

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

POST HEARING BRIEF

On March 4, 2024, a hearing was held on the Defendant's Motion to Dismiss and the Plaintiff's Motion for Judgment on the Pleadings seeking a declaration that Act 236 of 2023 was unconstitutional and the issuance of a preliminary and permanent injunction. The Defendant raised three issues in support of its Motion to Dismiss.

First, that the Plaintiff's do not have standing. The Plaintiff's clearly have standing. Senator King is a registered voter. Article 5, Section 1 of the Arkansas Constitution states in part in the first paragraph, "**the people reserve to themselves** the power to propose legislative measures, laws and amendments to the Constitution, and to enact or reject the same at the polls independent of the General Assembly..." Article 5, Section 1 further provides, "Unwarranted Restrictions Prohibited. **No law shall be passed to... in any manner interfering with the freedom of the people in procuring petitions...**" The Constitution reserves to the people the right to circulate petitions. Article 5, Section 1 further provides, "Self-Executing. ... **No legislation shall be enacted to restrict, hamper, or impair the exercise of the rights herein reserved to the people.**"

Senator King as a registered voter, a person, has the right under the constitution to propose a law and the constitution prohibits the General Assembly from interfering with that right is two separate clauses. As a voter, he has standing to challenge Act 236 since it interferes with his constitutional right. In addition, the League of Women Voters has institutional standing due to its decades long effort in protecting the right of voters and participating in the initiative process in the past. However, in a supplement to the Motion to Dismiss the League of Women Voters attached as an exhibit a current filing with the Arkansas Ethics Commission which shows that it is currently participating in the initiative process as a sponsor of an initiated act to remove the sales tax from feminine hygiene products and diapers. The Court's decision in this case will have to decide if they are required to collect a minimum number of signatures in 50 counties as required by Act 236 or 15 counties as required by the constitution. Certainly, the League of Women Voters have standing.

Second, the Defendant contends that the complaint is barred by sovereign immunity. The Arkansas Supreme Court has repeatedly held that seeking a declaratory judgment regarding the constitutionality of an issue is not barred by sovereign immunity.

Third, the Defendant contends that the Complaint should be dismissed because Act 236 is constitutional. The issue of the constitutionality of Act 236 has been joined in the pleadings. The Defendant contends that the language in the constitution that states, "at least 15 counties" means that the General Assembly can raise that bar to "at least 50 counties" and that Act 236 is therefore

constitutional. The Plaintiff in the complaint and in the Motion for Judgment on the Pleadings explains why Act 236 is unconstitutional. The Defendant responded to that Motion with the same argument. The Court should hold Act 236 unconstitutional.

The Court inquired as to the procedural status of the case. The Defendant has not filed an answer. The Court should deny the Motion to Dismiss. The Plaintiff has standing, the Complaint is not barred by sovereign immunity and Act 236 is unconstitutional. Rule 12(a) of the Arkansas Rules of Civil Procedure provides that the Defendant would have 10 days to file an answer after the Court denies the Motion to Dismiss. The Court should deny the Motion to Dismiss, enter a preliminary injunction holding that Act 236 is unconstitutional, and after the Defendant files an answer, enter declaratory judgment that Act 236 is unconstitutional and enter a permanent injunction prohibiting the Defendant from enforcement.

Respectfully submitted,

/s/ David A. Couch

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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

David A. Couch