the voters would not typically receive because the polls are rarely staffed with Spanish-speaking workers who can translate the ballot materials. *Id.* Keeping the tables staffed with volunteers and navigators for the entire day is a resource-intensive endeavor. *Id.* Since Arkansas United cannot anticipate the circumstances of any election, it must do its best to recruit as many volunteers and navigators as possible for its tables. *Id.*

84. Arkansas United typically sets its tables up outside of the 100-foot perimeter at polling places, but it works with coalition partners who set up within the 100-foot perimeter. *Id.* Although it has not engaged in activity within the 100-foot zone, Arkansas United is concerned that Act 728 will limit its ability to do things like hand out water to voters in the 100-foot zone in the future. *Id.* Arkansas United cannot anticipate whether its coalition partners will always have the resources to operate in that zone at all the polling places where voters need support, and Arkansas United is concerned that it will not have the option to step in and provide support in the 100-foot zone in future elections without its volunteers facing criminal penalties under Act 728. *Id.*

85. Although Arkansas United has always set up its tables outside the 100-foot perimeter, the need for its services does not end once voters enter the 100-foot perimeter. *Id.* Arkansas United has election assisters that stand beside voters, and under Act 728, it is unsure whether those assisters will be able to enter the 100-foot perimeter to help voters without facing criminal penalties. *Id.* Act 728 will have a particularly negative impact within the immigrant community, as they are more likely to arrive to the polls with someone to assist them. *Id.* Under Act 728, it is unclear whether assisters, be they Arkansas United volunteers or not, will face criminal charges for accompanying voters inside the 100-foot perimeter. *Id.* And because Act 728 imposes criminal penalties, the law diminishes Arkansas United's ability to recruit volunteers to

assist voters at the polls and thereby help the organization effectuate its mission. *See id.* Without volunteers able to assist voters or provide support, Arkansas United cannot convey its message that voting is a welcoming activity and every vote matters. *Id.*

86. Arkansas United believes that it cannot effectively communicate its message that immigrants are welcome to participate in democracy if it can only leave a chest of water or snacks inside the 100-foot perimeter or hand out water or snacks outside of that perimeter. *Id.*

87. The Challenged Provisions undermine Arkansas United's mission and will force it to divert already scarce resources from its grant deliverables and policy priorities. *Id.* If the Challenged Provisions are in effect for the 2022 election, Arkansas United will be forced to reallocate those resources toward educating its members and the public about the Challenged Provisions and engaging in activities to attempt to avoid some of the most negative effects of the laws. *Id.*

C. Experts agree that the Challenged Provisions are unnecessarily burdensome, duplicative, disenfranchising, will depress voter turnout, and are of no administrative benefit.

1. Pulaski County Elections Commissioner Susan Inman

88. Pulaski County Elections Commissioner Susan Inman offered her experience and expertise on elections in Arkansas. Trial Testimony of Pulaski County Elections Commissioner Susan Inman on March 15, 2022 (“Comm’r Inman Testimony”).⁴ Commissioner Inman has held

⁴ The Court regards Commissioner Inman’s testimony as expert evidence, in light of her extensive skills, experience, and training which qualify her as an expert on Arkansas elections and election administration, qualified to give opinion testimony about the impact of the Challenged Provisions on election administrators and voters. *See infra* Section V.A. Defendants did not object to the Court’s qualification of Commissioner Inman as an expert during trial. Commissioner Inman’s testimony is also admissible as fact testimony, as it is based on her personal knowledge.

a myriad of election administration positions. *Id.* She first served as an Election Coordinator for Pulaski County Election Commission from 1994 to 2000. *Id.* She next served in election positions under then-Secretary of State Sharon Priest from 2000 to 2003, including as Director of Elections. *Id.* She returned to Pulaski County Election Commission as Election Coordinator from 2003 until her retirement in 2009. *Id.* In addition to these positions, she has been a member of the League of Women Voters for the past 25 years. *Id.*

89. After retiring, Commissioner Inman formed a nonprofit to facilitate communication between election officials across the state, including specifically the State Board of Election Commissioners and the County Boards of Elections Commissioners, with the goal of helping them share and improve best practices to better serve the public. *Id.* Commissioner Inman's nonprofit was the only organization that provided for this type of collaboration amongst county officials. *Id.* No organization has brought all the state's election officials together since the organization ended in July 2016. *Id.*

90. While running her nonprofit, she ran for Secretary of State in 2014 against Mark Martin. *Id.* She ran again in 2018 against the current Secretary, John Thurston. *Id.*

91. In addition to her positions within Arkansas, Commissioner Inman has gained extensive experience serving as an international election observer. *Id.* Since 1997, Commissioner Inman has monitored elections in Yugoslavia, republics of the former USSR, Russia, and two presidential elections in Ukraine. *Id.* A considerable amount of training and experience is required to become an election observer. *Id.* To even be considered for the position, one must be considered an expert in the field of elections administration, and Commissioner Inman has been considered an expert in the field since at least 1997. *Id.* While overseas, Commissioner Inman was responsible

for observing poll sites, opening polls, transporting election materials, monitoring the tabulation and counting of ballots, and reporting her findings after elections. *Id.*

92. Commissioner Inman has also been a member of the State Board of Election Commissioners. *Id.* While a member of the State Board of Election Commissioners, Commissioner Inman was also elected to a two-year term with the Pulaski County Election Commission but resigned in 2013 to run for Secretary of State. *Id.* She was re-elected to Pulaski County Election Commission in May of 2021 and has worked three elections since taking office. *Id.*

93. In the 2000s, the State Board of Elections (the “Board”) began providing training to elections officials every other year, many of which Commissioner Inman has attended. *Id.*; Pls.’ Ex. 11. Commissioner Inman also has personal experience in training poll workers and other election officials in her duties as Election Coordinator in Pulaski County. *Id.*

94. Commissioner Inman most recently attended a training for County Boards of Election Commissioners provided by the State Board on February 28, 2022. *Id.* This training was presented by Daniel Shults, Chris Madison, and Jon Davidson on behalf of the Board. *Id.*

95. Commissioner Inman is concerned that each of the Challenged Provisions will impair or forfeit Arkansans’ fundamental right to vote. *Id.*

96. Regarding Act 973, in all Commissioner Inman’s years of service in election administration, Arkansas’s deadline to return absentee ballots in person has been the Monday before election day. *Id.*

97. Commissioner Inman explained that Governor Hutchinson refused to sign Act 973, because, in his words, “[Act 973] unnecessarily limits the opportunities for voters to cast their ballot prior to the election.” *Id.* Commissioner Inman agrees with Governor Hutchison that moving the deadline serves no purpose and deprives voters of crucial time to get all the information they

need before voting. *Id.* This is especially important because if an individual votes early or before the deadline, they will not have the opportunity to recall their ballot and change their decision if new information is revealed. *Id.* Voters often wait until the last minute to cast their absentee ballots to ensure they can consider late-breaking information before voting. *Id.* Furthermore, moving the deadline for in-person return of absentee ballots from Friday to Monday provides no administrative benefit because the election workers who handle and canvass absentee ballots are not the same people who staff polling places for early voting and election-day voting, at least in Pulaski County. *Id.*

98. Based on her experience in election administration, Commissioner Inman believes Act 973 has the potential to confuse experienced voters. *Id.* For the past thirty years, the deadline for returning absentee ballots in person has been the Friday before election day. *Id.* Commissioner Inman testified that Act 973's change to the deadline may confuse voters, making it less likely they will return their ballot in time. *Id.* For absentee voters who miss the Friday in-person return deadline, mailing the absentee ballot is likely not an option, because the ballot may not arrive by election day. *Id.* Voters in that situation would have to vote provisionally in person, which is particularly stressful and uncertain process for a voter who presumably had been unable to or had not planned to report to the polls to begin with. *Id.* Provisional ballots are tendered but not processed until after the election and require approval from the County Election Commission. *Id.*

99. Commissioner Inman also has concerns regarding Act 736. *Id.* As an elections commissioner responsible for making the final decision of whether to reject or accept signatures on absentee ballots, Commissioner Inman has never received training on how to compare signatures for authenticity. *Id.* She is similarly unaware of any objective training or standards articulated under Act 736 that clerks must use in their review of absentee ballot application

signatures. *Id.* She believes Act 736's changes to the absentee application process will disenfranchise voters. *Id.*

100. The previous application process involved more than one signature comparator and allowed clerks to compare application signatures against all the signatures in a voter's record. *Id.* Clerks typically used the most recent signature on file to make their comparison. *Id.* Now, under Act 736, they will no longer be able to do this, and Commissioner Inman thinks this will make it more likely that ballots are rejected. *Id.*

101. Commissioner Inman attended the Board's "2020 County Board of Election Commissioners' Training" led by Director Shults. *Id.* As part of that training the Board provided guidance regarding signature-matching in Arkansas elections. *Id.*; see also Pls.' Ex. 88, at 77-95. Commissioner Inman testified that the training was flawed, vague, and skewed to encourage *disqualification* of ballots. *Id.* Part of the Board's guidance said a signature is comparable unless it is "sufficiently dissimilar" to leave the official with "an abiding conviction" that it has been written by someone other than the voter. Pls.' Ex. 86; 88, at 81. However, there was no training on the threshold for an abiding conviction. Comm'r Inman Testimony. The Board's materials also instruct election officials to determine when the "quantity and severity" of a signature's distinctions "form a convincing case" it has been written by someone other than the voter. Pls.' Ex. 86; 88, at 95. But again, there is no clarification or explanation of when that threshold has been met. *See id.* The Board provided sample signatures to look at, but they were given only examples of what kinds of signature variations they might see and the decisions they would have to make. *See* Pls.' Ex. 88, at 82-94. Although intended to provide clarity and guidance, puzzlingly, the guidance for untrained laypersons was led by *untrained laypersons*. *See* Comm'r Inman Testimony; *see also* Trial Testimony of Dr. Linton Mohammed on March 15, 2022 ("Dr.

Mohammed Testimony”); Trial Testimony of Director Daniel Shults on behalf of the State Board of Election Commissioners on March 17-18, 2022 (“Dir. Shults Testimony”). Overall, Commissioner Inman felt the training was “all geared towards looking for points of rejections, not to be as fair as possible.” Comm’r Inman Testimony.

