

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

**STATE SENATOR BRYAN KING and  
THE LEAGUE OF WOMEN VOTERS OF ARKANSAS**

**PLAINTIFFS**

V.

**JOHN THURSTON, IN HIS OFFICIAL CAPACITY AS  
THE ARKANSAS SECRETARY OF STATE**

**DEFENDANT**

**MOTION FOR JUDGMENT ON THE PLEADINGS AND  
BRIEF IN SUPPORT**

Comes the Plaintiffs and for their motion for judgment on the pleadings and brief in support state:

1. On a motion for judgment on the pleadings under Arkansas Rule of Civil Procedure 12(c), the Court examines whether an issue is resolved on the face of the pleadings. *Estate of Hastings v. Planters & Stockman Bank*, 307 Ark.34,37 (1991). The issues in the case can be determined as a matter of law by the Court. The pleadings in the case demonstrate that as a matter of law that the Plaintiff is entitled to the relief sought in the complaint.
2. Article 5, Section 1 of the Arkansas Constitution provides, "Upon all initiative or referendum petitions provided for in any of the sections of this article, it shall be necessary to file from at least fifteen of the counties of the State, petitions bearing the signature of not less than one-half of the designated percentage of the electors of such county."

3. Article 5, Section 1 of the Arkansas Constitution provides in part, “For a state-wide petition, correction or amendment of an insufficient petition shall be permitted only if the petition contains valid signatures of legal voters to: (B) At least seventy-five percent (75%) of the required number of signatures of legal voters from each of at least fifteen (15) counties of the state.
4. Article 5, Section 1 of the Arkansas Constitution provides: Unwarranted Restrictions Prohibited. No law shall be passed to prohibit any person or persons from giving or receiving compensation for circulating petitions, nor to prohibit the circulation of petitions, nor in any manner interfering with the freedom of the people in procuring petitions; but laws shall be enacted prohibiting and penalizing perjury, forgery, and all other felonies or other fraudulent practices, in the securing of signatures or filing of petitions.
5. Article 5, Section 1 of the Arkansas Constitution provides: Self-Executing. This section shall be self-executing, and all its provisions shall be treated as mandatory, but laws may be enacted to facilitate its operation. No legislation shall be enacted to restrict, hamper or impair the exercise of the rights herein reserved to the people.
6. Act 236 of 2023 provides in part; (e) In order to certify a measure for the state wide election ballot, the official charged with verifying the signatures on an initiative petition or referendum petition shall also verify: (1) For a statutory initiative petition or referendum petition,

- that: (A) Petitions are filed from at least fifty (50) counties of the state; and (B) The petitions bear the signature of at least one-half (1/2) of the designated percentage of the electors of each county represented in subdivision (e)(1)(A) of this section; and (2) For an initiative petition for a constitutional amendment, that: (A) Petitions are filed from at least fifty (50) counties of the state; and (B) The petitions bear the signature of at least one-half (1/2) of the designated percentage of the electors of each county represented in subdivision (e)(2)(A) of this section. (f) If the requirements of subsection (e) of this section are less than the designated number of signatures or counties represented by petitions required by the Arkansas Constitution and statutory law in order to certify the measure for the ballot and the deadline for filing petitions has passed, the official charged with verifying the signatures shall declare the petition insufficient and shall not accept and file any additional signatures to cure the insufficiency of the petition on its face.
7. Act 236 of 2023 directly contradicts with Article 1 Section 5 of the Arkansas Constitution and therefore should be declared unconstitutional on its face and the Defendant enjoined from enforcing its provisions.
  8. Article 5, Section 1 provides that a certain number of signatures (1/2 of the designated percentage) must be collected on petitions from “at least fifteen counties of the state.” Act 236 of 2023 provides that a certain number of signatures (1/2 of the designated percentage) must be

collected on petitions from “at least fifty (50) counties of the state. Act 236 raises the number of counties from at least fifteen to at least fifty. At least fifty counties, is in contradiction to at least fifteen counties and is therefore unconstitutional.

9. Article 5, Section 1 provides that for a petition to be amended after submission to the Secretary of State (commonly referred to as a cure period) that at least 75% of the signatures on the petition be from legal voters from each of at least 15 counties of the state. Act 236 raises this threshold from at least 15 counties of the state to at least 50 counties of the state. At least 50 counties, is in contradiction to at least fifteen counties and is unconstitutional.
10. Article 5, Section 1 provides in part, “No law shall be passed ....in any manner interfering with the freedom of the people in procuring petitions...” Act 236 interferes with the freedom of the people in procuring petitions by requiring that petitions be collected from at least 50 counties instead of at least 15 counties.
11. Article 5, Section 1 provides in part, “... all its provisions shall be treated as mandatory, but laws may be enacted to facilitate its operation. No legislation shall be enacted to restrict, hamper or impair the exercise of the rights herein reserved to the people.” Act 236 does not facilitate the operation of Article 5 Section 1. According to the Oxford Dictionary the word facilitate means, “make (an action or process) easy or easier.” Increasing the minimum number of counties

from 15 counties to 50 counties can in no way be said to facilitate the operation of Article 5, Section 1. Common sense indicates that it would be more difficult and not easier to collect signatures from 15 counties than 50 counties. Act 236 does not facilitate the operation of Article 5, Section 1. Act 236 hampers the operation of Article 5, Section 1 and as such should be declared unconstitutional.

12. Any law that conflicts with the constitution is unconstitutional and void. This principle was first established in *Marbury v. Madison*, 5 U.S. 137, (1803) where the United States Supreme Court stated, “a law repugnant to the constitution is void; and that courts, as well as other departments, are bound by that instrument. The same holds true for the Arkansas Constitution. Laws in violation of the Arkansas Constitution are void. *Potts v. Hays*, 229 Ark. 830 (1958), *Handy Dan Improvement Center, Inc. v. Adams*, 276 Ark. 268 (1982). The Arkansas General Assembly is bound by the Arkansas Constitution. Act 236 is repugnant to the constitution and is void.

WHEREFORE, the Plaintiffs respectfully request that their motion be granted and that Act 236 of 2023 be declared unconstitutional and that the Defendant be enjoined from enforcing it.

Respectfully submitted,

/s/ David A. Couch

David A. Couch

Ark. Bar No. 85-033

1501 North University Ave.

Little Rock, AR 72207

501.661.1300

david@davidcouchlaw.com

**CERTIFICATE OF SERVICE**

I certify that I filed the foregoing document to the eFlex filing system, which notifies all counsel of record of its filing.

/s/ David A. Couch

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