

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

**AMENDED COMPLAINT**

Comes the Plaintiffs, through their attorney David A. Couch, and for their amended complaint state:

1. This is an action for declaratory and injunctive relief pursuant to the Arkansas Civil Rights Act, §16-123-101 *et. seq.* against the Arkansas Secretary of State, in his official capacity, which challenges the state constitutionality of Act 236 of 2023.

2. Arkansas is one of several states that guarantee its citizens the right to place proposed laws and constitutional amendments on the ballot through the initiative and referendum process. See, Ark. Con., Art. 5, §1. The Arkansas General Assembly passed Act 236 of 2023 which places additional requirements on the initiative and referendum process which are in direct contradiction of Ark. Con., Art. 5, §1 and do not facilitate the operation of the initiative and referendum process but place unwarranted and unconstitutional restrictions on the ability of citizens to circulate petitions and will prevent the placement of initiatives and referendum on the ballot for the general statewide election to be held in November of 2024 and all subsequent elections.

3. Because Act 236 of 2023 violates the Arkansas Constitution plaintiffs seek equitable relief from this Court in the form of a declaration that the Act is unconstitutional and enjoining its enforcement.

4. This Court has subject matter jurisdiction pursuant to Amendment 80 to the Arkansas Constitution.

5. Venue is proper in Pulaski County.

6. Senator Bryan King is a citizen and resident of Carroll County, Arkansas. He is a registered voter in the State of Arkansas and the duly elected State Senator from District 28 of the Arkansas State Senate which includes Carroll and Madison County and portions of Boone, Franklin, Johnson, and Newton Counties.

7. Plaintiff LEAGUE OF WOMEN VOTERS OF ARKANSAS (“LWVAR”) is a nonpartisan, nonprofit, membership organization, and is an affiliate of the League of Women Voters of the United States. The LWVAR was first incorporated in 1920 shortly after the 19<sup>th</sup> Amendment to the United States Constitution was ratified which gave women the right to vote. Since its inception the LWVAR has actively supported many nonpartisan political policies such as the abolition of the poll tax, high school funding, women’s prison reforms, and environmental reforms. The LWVAR encourages informed and active participation in government, works to increase understanding of major public policy issues, and influences public policy through education and advocacy on issues. The LWVAR is dedicated to promoting civic engagement and protecting democracy. The LWVAR has approximately 280 members located in counties across the State of Arkansas. The LWVAR and its members actively participate in the initiative and referendum process. Specifically

in 2022 by working for and supporting measures for an Independent Redistricting Commission and Top 4 Primary – Ranked Choice Voting. In 2020 and 2022 the LWVAR was one of the leaders in the campaigns to defeat referred constitutional amendments to impair the ability of citizens to propose measures pursuant to Article 5 Section 1 of the Arkansas Constitution. As part of its mission, LWVAR has participated and wishes to continue to participate in the initiative and referendum process. The LWVAR is currently participating in the initiative process. Attached hereto as an Exhibit is the Statement of Organization of the Arkansas Period Poverty Project Ballot Question Committee (APC) filed with the Arkansas Ethics Commission. This Ballot Question Committee, of which the LWVAR is a member, is currently circulating a petition to have an initiated act to remove the sales tax from feminine hygiene products and diapers placed on the November 2024 ballot. This initiative to remove the sales tax from feminine hygiene products and diapers is directly impacted by Act 236. The constitution provides that APC must collect 4% of number of registered voters who voted for governor in the last election in at least 15 counties. Act 236 provides that APC must collect 4% of the number of registered voters who voted for governor in the last election in at least 50 counties. If APC collects the 4% from 16 counties but not 50 counties the Secretary of State would be required to not certify the measure pursuant to Act 236 but according to the constitution would be required to certify it for the ballot. The LWVAR efforts are directly impacted by Act 236. Act 236 will substantially restricts the ability of the LWVAR and its members to participate in the initiative and referendum process and specifically the APC sponsored initiated act.