102. The vagueness of the Board’s guidance and the statute itself concerns Commissioner Inman because the review process is not standardized or uniform across the state. Comm’r Inman Testimony. There is also no guidance regarding what officials should do if they disagree with one another regarding whether a signature matches. *Id.* Commissioner Inman disagreed with a fellow commissioner on the question of a voter’s signature in the most recent election. *Id.* She felt the signature and its comparators were similar enough, but the other two commissioners reviewing the signatures felt they were not. *Id.* Commissioner Inman felt they were not “handwriting analysts” sufficiently trained to reject the ballot. *Id.* The Commissioner’s colleagues disagreed and believed they were indeed sufficiently trained to reject the ballot and ultimately did decide to disenfranchise that voter. *Id.*

103. Commissioner Inman has concerns regarding Act 249, as well. *Id.* Commissioner Inman accepted ballots from voters using the previous version of the voter eligibility affirmation, and she is unaware of any instance of voter fraud based on that affirmation or the Affidavit Fail-Safe. *Id.*

104. Commissioner Inman is also concerned about the burdens imposed on voters who do possess or can obtain acceptable photo ID but fail to present it while voting in person or to

return a photocopy of it along with their absentee ballot. *Id.*⁵ This can require significant travel for some voters: for example, if a voter casts their ballot at the local precinct, Act 249 will require they travel to the county seat to submit their information. *Id.* For some voters, this can require *hours* of travel both to and from the office. *Id.* If the voter cannot afford to travel or does not have the time to travel within the five-and-a-half-day cure window, the voter will be disenfranchised. *Id.*

105. Lastly, Commissioner Inman explained that Act 728 is unnecessary. *Id.* There is a separate law against electioneering that is already being enforced by poll workers and election officials. *Id.* When poll workers first open a polling center, they mark the 100-foot radius for awareness. *Id.* They also check throughout the day to ensure that no one is coming within that 100-foot radius for the purpose of electioneering. *Id.* If they do observe electioneering within the 100-foot zone, they will ask the individual to stop, and if the person engaging in electioneering refuses, they will call the police for assistance. *Id.*

106. Commissioner Inman has assisted and encouraged family and friends to vote, including encouraging neighbors and friends waiting in line at the polls. *Id.* She has also educated and encouraged her two adult sons to vote. *Id.* This sometimes includes activities at the polls. *Id.* Under Act 728, she is unsure whether she will be able to continue to engage in those activities. *Id.*

⁵ This is not mere speculation. Even Governor Hutchinson has fallen victim to this predicament; when he forgot to bring his acceptable photo ID with him to the polls in 2014, he had to send his aide to retrieve it for him so he could cast a non-provisional ballot. See Sara Morrison, "Voter ID-Supporting Candidate Forgets ID, Becomes Latest Victim of Voter ID Law," The Atlantic (May 20, 2014), <https://www.theatlantic.com/politics/archive/2014/05/voter-id-supporting-candidate-forgets-id-becomes-latest-victim-of-voter-idlaw/371302/>. Of course, most voters are not as fortunate as our Governor to have staff to help them mitigate the burdens that strict Act 249's strict voter identification requirements impose.

She understands the 100-foot area to be a quiet zone where people are not bothered by campaigning but is uncertain whether she will be in violation if she stops within the zone for any reason other than entering or exiting the polling location. *Id.*

2. Dr. Linton Mohammed

107. Dr. Linton Mohammed testified as an expert on behalf of the Plaintiffs. Dr. Mohammed Testimony. Dr. Mohammed is a forensic document examiner with more than 35 years of experience. *Id.* Dr. Mohammed holds a Ph.D. in Human Biosciences from La Trobe University in Melbourne, Australia. *Id.*; Pls.' Ex. 46. His duties include examining documents for authenticity, age, source, and content. *Id.* Approximately 80% of this work involves comparison of signatures. *Id.*

108. Most of Dr. Mohammed's research has involved signature evaluation and comparisons. *Id.* He has authored 18 peer-reviewed papers, is the author of "Forensic Examination of Signatures," and co-authored another book published in 2018. *Id.*; Pls.' Ex. 46. Dr. Mohammed has testified as an expert in signature comparisons more than 200 times in both civil and criminal cases across the nation. Dr. Mohammed Testimony. In that time, his testimony has never been rejected by any court and his credentials never questioned. *Id.*

109. Although Act 736 requires that signatures on absentee ballot applications and voter registration form look "similar," in Dr. Mohammed's experience, laypersons typically refer to the process of determining whether signatures are genuine or not genuine—the determination he seeks to make in examining signatures as a forensic document examiner—by referring to signature matching. *Id.* And laypersons typically refer to how they determine whether signatures are genuine or not genuine by saying they look to see whether the signatures are pictorially similar or

dissimilar. *Id.* In each case, untrained laypersons are using unscientific language to refer to the process of determining whether signatures are genuine or not genuine. *Id.*

110. Dr. Mohammed explained how Act 736 will affect the reliability of the procedures and techniques of the signature verification process for absentee ballot applications. *Id.* In Dr. Mohammed's expert opinion, by limiting election officials to a single comparator rather than a range of reference signatures, Act 736 will increase the rate at which absentee ballots will be erroneously rejected. *Id.*

111. Signature matching by untrained laypersons is inherently unreliable. *Id.* Laypersons are inherently unreliable examiners because they are not trained to evaluate the features they are looking at, nor can they properly evaluate the dissimilarities they observe. *Id.* This makes laypersons more prone to "Type 2 Errors," where genuine signatures are determined to be non-genuine. *Id.*

112. Signatures vary from one execution to the next. *Id.*; Pls.' Exs. 48-50. Even when made by the same person, on the same day, within a short period of time, signatures have a wide range of variations. Dr. Mohammed Testimony. Variations can occur because of the tool used, the platform used, the writer's age, disabilities, or illnesses, among other reasons. *Id.* Age is a particularly influential factor. *Id.* Older individuals whose motor skills have deteriorated will have varied signatures, as demonstrated by the Voter Plaintiffs. *Id.* Younger voters, who even at 18 years old have not fully developed their motor abilities, may also have signatures that vary from the time of registration to the next election as their motor abilities develop. *Id.* Additionally, illiterate writers and writers who speak English as a second language tend to have less pen control than other writers and therefore have greater range of variation in their signatures. Pls.' Ex. 47 at ¶ 42.

113. Signatures also vary because writers use different styles. Dr. Mohammed Testimony. A person casually signing for a package at their front door may have a completely different signature just moments later when signing a formal legal document with their attorney. *Id.* Left-handed individuals will also have varied signatures depending upon whether they are using a stylus, writing in a binder, or in a small signature block because of the hook style of writing they use. *Id.*

114. In addition to different styles of writing, there are also three different signature styles: text-based, mixed, and stylized. *Id.* In text-based signatures, the writer's name is legible, while stylized signatures are completely illegible. *Id.* Mixed signatures combine features of stylized and text-based signatures and have some legible and some illegible features. *Id.*

115. Even trained Forensic Document Examiners cannot reliably compare signatures made in different styles with each other and would not be able to conclude whether signatures made using different styles are genuine without additional comparators to determine the writer's range of variation. *Id.* A layperson cannot evaluate signatures of varied styles with any greater reliability, and untrained laypeople are far more likely to conclude erroneously that two such signatures are not genuine because they appear pictorially dissimilar. *Id.*

116. Any determination whether a signature is genuine or nongenuine depends upon whether the feature or features being examined occur outside the normal range of variation. *Id.* Without a range of samples, there is no way to determine the normal range of variation and whether a signature's feature is a variation versus a difference. *Id.* Any evaluation of comparators without a range of samples would be inconclusive. *Id.* Experts agree that document examiners need a *minimum* of ten comparator signatures to reliably determine whether a signature is genuine. *Id.*

117. As unreliable as signature-matching is generally, Act 736 makes Arkansas's absentee ballot application signature matching process is made significantly more *unreliable* by limiting county officials to only the signature on the voter's registration form in determining whether the signature on their absentee ballot application is genuine—giving Arkansas the dubious distinction of being the *only* state to require a one-to-one comparison for signature matching in electoral processes. *Id.* By limiting county officials to reviewing only the signature on the voter's registration application in evaluating whether a signature on an absentee ballot application is genuine, Act 736 makes it impossible for county officials to determine whether features in an absentee ballot application signature fall within a voter's normal range of variation. *Id.* As a result, county officials are more likely to determine erroneously that variations are differences and erroneously reject genuine signatures. *Id.*

118. Dr. Mohammed submitted an expert report concluding that Act 736's, "signature matching rules and procedures, which allow individuals without adequate training—and without guidance—to reject the signatures on absentee ballot applications, will result in a significant number of erroneous rejections." Pls.' Ex. 47, at 10. Dr. Mohammed further concluded that, "Arkansas election officials are likely to reject properly completed absentee ballot applications, signed by the correct voter, because of their incorrect determination that the signatures on the absentee ballot applications are not genuine." *Id.*

3. Dr. Kenneth Mayer

119. Dr. Kenneth Mayer testified as an expert on behalf of the plaintiff. Dr. Mayer is an expert in political science, statistical and quantitative analysis of voting, voter behavior, voter turnout, and election administration. Dr. Mayer Testimony.

120. Dr. Mayer is a full professor in the political science department at the University of Wisconsin-Madison, where he has been on the faculty since August 1989. *Id.*; Pls.' Ex. 55. Before rising to that position, Dr. Mayer earned his Bachelor of Arts in political administration with a minor in applied mathematics from the University of California, San Diego. *Id.* He then earned both his Master of Arts and Ph.D. in political science from Yale University. *Id.*

121. In the last 10 years alone, Dr. Mayer has authored and published publications in at least ten peer-reviewed journals and five law reviews across the nation and abroad. Dr. Mayer Testimony; Pls.' Ex. 56 at 2-3. His work has been cited by the U.S. Government Accountability Office and legislative research offices of Connecticut and Wisconsin. Pls.' Ex. 56 at 3. He has been retained by the U.S. Department of Justice to review and analyze data and methods of election administration in Florida, and the Wisconsin Government Accountability Board to review their compliance with federal mandates and reporting systems. *Id.* In the past nine years alone, he has been retained as an expert in no less than 20 state and federal proceedings related to elections administration, absentee ballots, or other similarly related subjects. *Id.* Dr. Mayer's expert opinions have never been excluded by any court whether scrutinized under *Daubert* or any other standard. *Id.*; Dr. Mayer Testimony. And courts have in fact cited his expert opinion in their decisions, finding they were reliable and persuasive. *Id.*

122. Plaintiffs retained Dr. Mayer to opine on the effects of the Challenged Provisions. Dr. Mayer Testimony; Pls.' Ex. 56 at 2. Dr. Mayer's expert opinion is that the Challenged Provisions will "impose direct and indirect costs on voters and force voters to overcome specific burdens to cast their ballots." Pls.' Ex. 56, at 2. These burdens are very likely to decrease turnout, make it harder to vote, and disenfranchise Arkansas's most vulnerable subpopulations. Moreover, the Challenged Provisions will not produce any material contributions to elections administration,

security, or integrity. Dr. Mayer Testimony; Pls.' Ex. 56, at 2. Because the Challenged Provisions impose costs and burdens on voters that will reduce turnout and provide no benefit, they are "administrative deadweight," a public administration term for requirements that create additional administrative costs and hurdles without any benefit. *Id.*

123. In reaching his conclusion, Dr. Mayer relied on a collection of data and academic literature. Dr. Mayer Testimony; Pls.' Ex. 56, at 4. Dr. Mayer analyzed the Challenged Provisions using the cost of voting framework, which is the foremost political science model for understanding how voting behavior and turnout is affected by changes in administrative practices. Dr. Mayer Testimony; Pls.' Ex. 56, at 4-6. The cost of voting framework has been empirically tested for the past 60-70 years and is considered canonical among experts and academics as the starting point for almost every analysis of voter turnout and the effect of administrative practices on turnout. Dr. Mayer Testimony.

124. The cost of voting framework assesses the costs and benefits of the voting process and looks at how those costs impact voters. *Id.*

125. Socioeconomic status is strongly correlated with voter turnout. *Id.*; Pls.' Ex. 56, at 5. Lower educational attainment and income are directly related to lower voter turnout. Dr. Mayer Testimony; Pls.' Ex. 56, at 12; Pls.' Ex. 59-61. Higher educational attainment and income are directly related to higher voter turnout. *Id.* Voters with higher educational attainment and income have a better perception of the benefit of voting, pay closer attention because they have an easier time understanding and overcoming the administrative burdens, and consequently, are more likely to overcome the costs of voting. *Id.*

126. Before the Challenged Provisions were enacted, Arkansas already had one of the strictest, if not the strictest, voting regimes in the country. Dr. Mayer Testimony; Pls.' Ex. 56, at

6-7. The combination of a 30-day cut-off for registration, strict absentee voting rules, lack of online voter registration, lack of online absentee applications, and non-strict voter ID laws working in concert have depressed voter turnout so much that Arkansas has among the lowest turnout of any state, both overall and among African-American populations. *Id.*

127. State level turnout from 2008 to 2020 shows that Arkansas has been in the bottom five states every year except 2014, an anomalous year that saw the lowest turnout nationwide since 1942. *Id.*; *see also* Pls.' Ex. 56, at 7; 57. Arkansas has the lowest maximum turnout, 56.1% in 2020, of any state in any year between 2008 and 2020. Pls.' Ex. 56, at 6-7.

128. The depressive effects of Arkansas's strict voting regime are most severely felt by Arkansas's most vulnerable subpopulations. Dr. Mayer Testimony; Pls.' Ex. 56, at 7, 18; Pls.' Ex. 58. While turnout is generally low across the state, turnout among African Americans shows just how severely Arkansas's voting regime impacts African Americans. *Id.* In 2008 and 2010 Arkansas had the lowest turnout among African Americans in the entire nation and in the years since has never risen above 60%. *Id.*; Pls.' Ex. 56, at 7-8.

129. The statistical relationship between poverty and voter turnout in Arkansas has remained the same since 2012—as poverty levels increase voter, turnout decreases. Dr. Mayer Testimony; Pls.' Exs. 60, 62. Poverty levels even depress voter turnout among registrants who have already overcome the initial administrative burden of registration. Dr. Mayer Testimony; Pls.' Ex. 56, at 9-10; *see also* 59-60. In 2020, the percentage of registrants who voted, 66.9%, was twenty-five percentage points behind the national figure of 91.9%. Dr. Mayer Testimony; Pls.' Ex. 56, at 11-12.

130. Arkansas's restrictive voting regime has had a depressive effect on voter turnout and kept Arkansas as one of the lowest-turnout states in the nation for years. Dr. Mayer Testimony.

The data also show that the costs and burdens of voting are not borne equally, but fall disproportionately on the minority and low-income communities, and on those with lower educational attainment. *Id.*

131. Prior to the enactment of the Challenged Provisions, Arkansas already had among the highest absentee ballot rejection rates in the country. Dr. Mayer Testimony; Pls.' Ex. 56, at 12-13; Pls.' Ex. 63. In 2020, Arkansas had the highest absent ballot rejection rate, one that was more than ten times higher than the national average. *Id.*

132. Dr. Mayer believes the Challenged Provisions, whether taken individually or collectively, will disenfranchise Arkansas voters. Dr. Mayer Testimony.

133. By removing the Affidavit Fail-Safe option, Act 249 transformed Arkansas into what the National Conference of State Legislatures describes as a "strict" voter ID state. *Id.* A state earns the "strict" designation if its laws require only limited forms of ID with no exceptions. *Id.* Act 249's elimination of the Affidavit Fail-Safe removes the method by which more than 1,600 voters in Pulaski County alone voted in 2020. *Id.*; Pls.' Ex. 56, at 18-19. Although Dr. Mayer did not receive data from other counties, he is certain statewide usage exceeds what he observed in Pulaski County. *Id.* Arkansas United's earlier testimony that members of the Fayetteville community had used the failsafe in recent elections corroborates this. Reith Testimony.

134. Act 249 also removes the Affidavit Fail-Safe for absentee voters who submit their ballots by mail, but it does not specify what exactly such voters must do to comply. Dr. Mayer Testimony; Pls.' Ex. 56, at 19. Presumably, voters are expected to include a photocopy of their ID in the envelope with their ballot. *Id.* But it is unclear that this is sufficient from reading the text of the statute. *Id.* This would prove extremely difficult for the voters in the approximately 14% of

Arkansas households who do not have a computer and likely also lack access to a photocopier or printer. *Id.*

135. Act 249 will have an especially adverse impact on lower socioeconomic, minority, elderly, and younger voters who are less likely to possess the requisite forms of ID. Dr. Mayer Testimony. Consequently, the burdens will be most severely felt by those subpopulations and increase the likelihood they are unfairly and erroneously disenfranchised as compared to their fellow citizens. *Id.*

136. Act 973 will have a depressive effect for multiple reasons. Dr. Mayer Testimony; Pls.' Ex. 56, at 19-21. The various absentee ballot deadlines increase the informational burdens on voters and the potential for confusion. *Id.* Commissioner Inman's testimony corroborates this as she felt voters who had cast their ballots under the new deadline were more likely to be confused by the new change and potentially miss the new deadline. Comm'r Inman Testimony. Act 973 also increases the likelihood that voters who originally intended to mail their absentee ballots but fear they will miss the deadline because of mail delays, would be turned away if they try to return their ballot in person during the three-day window. Dr. Mayer Testimony; Pls.' Ex. 56, at 19-21. Since 2016, more than 1,222 Arkansas voters returned their absentee ballots in person during the three-day window that Act 973 eliminates. *Id.* Arkansas already had a very high absentee ballot rejection rate compared to other states, and Act 973 will lead to even more rejections and voter disenfranchisement. *Id.*; Pls.' Ex. 56, at 12-13; Pls.' Exs. 63-65.

137. Act 728 will disproportionately impair and disenfranchise minority voters who are more likely to wait in lines longer than their white counterparts. Dr. Mayer Testimony; Pls.' Ex. 56, at 21. Minority voters across the nation were more likely to wait at least 30 minutes in line to vote and on average wait nearly 30% longer to vote than their white counterparts. *Id.* Additionally,

Act 728's lack of clarity creates the additional risk of unequal application of discretion. *Id.* Given the criminal penalties of Act 728, this is a particularly concerning prospect because minority voters are more likely to face long lines where they will require assistance to endure the wait. *Id.*

138. Dr. Mayer's analysis of Act 736 corroborates Dr. Mohammed's testimony regarding the unreliability of the signature matching process for verifying voters' identification. Pls.' Ex. 56, at 24-25; *see also* Dr. Mohammed Testimony. The academic literature shows that signature matching is an inherently error-prone process that relies on subjective standards, election offices use varying methods and standards even when considerable resources are devoted to training, and error rates resulting in improper rejections are high. Dr. Mayer Testimony; Pls.' Ex. 56, at 24-25.