8. John Thurston is the duly elected Secretary of State and is responsible for certifying statewide initiative and referendum measures for the ballot and carrying out the provisions of Act 236 of 2023.

9. Article 5, Section 1 of the Arkansas Constitution provides, The legislative power of the people of this State shall be vested in a General Assembly, which shall consist of the Senate and House of Representatives, but 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; and also reserve the power, at their own option to approve or reject at the polls any entire act or any item of an appropriation bill.

10. 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."

11. Article 5, Section 1 of the Arkansas Constitution provides, "The sufficiency of all state-wide petitions shall be decided in the first instance by the Secretary of State, subject to review by the Supreme Court of the State, which shall have original and exclusive jurisdiction over all such causes."

12. 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 the fifteen (15) counties of the state.”

13. A copy of Act 236 of 2023 is attached as an exhibit hereto and incorporated herein by reference.

14. 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.

15. Act 236 of 2023 is unconstitutional. The General Assembly does not have the ability to change the constitution with an act. The Arkansas Constitution provides that for an initiative or referendum to qualify for the ballot, signatures from at least 15 counties must be collected and turned into the Arkansas Secretary of State to qualify for the ballot. Act 236 of 2023 requires that for an initiative or referendum to qualify for the ballot, signatures from at least 50 counties must be collected and turned into the Arkansas Secretary of State to qualify for the ballot.

16. Act 236 of 2023 is unconstitutional. The General Assembly does not have the ability to change the constitution with an act. The Arkansas Constitution provides that “at least seventy-five percent (75%) of the required number of signatures of **legal voters** from each of fifteen (15) counties of the state” be submitted to the Secretary of State for the Secretary to allow an amendment to a petition (commonly referred to as a cure period). Act 236 of 2023 requires that in order for an initiative or referendum to be amended (or to permit a cure period) that petitions must be filed from at least fifty (50) counties and bear signatures of at least one-half ( $\frac{1}{2}$ ) of the designated percentage of the **electors** of each county represented. “Legal voter” is a percentage of the individuals who voted for Governor in the last election. The term “electors” is not defined by the General Assembly and to the extent that “electors” would impose any additional requirement other than being a function of the number of people who voted for Governor in the last election then those additional requirements are unconstitutional. In addition, Act 236 of 2023, while it increases the number of counties from 15 to 50 it lowers the required percentage of electors needed from

75% to 50%. The General Assembly does not have the power to make these changes to the constitution.

17. 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.** (Emphasis added)

Act 236 of 2023 interferes with freedom of the people in procuring petitions by raising the minimum number of counties required to qualify an initiative or referendum from 15 to 50. Act 236 of 2023 is not a law that penalizes perjury, forgery, and all other felonies or fraudulent practices, in securing signatures or filing of petitions.

18. 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.** (Emphasis added)

Article 5, Section 1 of the Arkansas Constitution provides that only laws that **facilitate** its operation are authorized. Facilitate means to make an action or process easy, easier, or less difficult. Requiring signatures from at least 50 counties, and not 15 counties, does not **facilitate** the operation of the initiative and referendum process and to the contrary makes the process substantially more difficult. The increase from 15 to 50 is legislation that restricts, hampers, and impairs the exercise of the rights reserved to the people under Article 5 of the

Arkansas Constitution. Act 236 of 2023 is unconstitutional and in violation of the specific provisions of Article 5 of the Arkansas Constitution.

19. Act 236 of 2023 should be declared unconstitutional and the Secretary of State should be enjoined from enforcing its provisions.

WHEREFORE, the plaintiffs request that this Court:

- (1) Enter judgment in their favor on their complaint in its entirety.
- (2) Declare Act 236 of 2023 to be unconstitutional and invalid under the Arkansas Constitution.
- (3) Award the plaintiff all relief allowed by law and equity, including but not limited to declaratory, preliminary injunctive relief, permanent injunctive relief and writs of mandamus as needed to carry out the Courts orders, and any other relief that the Court deems proper and justified.

Respectfully submitted,

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