139. In a Georgia study that reviewed absentee ballots rejected for mismatched signatures which were subsequently cured to illustrate this problem, the rejection error rates were 32.4% for the 2020 general election and 60.4% for the January 2021 runoff elections that followed. Dr. Mayer Testimony; Pls.' Ex. 56, at 24. Dr. Mayer anticipates there to be similar problems in Arkansas where officials employ similarly inconsistent and subjective standards. *Id.* To confirm this, Dr. Mayer analyzed the signature rejection rates for absentee ballots in Arkansas since data was not available for absentee ballot application rejection rates. *Id.* Of the counties that did report their data, rejection rates varied widely from county to county, reflecting the inconsistent standards for signature comparison from county to county. *Id.*

140. Act 736 takes the subjective and inherently error-prone signature matching process already in place and exacerbates its effects. *Id.* This will not only increase overall rejection rates, but also erroneous rejection rates. *Id.* Act 736 will not enhance election security or integrity. *Id.*

141. Voter fraud is vanishingly rare nationally and in Arkansas. Dr. Mayer Testimony; Pls.’ Ex. 56, at 14-17. Since 2002, there have been only four instances of confirmed election fraud in Arkansas. *Id.* There is no material voter fraud in Arkansas and nothing indicating that Arkansas elections are not secure. *Id.* Moreover, there have been no instances of fraud or misconduct associated with (1) the Affidavit Fail-Safe eliminated by Act 249; (2) absentee ballots being turned in in-person the day before election day; (3) absentee ballot application signature matching, or (4); people handing out water or snacks to voters waiting in line. *Id.*

D. Defendants made several key concessions which undermine their defense of the Challenged Provisions.

1. State Board of Election Commissioners

142. Director Daniel Shults testified on behalf of the Board. Dir. Shults Testimony.

143. On the one hand, the Board is responsible for training local election officials on election laws. *Id.* On the other hand, the Secretary of State is responsible for educating the public about changes in election laws, and those duties “fall on the Secretary’s side of the street.” *Id.*

144. County clerks—not county election administrators—process absentee ballot applications. *Id.* The Board provides no training to county clerks on signature comparison or on how to evaluate signature similarity. *Id.*

145. The Board’s testimony regarding any signature comparison guidance in Plaintiffs’ Exhibit 88, which pertains to the canvassing of absentee ballots by county election commissioners rather than the processing of absentee ballot applications, is therefore wholly irrelevant to the analysis of Act 736 because such information has not been presented to county clerks by the Board and there is no similar training that the Board makes available for county clerks. *Id.*

146. The Board has no record of how many absentee ballot applications have been rejected on the basis of an alleged signature mismatch. *Id.*

147. The Board expects signatures will vary over time and the signatures on file may be on file for many years or several decades. Pls.' Ex. 7.

148. The Board is not aware of a single instance of fraud arising out of alleged false signatures on an absentee ballot application. Dir. Shults Testimony.

149. The Board is not aware of a single prosecution arising out of an alleged false signature on an absentee ballot application. *Id.*

150. The Board admits that requiring an absentee voter to go to the county clerk's office to present photo ID in person if the voter is unable to include a photocopy of same along with the absentee ballot would "defeat the purpose" of voting absentee. *Id.*

151. The Board claims that Act 973's shortening of the window in which absentee ballots may be returned in person will alleviate administrative burdens. However, the Board admitted that it has no idea: (1) how many absentee ballots were delivered in person as opposed to delivered by hand in any prior election; or (2) how many absentee ballots were delivered in person on the Monday before election day in any prior election. *Id.*

152. In addition, the Board admitted that local election officials must canvass all absentee ballots, regardless of whether they are timely or not, so Act 973's shortening of the in-person absentee return ballot deadline does nothing to alleviate administrative burdens with regard to the canvassing of absentee ballots. *Id.*

153. The Board is not aware of a single instance of fraud arising because of the Affidavit Fail-Safe that was eliminated under Act 249. *Id.* The Board is not aware of any instance in which somebody lied on an Affidavit Fail-Safe. *Id.* The Board is not aware of any instance in which a prosecuting attorney has charged someone with falsifying an Affidavit Fail-Safe. *Id.*

154. The Board admitted that Amendment 99 did not *require* elimination of the Affidavit Fail-Safe. *Id.* This is necessarily so because the Affidavit Fail-Safe remained available for years after Amendment 99 was added to the Constitution. *Id.*

155. To obtain a free voter verification card, voters must travel to their county clerk's office during normal business hours and present two forms of underlying documents to evidence their identity. *Id.*; Pls.' Ex. 6. The Board has no idea how many eligible or even registered Arkansas voters lack such underlying documentation. Dir. Shults Testimony.

156. The Board is not aware of how many, if any, free voter verification cards have been issued since they first became available in 2017. *Id.*

157. The Board claims that the Challenged Provisions, while unnecessary to prevent actual voter fraud because there has been none, is necessary to prevent the *impression* of election insecurity. *Id.* While the 2020 General Election was the most successful in Arkansas history, *see* Pls.' Ex. 42; Pls.' Ex. 43, at 3:2-9, public perceptions of election insecurity arose out of misinformation and disinformation promoted on social media outlets and in other public forums.

158. The Board claims that hundreds of voters contacted the Board with unfounded concerns about election security in the 2020 General Election. *Id.* The Board responded by providing those voters with a typed legal memorandum explaining that Arkansas's election equipment is secure. *Id.*; *see also* Pls.' Ex. 33. Unsurprisingly, this legal memorandum did not assuage the concerns of ordinary voters, which the Board acknowledged were based on misinformation. Dir. Shults Testimony.

159. The Board does not believe that the words "lawful purposes" as contained within Act 728 "add much," and that Act 728 instead serves to prohibit anyone from entering the 100-

foot zone around a polling place unless that person is “ingressing or egressing” from the building where voting is taking place. *Id.*

160. Act 728 does not contain the word “electioneering,” in part because electioneering was already illegal within the 100-foot zone around a polling place prior to Act 728. *See* Ark. Code Ann. § 7-1-103(a)(8). Accordingly, Act 728 was unnecessary to prevent electioneering. Dir. Shults Testimony.

161. Act 728 does not contain the words “voter intimidation,” in part because voter intimidation was already illegal prior to Act 728. *See* Ark. Code Ann. § 7-1-104(a)(5) (it is a “unlawful for any person to make any threat or attempt to intimidate any elector or the family, business, or profession of the elector”); 18 U.S. Code § 594 (“Whoever intimidates, threatens, coerces, or attempts to intimidate, threaten, or coerce, any other person for the purpose of interfering with the right of such other person to vote or to vote as he may choose . . . shall be fined under this title or imprisoned not more than one year, or both.”). Accordingly, Act 728 was unnecessary to prevent voter intimidation, which is also illegal under federal law. Dir. Shults Testimony.

162. Act 728 does not contain the word “loitering,” in part because loitering was already illegal prior to Act 728. *See* Ark. Code Ann. § 5-71-213. Accordingly, Act 728 was unnecessary to prevent loitering. Dir. Shults Testimony.

163. The Board is not aware of any instances of individuals engaging in electioneering while handing out free water or snacks to voters waiting in line. *Id.*

164. Instead, the Board claimed that Act 728 was necessary to prevent voters who might be confused about the definition of electioneering from thinking that handing out free water or snacks was electioneering. *Id.*

2. Secretary of State

165. Mr. Joshua Bridges testified on behalf of the Secretary of State and the Secretary's Office. Trial Testimony of Joshua Bridges on behalf of the Secretary of State and the Secretary's Office on March 18, 2022 ("Bridges Testimony").

166. The Secretary has no record of how many absentee ballot applications have been rejected on the basis of an alleged signature mismatch. *Id.*

167. The Secretary admitted that "signatures aren't always perfectly identical," and that they change over time. *Id.*

168. The Secretary admitted that signatures can be affected by age and illness, including such conditions as tremors, neuropathy, bursitis, Parkinson's Disease, multiple sclerosis, alcoholism, and stroke. *Id.*

169. The Secretary is not aware of a single instance of fraud arising out of alleged false signatures on an absentee ballot application. *Id.*

170. The Secretary is not aware of a single prosecution arising out of an alleged false signature on an absentee ballot application. *Id.*

171. The Secretary's Office trains election officials *not* to look at the actual signature when evaluating whether voter signatures are valid on initiative or referendum petitions. *Id.*

172. Instead, the Secretary's Office instructs election officials to simply compare the voter's information on the petition, such as name, date of birth, and address, to that same information in the voter registration database, while *ignoring* the signature mark. *Id.* That same demographic information is contained on every absentee ballot application. *Id.* And the Secretary's Office has admitted that it is equally important to prevent fraud in the petition process as it is with other types of voting, and that comparing demographic information only is sufficient to prevent fraud in the petition context. *Id.*

173. The Secretary claims that Act 973's shortening of the window in which absentee ballots may be returned in person will alleviate administrative burdens. *Id.* However, the Secretary admitted of no knowledge as to: (1) how many absentee ballots were delivered in person as opposed to delivered by hand in any prior election; and (2) how many absentee ballots were delivered in person on the Monday before election day in any prior election. *Id.*

174. The Secretary is not aware of a single instance of fraud arising because of the Affidavit Fail-Safe that was eliminated under Act 249. *Id.*

175. The Secretary admitted that Amendment 99 did not *require* elimination of the Affidavit Fail-Safe. *Id.* This is necessarily so because the Affidavit Fail-Safe remained available for years after Amendment 99 was added to the Constitution *Id.*

176. To obtain a free voter verification card, voters must travel to their county clerk's office during normal business hours and present two forms of underlying documents to evidence their identity. *Id.*; Pls.' Ex. 6. The Secretary has no idea how many eligible or even registered Arkansas voters lack such underlying documentation. Bridges Testimony.

177. The Secretary is not aware of how many, if any, free voter verification cards have been issued since they first became available in 2017. *Id.*

178. Plaintiffs' Exhibit 84, which was admitted without objection, shows that of the 35 counties that responded to Plaintiffs' public records requests for the number of voter verification cards that had been issued by each county since 2017, a total of only 88 voter verification cards had ever been issued, even though the Secretary's own website reports that 1,089,276 registered voters reside in those 35 responsive counties. *Id.*; *see also* Ex. 84. Many counties reported having never issued a single voter verification card. Bridges Testimony.

179. The Secretary claims that the Challenged Provisions, while unnecessary to prevent actual voter fraud because there has been none, is necessary to prevent the *impression* of election insecurity. *Id.* While the 2020 General Election was the most successful in Arkansas history, *see* Pls.’ Ex. 42; Pls.’ Ex. 43, at 3:2-9, public perceptions of election insecurity arose out of misinformation and disinformation promoted on social media outlets and in other public forums. Bridges Testimony; Dir. Shults Testimony.

180. The Secretary claimed that the state’s interest in Act 728 was to “amend the definition of electioneering.” *Id.*

181. However, Act 728 does not contain the word “electioneering,” in part because electioneering was already illegal within the 100-foot zone around a polling place prior to Act 728. *See* Ark. Code Ann. § 7-1-103(a)(8). Accordingly, Act 728 was unnecessary to prevent electioneering. Bridges Testimony.

182. Act 728 does not contain the words “voter intimidation,” in part because voter intimidation was already illegal prior to Act 728. *See* Ark. Code Ann. § 7-1-104(a)(5) (it is unlawful for any person to make any threat or attempt to intimidate any elector or the family, business, or profession of the elector.”); 18 U.S. Code § 594 (“Whoever intimidates, threatens, coerces, or attempts to intimidate, threaten, or coerce, any other person for the purpose of interfering with the right of such other person to vote or to vote as he may choose . . . shall be fined under this title or imprisoned not more than one year, or both.”). Accordingly, Act 728 was unnecessary to prevent voter intimidation, which is also illegal under federal law. Bridges Testimony.

183. Act 728 does not contain the word “loitering,” in part because loitering was already illegal prior to Act 728. *See* Ark. Code § 5-71-213. Accordingly, Act 728 was unnecessary to prevent loitering. Bridges Testimony.

184. The Secretary is not aware of any instances of individuals engaging in electioneering while handing out free water or snacks to voters waiting in line. *Id.*

185. The Secretary was neither able to explain nor define a “lawful purpose,” and testified that only an attorney could properly opine on its meaning. *Id.*

186. In fact, the Secretary admitted he did not even know if someone entering a polling place for the purpose of washing the windows would satisfy the lawful purpose requirement in the following deposition testimony:

Q. What about entering for a purpose that might not have – that might not be provided for in statute; is that a lawful purpose?

A. That would be something that’s subject to interpretation because it would – it would depend on what someone is alleging to be a lawful purpose. If a lawful purpose is, I need to come in so I can wash these windows when they weren’t asked to wash those windows, is that a lawful purpose?

Well, that’s up to speculation and interpretation. So I don’t know that I can really delve into what a lawful purpose is with me not being an attorney. I just do know that there are certain individuals that are allowed within polling locations, so...

Id.

V. Conclusions of Law:

After considering the evidence before this Court and the applicable law, the Court concludes that the Challenged Provisions violate the Arkansas Constitution because they individually and collectively impair and infringe upon fundamental rights guaranteed by the Arkansas Constitution. The Court’s conclusions of law are set forth below:

A. Dr. Kenneth Mayer, Dr. Linton Mohammed, and Commissioner Susan Inman are experts who are qualified to offer opinion testimony in their respective areas of expertise.

187. Commissioner Inman's extensive experience over the last several decades qualifies her as an expert in Arkansas elections and election administration who is qualified to give opinion testimony about the impact of the Challenged Provisions on election administrators and voters.

188. Dr. Mohammed's extensive experience qualifies him as an expert with extensive specialized knowledge in signature, handwriting, and document examination who is qualified to give opinion testimony concerning the effect of Act 736 on voters and election administrators. Dr. Mohammed's expert report, which was admitted into evidence by stipulation of the parties, is trustworthy and corroborative of the testimony he provided in Court. Pls.' Ex. 47.

189. Dr. Mayer's extensive experience qualifies him as an expert with specialized knowledge in election administration, voter turnout, and voter behavior who is qualified to give opinion testimony concerning the impact of the Challenged Provisions on voters and election administration. Dr. Mayer's expert report, which was admitted into evidence by stipulation of the parties, is trustworthy and corroborative of the testimony he provided in Court. Pls.' Ex. 56.

190. Defendants did not proffer any expert analysis, including any rebuttal expert analysis.

B. Plaintiffs have standing.

191. Each of the Voter and Organizational Plaintiffs have standing to challenge the Challenged Provisions. In Arkansas courts, "a litigant has standing to challenge the constitutionality of a statute if the law is unconstitutional as applied to that particular litigant." *Ghegan & Ghegan, Inc. v. Weiss*, 338 Ark. 9, 14-15, 991 S.W.2d 536, 539 (1999).

192. A plaintiff “must have suffered injury or belong to a class that is prejudiced in order to have standing to challenge the validity of a law.” *Id.* This is not an onerous requirement: Plaintiffs need only “show that the questioned act has a prejudicial impact on them.” *Martin v. Kohls*, 2014 Ark. 427, at 8, 444 S.W.3d 844, 849 (citations omitted).

193. The Voter Plaintiffs have standing to challenge voting-related laws “by virtue of their status as registered voters; nothing more is required.” *Martin v. Haas*, 2018 Ark. 283, at 8, 556 S.W.3d 509, 515). Even if being a registered voter were not enough to establish standing (and it is under Arkansas law), there is substantial evidence demonstrating that the Voter Plaintiffs will be injured by the Challenged Provisions. *See* ¶¶ 14-17, 20-30, 35-42, 43-48.

194. The evidence also demonstrates that Organizational Plaintiffs will suffer harm sufficient to confer standing on them directly: they will be forced to divert resources to ameliorate the negative effects of the Challenged Provisions, the Challenged Provisions frustrate their missions, and Act 728 bars them from engaging in protected expressive conduct. *See* ¶¶ 49, 51-65, 66-87.

195. The Organizational Plaintiffs also have proven associational standing on behalf of their members and constituents. The Organizational Plaintiffs’ testimony established that: (1) their members would otherwise have standing to sue in their own right; (2) the interests they seek to protect are germane to the organization’s purpose; and (3) neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit.⁶ *See Iowa League of*

⁶ Arkansas case law is silent on associational standing. This silence is likely the result of state law expressly providing for non-profit organizations to assert associational standing until it was repealed in 2012. *See* Ark. Code Ann. § 4-28-507 (repealed 2012). Virtually all states have embraced associational standing doctrine, as have federal courts. *See Int’l Union of Operating Eng’rs v. Ill. Dep’t of Empl. Sec.*, 828 N.E.2d 1104, 1112 (Ill. 2005) (collecting cases); *see also Hunt v. Wash. State Apple Advert. Comm’n*, 432 U.S. 333, 342–43 (1977).

Cities v. EPA, 711 F.3d 844, 869 (8th Cir. 2013) (discussing these requirements); *see also* ¶¶ 58-61, 63-65, 67, 72-81, 83-87.

196. The Organizational Plaintiffs have described in detail how the Challenged Provisions will harm their members. *See* ¶¶ *id.*

197. Moreover, three individual plaintiffs—Dortha Dunlap, Nell Matthews Mock, and Patsy Watkins—are members of the League and have standing by virtue of being registered voters in Arkansas. *See Martin v. Haas*, 2018 Ark. 283, at 8, 556 S.W.3d 509, 515(2014)); *see also* ¶¶ 13, 18, 20, 32, 34, 49; *supra* n.2.

198. And the injuries demonstrated on behalf of the Organizational Plaintiffs' members are sufficiently concrete: Plaintiffs have established a realistic probability that their members will suffer an imminent injury during or before the next election. *See* ¶¶ 58-61, 63-65, 67, 72-81, 83-87. Organizational Plaintiffs also established prospective harm and the League identified specific members who will be harmed by the Challenged Provisions. *See* ¶¶ 13, 18, 32, 49; *see also supra* n.2.

199. The Organizational Plaintiffs also explained that the League and Arkansas United effectuate their respective missions by attempting to ensure that *all* Arkansas voters' ballots are properly cast and counted. *See e.g.*, ¶¶ 62-63, 67, 69, 72.

200. Accordingly, the Organizational Plaintiffs have a vested and mission-driven interest in protecting Arkansans from being disenfranchised or subjected to unjustifiable burdens on their fundamental right to vote.

201. Additionally, both the League and Arkansas United testified that they have Black and Latinx members, who the evidence shows will be especially burdened by the Challenged Provisions. *See* ¶¶ 49, 67; *see generally* 122-41. Accordingly, the League and Arkansas United

have associational standing to bring the claims in this case. *See Iowa League of Cities v. E.P.A.*, 711 F.3d at 869.

C. Legal Standard.

202. In Arkansas, “[w]hen 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. Ark. Soc. Servs.*, 282 Ark. 369, 374, 669 S.W.2d 878, 880 (1984)).

203. When a challenged law burdens a fundamental right, the state must prove that “‘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*, 349 Ark. 600, at 632, 80 S.W.3d at 350 (quoting *Thompson*, 282 Ark. 369, at 374, 669 S.W.2d at 880).

204. In addition, when an equal protection challenge brought under Article 2, Section 3 of the Arkansas Constitution implicates a “suspect classification”—such as a classification based on race—it “warrant[s] strict scrutiny.” *Howton v. State*, 2021 Ark. App. 86, at 7, 619 S.W.3d 29, 35 (2021).

205. Any burdens imposed on fundamental rights should be considered *together*, in the context of all of Arkansas’s election laws, with explicit regard for their cumulative harm. *See, e.g., League of Women Voters v. Hargett*, 400 F. Supp. 3d 706, 733 (M.D. Tenn. 2019) (finding a law burdens the fundamental right to suffrage in considering the “Cumulative Burdens of the Act”); *see also Williams v. Rhodes*, 393 U.S. 23, 38 (1968) (finding that, “[t]aken together,” various provisions make ballot access and the ability to vote for a third party candidate “difficult, if not impossible”).

206. As discussed below, *see infra* Section V.J, even if some other standard of review applied (and it does not), the Challenged Provisions would still impose unconstitutional burdens on the right to vote.

D. The right to vote is a fundamental right.

207. The right to have one’s ballot counted and free from arbitrary interference is a fundamental right guaranteed by Article 3, section 2 of the Arkansas Constitution. *Reynolds v. Sims*, 377 U.S. 533, 554-555 (1964); *Davidson v. Rhea*, 221 Ark. 885, 256 S.W.2d 744 (1953); *Henderson v. Gladish*, 198 Ark. 217, 217, 128 S.W.2d 257, 262 (1939). So are the rights to freedom of speech and assembly. *See e.g.*, Ark. Code Ann. § 6-60-1002 (characterizing “freedom of speech as a fundamental right for all”). Because the Challenged Provisions infringe on the fundamental rights to vote, speak, and assemble, the burden shifts to Defendants to establish that “a compelling state interest is advanced by the [Challenged Provisions] and [that they are] the least restrictive method available to carry out [the] state interest.” *Jegley*, 349 Ark. 600, at 632, 80 S.W.3d 332, 350 (quoting *Thompson*, 282 Ark. 369, 374, 669 S.W.2d, 880). Defendants have not even approached satisfaction of this evidentiary burden—they have failed to show that any Challenged Provision advances any compelling state interest much less that any Challenged Provision is the least restrictive method available to advance any state interest.

E. Freedom of speech and assembly are fundamental rights.

208. Article 2, Section 4 of the Arkansas Constitution guarantees that the right of the people to peaceably “assembl[e], consult for the common good[,] and to petition . . . shall never be abridged.” Article 2, Section 6 of the Arkansas Constitution decrees that “[t]he free communication of thoughts and opinions[] is one of the most invaluable rights of man.”

209. The Arkansas Supreme Court has explained that this state constitutional guarantee of free speech provides at least as much protection as the First Amendment of the United States Constitution. *See McDaniel v. Spencer*, 2015 Ark. 94, at 8, 457 S.W.3d 641, 649.

210. The First Amendment protects the rights of free speech and expression, particularly the “interactive communication concerning political change” that is appropriately described as “core political speech.” *Buckley v. Am. Const. Law Found., Inc.*, 525 U.S. 182, 186 (1999) (quoting *Meyer v. Grant*, 486 U.S. 414, 422 (1988)). Under federal law, limitations on such speech and expression are subject to “exacting scrutiny.” *Id.* at 202 (citing *Buckley v. Valeo*, 424 U.S. 1, 45 (1976)). This standard requires defendants to prove that the restriction is “substantially related to important governmental interests” and that the interest cannot be served by “less problematic measures.” *Id.* at 202, 204.

211. Moreover, under Arkansas law, the rights to freedom of speech and assembly are fundamental, *see e.g.*, Ark. Code Ann. § 6-60-1002(6) (2019) (characterizing “freedom of speech as a fundamental right for all”).

F. The parties may not rely on wholly speculative assertions and guesswork in proving their case.

212. Under Arkansas law, to raise a question of fact, the proponent of such a fact must “adduce some substantial testimony from which the [factfinder] might have found” in their favor. *Glidewell v. Arkhola Sand & Gravel Co.*, 212 Ark. 838, 843, 208 S.W.2d 4, 8 (1948).

213. The proponent of such a fact “might establish [it], either by direct or circumstantial testimony.” *Id.* However, they “[cannot] rely upon inferences *based on conjecture or speculation* in order to establish proof” of such a fact. *Id.* (emphasis added). “What is meant is that an inference cannot be based upon evidence which is too uncertain or speculative or which raises merely a conjecture or possibility.” *Id.* (quoting 20 Am. Jur., Section 165, page 169).

214. “The indulgence of inferences will not supply a nonexistent fact. Inferences to support a verdict arise out of facts established by evidence. Other inferences are purely speculative, or maybe guesswork or conjecture. This method of dealing with the rights of parties has been condemned by many decisions.” *Id.* (quoting *Fort Smith Gas Co. v. Blankenship*, 193 Ark. 718, 102 S.W.2d 75, 76 (1937) (citing cases)).

G. The Challenged Provisions are unconstitutional.

215. As set forth below: (1) all four Challenged Provisions violate the Free and Equal Elections Clause, Ark. Const. art. 2 § 3, and the Equal Protection Clause, Ark. Const. art. 2 § 3; (2) the Absentee Application Signature-Match Requirement and the In-Person Ballot Receipt Deadline, Acts 736 and 973 respectively, violate the Voter Qualifications Clause, Ark. Const. art. 2 § 1; (3) Act 249 violates Section 19 of Amendment 51; and (4) the Voter Support Ban, Act 728, violates the rights to freedom of speech and assembly in the Arkansas Constitution, Ark. Const. art. 2 § 4; Ark. Const. art. 2 § 6.

H. The Challenged Provisions implicate suspect classifications and cannot withstand strict scrutiny.

216. The Challenged Provisions implicate suspect classifications in violation of Article 2, Section 3 of the Constitution, which guarantees that “[t]he equality of all persons before the law . . . shall ever remain inviolate; nor shall any citizen ever be deprived of any right, privilege or immunity; nor exempted from any burden or duty, on account of race, color or previous condition.” When an equal protection challenge implicates a “suspect classification”—such as a classification based on race—it “warrant[s] strict scrutiny.” *Howton v. State*, 2021 Ark. App. 86, at 7, 619 S.W.3d 29, 35 (2021). And, in any event, *each* of the Challenged Provisions is otherwise subject to strict scrutiny because each abridges and impedes the exercise of fundamental rights. *See Jegley*,

349 Ark. 600 at 632, 80 S.W.3d at 350. The evidence adduced at trial shows that the Challenged Provisions, both independently and collectively, are certain to further depress turnout in Arkansas, especially among African-American voters, voters living in poverty, and voters with limited educational backgrounds. *See generally* ¶¶ 122-40.

217. The negative effects of Act 728, in particular, are likely to be greatest in areas with higher minority populations. As Dr. Mayer explained, “[n]ationwide, minority voters were much more likely to wait at least 30 minutes to vote, and on average waited nearly 30% longer to vote than white voters” Pls.’ Ex. 56, at 21 (citing Chen et al. 2020; Stein et al. 2019). “In addition, wait times are a function of how well-resourced local election offices are, which is more likely to affect polling places in areas with high poverty levels. *Id.* (citing Pitzer, McClendon and Sherraden 2021)). “A lack of clarity about what constitutes a ‘lawful purpose’ and who is responsible for making that determination (whether election officials or other voters) creates additional risks for the unequal application of poll worker discretion.” *Id.* “And prohibiting the practice of offering water to voters who may be waiting in long lines with significant waiting times will have the effect of imposing disproportionate burdens on poor and minority voters.” *Id.*

218. In addition, Arkansas United testified that: (1) Act 736 “targets” Arkansas’s immigrant voters for disenfranchisement because they typically have multiple surnames that are listed inconsistently on government forms and exhibit more variation than other voters based on which surnames they use when signing, which likely exacerbates perceived discrepancies between their signatures; (2) Act 728 imposes more severe burdens on immigrants and other non-English speaking voters who are more likely to require assistance from someone to translate election materials, because Arkansas is an English-only state that does not provide translated ballots or election materials; and (3) Act 249 imposes even more severe burdens on immigrant voters

because their surnames are often rearranged or changed, and that even when immigrant voters dictate to the DMV the way in which their name should appear, the result is often wrong because DMVs do not have any Spanish-speaking staff to assist them, which makes them more likely to have their photo ID rejected by poll workers. ¶¶ 72-87.

I. The Challenged Provisions violate, impair, or forfeit the fundamental right to vote.

219. Each of the Challenged Provisions impairs or forfeits the fundamental right to vote in violation of Article 3, Section 2 of the Arkansas Constitution, which guarantees that “[e]lections shall be free and equal,” and that “[n]o 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 . . .,” as well as the Voter Qualifications Clause in Article 3, Section 1, which guarantees that “any person” can vote as long as they are at least eighteen, a U.S. citizen, an Arkansas resident, and can verify their identity.

3. Act 736 impairs or forfeits the fundamental right to vote.

220. Act 736 unconstitutionally impairs or forfeits the fundamental right to vote as guaranteed under Article 3, Section 2 of the Constitution, and the Voter Qualification Clause of Article 3, Section 1, by imposing a new requirement on voters not contained within the Constitution, *i.e.*, that the voter’s signature on her absentee ballot application match the signature on her registration application.

221. Specifically, Act 736 makes the signature matching process for obtaining an absentee ballot even more error-prone and arbitrary by restricting the universe of signatures canvassers can use as comparators. ¶¶ 9, 109-18, 167-68. Dr. Linton Mohammed explained that determining whether signatures are genuine or non-genuine—or, in the language of Act 736, “similar”—requires a sufficient number of sample signatures. ¶¶ 109, 116-17. Even trained

Forensic Document Examiners cannot reliably determine whether signatures are genuine with only a single comparator signature. *See* ¶ 116. Experts agree that examiners need at least *ten* comparators to reliably determine whether a signature is genuine. *Id.* Act 736 permits election officials to review only the signature on a voter's registration form—a single comparator—in determining whether the signature on the voter's absentee ballot application is “similar” to the prior signature—or, in non-lay terms, whether the absentee ballot application signature is genuine. ¶¶ 9, 109. Restricting election officials to only a single comparator signature will cause lawful voters to have their genuine absentee ballot application signatures rejected. *See* ¶¶ 116-17.

222. Act 736's new mandate will impede and, in some cases, entirely deny lawful voters their right to vote absentee based on arbitrary decisions by untrained, non-expert county officials who are ill-equipped to accurately determine whether two signatures were in fact made by the same person. *See generally* ¶¶ 109-18. This is especially true because factors such as age, illness, injury, medicine, eyesight, alcohol, and drugs, and mechanical factors such as the pen type affect a person's signature and increase the odds of arbitrary rejection of an absentee application by the voter. ¶¶ 112, 167-68.

223. Act 736 impairs Plaintiffs and other similarly situated Arkansan's right to vote. Dr. Watkins's arthritis, Mr. Rust's tremor and macular degeneration, Ms. Mock's arthritis, and Ms. Dunlap's neuropathy and arthritis have all worsened over time and affect their signatures in unpredictable and uncontrollable ways. ¶¶ 15, 17, 22-24, 35, 46-48. Beyond physical impairments, racial and ethnic characteristics are also likely to impact whether a signature is erroneously rejected. ¶¶ 73-75. Ms. Reith testified Arkansas United's members of Latinx and Asian descent are more likely to have four or even five names on their birth certificates and may not recall how they signed their name when they originally registered. *Id.* . She further testified Act 736 would

require that she build Arkansas United's members' awareness paying special attention to the potential problems as a result of Act 736's new signature match requirements. *Id.*

224. Beyond a voter's age, physical disabilities, and race or ethnicity, a voter's literacy and non-English primary language are also likely to lead to their ballot being erroneously and unjustly rejected under Act 736. ¶¶ 112. Illiterate writers and writers for whom English is a second language tend to have less pen control than most other writers so their signatures often have a greater range of variation. *Id.*

225. In sum, Act 736 makes it more likely that Arkansas voters, including Plaintiffs, will have their absentee ballot applications erroneously rejected on the basis of an alleged signature mismatch. *See* ¶¶ 117-18. This risk only increases for disabled, elderly, and minority voters, as well as for voters with limited literacy skills and who speak English as a second language. ¶¶ 73-75, 112.

226. There is no compelling state interest furthered by such an arbitrary burden on the right to vote. The purported justification for the Absentee Ballot Application Signature-Matching Requirement is to prevent voting fraud via the absentee ballot. *See* Ex. 56 at 14. However, neither the Secretary nor the Board is aware of any voter fraud in the past election by way of an absentee ballot. ¶¶ 148-49, 169-70. In fact, the Secretary admitted that it explicitly trains election officials to verify identity and eligibility using the voter's name, date of birth, and address, and to *ignore* the signature mark in petitions under Amendment 7. ¶¶ 171-72. The Secretary further admitted that it is equally necessary to prevent fraud in the petition process, and that comparing demographic information alone fully satisfies this interest. ¶¶ 171-72. In addition, Arkansas elections are secure and voter fraud is vanishingly rare—rendering Defendants' justification obsolete. ¶ 141. A

proposed justification that is based wholly on “conjecture or speculation” is patently insufficient under settled Arkansas law. *Glidewell*, 212 Ark. at 843, 208 S.W.2d at 8.

227. Defendants suggest that because laypersons engage in signature matching in other circumstances, Act 736’s limitations do not constitute a burden on the right to vote under Arkansas’s Constitution. Not so. Voting is a fundamental right, and when a fundamental right is at stake, an unreliable process that will result in erroneous rejections of absentee ballot applications cannot pass constitutional muster, *see supra* Section V.D, no matter how frequently laypersons engage in similarly unreliable practices in other contexts. And in any event, Defendants offered no concrete evidence of signature matching in any context outside of voting to support their claims.

228. In sum, Act 736 impairs or forfeits the right to vote, and those burdens are not supported by any state legitimate state interest, let alone a compelling one.

4. Act 973 impairs or forfeits the right to vote.

229. Act 973’s amended deadline unconstitutionally impairs or forfeits the fundamental right to vote in violation of Article 3, Section 2 of the Constitution, as well as the Voter Qualification Clause of Article 3, Section 1 by imposing a disparate temporal qualification on in-person absentee voters that is unrelated to their eligibility and does not appear in the Constitution.

230. Returning an absentee ballot by mail is a challenging endeavor for absentee voters. Multiple plaintiffs testified as to their problems with the postal service. ¶¶ 14, 98, 136.

231. Defendants’ assertion that voters can merely cast their ballots earlier is unpersuasive. Dr. Mayer testified that since 2016, more than 1,222 Arkansas voters returned their ballots in the 3-day window Act 973 eliminates. ¶ 136; Pls.’ Ex. 66. Voters who prefer to wait till closer to the deadline will still face prohibitive burdens. *See, e.g.*, ¶¶ 44, 76, 136. Arkansas United’s members whose jobs involve unpredictable schedules will be forced to make voting plans that, in

all likelihood, they will have to forego because of their schedules. ¶ 76. Voters who wish to wait for any late-breaking news and changes to the ballot will be forced to forego their ability to cast an informed ballot under the new deadline as well. *See e.g.*, ¶ 44. Casting their ballots earlier does nothing to alleviate these burdens.

232. Defendants' claim that the earlier deadline serves the "compelling" state interest of alleviating administrative burdens is equally unpersuasive. *See* ¶¶ 151-52, 173. As Commissioner Inman testified, county clerks are well trained and efficient. ¶¶ 96-98. This is perhaps best demonstrated by the Defendants' own admission that despite that the 2020 general election resulted in the largest increase in absentee voting in recent memory, it was also, as Secretary Thurston himself put it, the *most successful* election in Arkansas history. Pls.' Ex. 42; Pls.' Ex. 43, at 3:2-9 (emphasis added); *see also* Dir. Shults Testimony; Bridges Testimony.

233. In sum, Act 973 imposes an unnecessary burden on absentee voters in Arkansas by limiting the amount of time they have to cast an informed ballot in the manner that most assuredly guarantees their ballot will be returned in time to be successfully canvassed and counted, and those burdens are not supported by any state legitimate state interest, let alone a compelling one.

5. Act 249 impairs or forfeits the right to vote.

234. Act 249 impairs or forfeits the right to vote in violation of Article 3, Section 2 of the Constitution because its elimination of the Affidavit Fail-Safe puts thousands of Arkansas voters in jeopardy of disenfranchisement.

235. Act 249's elimination of the Affidavit Fail-Safe transformed Arkansas voter ID regime from non-strict to strict. ¶ 133. This will undoubtedly suppress voter turnout and lead to increased rejection rates. ¶¶ 133-35. Importantly, the reduced turnout will have a particularly significant impact on minorities, the elderly, and groups with lower incomes and education. ¶¶

133-35. Ms. Dunlap's testimony corroborates this. She testified that she's unlikely to renew her driver's license once it expires. ¶ 16. Furthermore, obtaining the alternative state issued voter ID is a task easier said than done because of her mobility and transportation restrictions. *See* ¶¶ 176-78.

236. In addition to the burdens imposed on those who lack the requisite identification, even voters who have the requisite identification will be burdened by Act 249. ¶¶ 11, 104, 134. If they vote in person without acceptable ID, they will no longer be able to prove their identity by executing a voter verification affidavit, and these voters will instead have to return to their local clerk's office in the days immediately following the election to present their ID, or their provisional ballot will not count. ¶¶ 11, 104, 134.

237. If voting absentee, they will have to include a copy of their identification with their absentee ballot or report to the clerk's office in person to show their ID. *See* ¶¶ 104, 134.

238. For those voting absentee because of illness, infirmity, or limited mobility, this is a paradoxical hurdle that will likely require they forfeit their right to vote for reasons completely unrelated to their eligibility. ¶¶ 133-35, 150 (the Board admitting that requiring such voters to return to their county clerk's office lest their ballots be rejected "defeats the purpose" of voting absentee in the first place).

239. Arkansas United explained that Act 249 will also have stark and disparate impacts on its immigrant members—both those who vote in person and those who vote absentee. *See* ¶¶ 78-82.

240. There is no compelling state interest in support of Act 249's significant burdens on access to the franchise. Defendants make three arguments in support of the law, and all three fail.

241. First, Defendants argue that Act 249 was required by Amendment 99, which was passed in 2018. However, the Board admitted that Amendment 99 did not require the elimination of the Affidavit Fail-Safe, effectively recanting that argument. *See* ¶ 154.

242. Second, Defendants argue that *Martin v. Haas* forecloses relief, but their reliance on *Haas* is misplaced. In *Martin v. Haas*, the Supreme Court found that Act 633's photo ID requirement, which *included* the Affidavit Fail-Safe, was constitutional as it aligned with Amendment 51's requirement that the General Assembly may only amend Sections 5 through 15 of Amendment 51 if said amendments are germane to Amendment 51 and consistent with its policy and purpose. *See* Ark. Const. amend. 51, § 19 (1964); 2018 Ark. 283, 556 S.W.3d 509).

243. Here, unlike *Haas*, the Court must consider the operative effect of Act 249. Act 249's removal of the Affidavit Fail-Safe is substantively different than Act 633, and *Haas* cannot be read to mean—as Defendants suggest—that *any* method of verifying voter identity and registration is automatically germane to Amendment 51 and consistent with its policy and purpose of eliminating the poll tax and establishing a system of voter registration. Such a reading would yield absurd results: for example, the State would by legislative enactment be able to limit voter identification to only costly U.S. Passports, or concealed carry permits, regardless of how many eligible and registered voters lacked such ID.

244. Third, Defendants argue—despite their admissions that there has not been a single case of voter fraud ever that resulted from the Affidavit Fail-Safe, and despite that the Affidavit has been used by tens of thousands of Arkansas voters over the last several years—that Act 249 can be justified based on *perceptions* of election insecurity. However, Defendants readily admitted that the concerns raised about insecurity and fraud in Arkansas by voters were based on “misinformation” and “disinformation.” ¶¶ 157, 179.

245. Nefarious social media campaigns designed to sow distrust among Arkansas voters by bad actors cannot possibly give rise to a compelling state interest sufficient to justify the most extreme of burdens on the fundamental right to vote on eligible and registered voters without acceptable photo ID: disenfranchisement. Nor can social media campaigns justify the other attendant burdens Act 249 imposes on absentee voters who do not possess photocopiers, printers, or scanners.

246. In sum, Act 249's elimination of the Affidavit Fail-Safe impairs or forfeits the right to vote, and those burdens are not supported by any state legitimate state interest, let alone a compelling one. And there is no argument by Defendants, nor could there be, that Act 249 represents the least restrictive method for ensuring election integrity because, by Defendants' own admissions, the Affidavit Fail-Safe was already 100% effective at preventing voter fraud.

6. Act 728 impairs or forfeits the right to vote.

247. Act 728's Voter Support Ban unconstitutionally impairs or forfeits the fundamental right to vote in violation of Article 3, Section 2 of the Constitution.

248. It has become an unfortunate trend with Arkansas elections that many voters increasingly must brave hours-long lines to cast their ballot. Pls.' Exs. 8, 18. Ms. Matthews Mock remembers standing in hours-long lines throughout the 90s and 2000s, but she could not do that now. ¶ 36. Dr. Watkins stood in line for more than an hour at Naturals stadium to cast her ballot for the November 2020 general election. ¶¶ 26-27. As a result, she suffered from severe back pains. ¶ 27. Had she been faced with waiting any longer she would have been forced to leave the line and forfeit her opportunity to vote. *Id.*

249. For some voters, the prospect of waiting is an insurmountable burden. ¶¶ 63-65, 83, 86, 216. Dr. Watkins, Ms. Matthews Mock, and Mr. Rust each testified that they could not

withstand hours-long waits in order to vote. ¶¶ 30, 36, 48. They also testified that having another person stand with them or bring them water could mean the difference between being able to vote or not. ¶¶ 30, 36, 48.

250. Act 728's blanket prohibition of what is an essential support will disenfranchise elderly or disabled voters who will have to forfeit their right to vote or risk their family and friends being criminally prosecuted. ¶¶ 30, 36, 48. There are no exceptions in Act 728 for those who are simply assisting or supporting voters waiting in line to vote. As testimony and evidence indicates, Act 728 broadly prohibits people from even entering the 100-foot zone unless they are entering or leaving the polling place for an undefined "lawful purpose." *See* Pls' Ex. 2.

251. It is also evident that Act 728 will disproportionately burden poor and minority voters because those communities are most often affected by long lines, they will be disproportionately burdened by Act 728's prohibition of assistance. ¶¶ 122, 137. Moreover, Act 728's lack of clarity about what constitutes a "lawful purpose" presents a significant risk that unequal application of poll worker discretion will unjustly disenfranchise voters and put those who support them at risk for criminal prosecution. ¶ 137.

252. In sum, Act 728 impairs or forfeits the right to vote, and those burdens are not supported by any state legitimate state interest, let alone a compelling one.

J. Even if some other standard of review applied (and it does not), the Challenged Provisions would still impose unconstitutional burdens on the right to vote.

253. Defendants wrongly argue that this Court should apply the federal *Anderson-Burdick* standard instead of applying the clear law of this state. No Arkansas Court has adopted the *Anderson-Burdick* standard for claims made under the Arkansas Constitution, and Defendants do not explain why this Court should be the first do so, in contravention of the binding standard

for fundamental rights of Arkansans set out in *Jegley v. Picado*, 349 Ark. at 632, 80 S.W.3d at 350 (quoting *Thompson v. Ark. Soc. Servs.*, 282 Ark. 369, 374, 669 S.W.2d 878, 880 (1984)).

254. Defendants' claim that the Supreme Court adopted *Anderson-Burdick* in *U.S. Term Limits, Inc. v. Hill*, 316 Ark. 251, 872 S.W.2d 340 (1994) is wrong—the Supreme Court applied *Anderson-Burdick* only to the **federal** constitutional claims raised in that case. The Supreme Court did not imply, let alone hold, that the same standard applied in the context of right-to-vote claims made under the Arkansas Constitution.

255. But even *if* *Anderson-Burdick* did apply (and it does not), Plaintiffs would still prevail. Under *Anderson-Burdick*, courts must weigh the burden imposed on voters by the challenged laws against the interests of the state in enforcing them. This analysis proceeds in three steps. Courts “must first consider the character and magnitude of the asserted injury to the rights . . . that the plaintiff seeks to vindicate.” *Anderson v. Celebrezze*, 460 U.S. 780, 789 (1983). Courts “then must identify and evaluate the precise interests put forward by the State as justifications for the burden imposed by its rule.” *Id.* Finally, courts must “determine the legitimacy and strength of each of those interests,” and “the extent to which those interests make it necessary to burden the plaintiff’s rights.” *Id.* “Only after weighing all these factors is the reviewing court in a position to decide whether the challenged provision is unconstitutional.” *Id.*

256. Here, the outcome would be the same whether the Court were to apply *Jegley*, as it must, or *Anderson-Burdick*, because (1) the burdens that the Challenged Provisions impose on the fundamental right to vote are significant, (2) the Acts do not further any legitimate state interests, and (3) even if the Acts were supported by legitimate state interests (and they are not), those interests would not justify the magnitude of the burdens that the Acts impose on fundamental rights. Accordingly, the Acts would fail under *Anderson-Burdick* as well.

257. In fact, the Challenged Provisions would not even withstand rational basis review. Under this least exacting standard of review, courts must not “review the wisdom or rightness of legislation” but must still determine if there is any reasonable basis to support it. *Four Cnty. (NW) Reg’l Solid Waste Mgmt. Dist. Bd. v. Sunray Servs., Inc.*, 334 Ark. 118, 127, 971 S.W.2d 255, 260 (1998). Here, there is no reasonable basis to impose the severe burdens foisted upon voters by the Challenged Provisions. Defendants admit there is no history of voter fraud in Arkansas based on the conduct that is the target of the Challenged Provisions, and they agree that public perceptions about election insecurity and fraud are based on “misinformation” and “disinformation” broadcast on social media. ¶¶ 157, 179. This misinformation was spread by uninformed individuals at best and bad actors with nefarious aims at worst. And Defendants themselves have admitted that—contrary to such misinformation—the 2020 general election was the most successful in Arkansas’s history. ¶¶ 157, 179. These admittedly wrong ideas do not present any reasonable basis for further burdening voters—instead they require that Defendants do a better job of educating the public and disabusing them of the lies and falsehoods they may have heard on television or seen online.

258. There is also no reasonable justification for Act 728, which Defendants admit does nothing but prevent activity that was already illegal, ¶¶ 160-62, 181-83, or Act 249, which Defendants admit eliminates a failsafe method of voting that ensured access to the franchise for tens of thousands of Arkansans without a single instance of fraud, ¶¶ 148-49, 153, 169-70, 174 , Act 736, which is assured to result in greater burdens for voters vis-à-vis a method that it so *inherently unreliable* that it could not prevent fraud even if fraud were its justification, *see generally* Dr. Mohammed Testimony; *see also* ¶ 111, or act 973, which even Governor Hutchinson said “unnecessarily limits the opportunities for voters to cast their ballot prior to the election,” and serves no purpose other than to deprive voters of crucial time to get all the information they need

before voting and while retaining confidence that their ballots will be timely and therefore counted. See ¶¶ 10, 97.

K. Act 728 abridges and denies the fundamental rights to free speech and assembly.

259. Act 728 also infringes upon Arkansas United's and the League's freedom of speech and association, in violation of Article 2, Section 4 of the Constitution, which guarantees that the right of the people to peaceably "assembl[e], consult for the common good[,] and to petition . . . shall never be abridged," as well as in violation of Article 2, Section 6, which decrees that "[t]he free communication of thoughts and opinions[] is one of the most invaluable rights of man." As the Supreme Court has explained, Arkansas's constitutional guarantee of free speech provides at least as much protection as the First Amendment. See *McDaniel v. Spencer*, 2015 Ark. 94, at 8, 457 S.W.3d 641, 649 (2015).

260. As set out in the Findings of Fact, voters faced with long lines at the polls are less likely to participate in the franchise. ¶¶ 122, 137, 217. Dr. Watkins, Ms. Matthews Mock, and Mr. Rust each testified as much when explaining how their disabilities affect their mobility and ability to stand for any lengthy period of time. ¶¶ 26-28, 30, 36, 42, 48. For many voters, support and assistance efforts will mean the difference between being able to vote or not. ¶¶ 63-65, 83, 86, 217.

261. Arkansas United already provides voters waiting in line with water, snacks, and translation services outside the 100-foot zone. ¶¶ 71, 83, 86. But for Act 728, the League and Arkansas United would provide voters with similar support services within the 100-foot zone as well. ¶¶ 83, 86. The League believes this conveys the message that the democratic process is open and welcoming and that every voter is going to be respected and enabled and supported to be part of the democratic process. ¶¶ 83, 86.

262. There is no basis in law for Defendants' argument that Organizational Plaintiffs' support of voters in line is not expressive because it is *unnecessary*. Organizational Plaintiffs' rights are not dependent upon whether their intended audience *needs* the message; it is not even relevant whether that audience is receptive. Secondly, Organizational Plaintiffs' unconditional provision of free water and snacks *is* expressive, regardless of whether Defendants deem that expression "necessary," and does not constitute electioneering as defined by Section 7-1-103(a)(8) of the Arkansas Code. As Ms. Reith testified, Arkansas United is conveying a message of support and encouragement to voters braving the long lines and elements. ¶¶ 83, 86. This is exactly the type of expressive conduct the First Amendment—and thus the Free Speech and Assembly clauses of the Arkansas Constitution—protects. *See Fort Lauderdale Food Not Bombs v. City of Fort Lauderdale*, 901 F.3d 1235, 1243 (11th Cir. 2018) (citing *Spence v. Wash.*, 418 U.S. 405, 411 (1974)). Organizational Plaintiffs do not have to curate their message to Defendants' liking. It need only be expressive, and here, their message is just that. *See Hurley v. Irish-Am. Gay, Lesbian and Bisexual Grp. of Bos.*, 515 U.S. 557, 569 (1995).

263. Defendant's purported justification for Act 728 is preventing electioneering and voter intimidation. But their argument is unsound and rather than showing a compelling interest shows that it is superfluous and redundant. Electioneering, voter intimidation, and loitering are each already prohibited by law. Ark. Code Ann. §§ 7-1-103(a)(8); 7-1-104(a)(5); 5-71-213. Any restriction on speech cannot be supported by a putative interest in preventing conduct that is *already* prohibited under state law and "generic criminal statutes." *McCullen v. Coakley*, 573 U.S. 464, 490–92 (2014).

VI. Conclusion

264. Accordingly, the Court concludes that (1) all four Challenged Provisions (Acts 736, 973, 249, and 28) violate the Free and Equal Elections Clause, Ark. Const. art. 2 § 3, and the Equal Protection Clause, Ark. Const. art. 2 § 3; (2) Acts 736 and 973 violate the Voter Qualifications Clause, Ark. Const. art. 2 § 1; (3) Act 249 violates Section 19 of Amendment 51; and (4) Act 728 violates the rights to freedom of speech and assembly in the Arkansas Constitution, Ark. Const. art. 2 § 4; Ark. Const. art. 2 § 6.

265. The Court permanently enjoins Defendants, as well as 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.

Respectfully submitted, this 21st day of March, 2022,

/s/ Jess Askew III

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CERTIFICATE OF SERVICE

I, Jess Askew III, hereby certify that I served the Clerk of Court with the foregoing on this 21st day of March 2022, via the e-flex electronic filing system, which shall send notice to all counsel of record.

/s/ Jess Askew III
Jess Askew III

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