

**IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
FAYETTEVILLE DIVISION**

LEAGUE OF WOMEN VOTERS OF
ARKANSAS, et al.,

Plaintiffs,

and

PROTECT AR RIGHTS, et al.,

Intervenor-Plaintiffs,

v.

COLE JESTER, in his official capacity as
Secretary of State of Arkansas,

Defendant.

Civil Action No. 5:25-CV-5087

**PLAINTIFFS' OPPOSITION TO
DEFENDANT'S MOTION TO DISMISS FOR MOOTNESS**

The State's motion to dismiss for "mootness" is premised on an overly narrow conception of both this case and the applicable law. Plaintiffs brought this action to enforce rights enshrined in the Arkansas Constitution that are at the core of Arkansans' protected political speech under the First Amendment. Plaintiffs' challenges to the State's unconstitutional restrictions on the ballot initiative process were *not* limited—as the State argues—to a particular measure circulating for the November 2026 ballot. The Challenged Laws burden Plaintiffs' ability to participate in the ballot initiative process—a process in which each of the Plaintiffs has participated in the past and intends to continue to participate in again—now and in the future. Thus, the passing of one deadline does not eliminate the controversy between the Parties.

The State has made clear throughout this litigation that it intends for the Challenged Laws to remain in force and that the State will continue to enforce them unless the Secretary is enjoined from doing so. If the Secretary has his way, Plaintiffs will remain subject to these unconstitutional

statutory burdens on their speech, unlawfully restricting their intended future participation in Arkansas's ballot initiative process. Plaintiffs' claims are not moot and Defendant's Motion to Dismiss for Mootness (Dkt. 159, the "Motion") should be denied.

I. APPLICABLE FACTS

Plaintiff League of Women Voters of Arkansas ("LWVAR") is a non-profit, nonpartisan civic organization dedicated to promoting active and informed participation in the democratic process. Trial Transcript ("Tr.") at 11:9–18 (Miller); PX20. Plaintiff Save AR Democracy ("SARD") is the Ballot Question Committee that LWVAR formed and filed to advocate for the passage of the Direct Democracy Reform Amendment of 2026. Tr. at 61:7–10, 64:5–66:3 (Miller); PX16; PX17; PX18.¹ Plaintiffs Bonnie Heather Miller, Danielle Quesnell, Amy Cruz, and Lee Evans ("Individual Plaintiffs") are Arkansas residents that (1) have participated in the initiative and referendum process to place issues directly before voters, and (2) want to continue to participate initiative and referendum process in the future. *See* Dkt. 20-1 (Miller); Dkt. 20-2 (Quesnell); Dkt. 20-4 (Cruz); Dkt. 20-8 (Evans). The Sponsor Plaintiffs and the Individual Plaintiffs brought their own constitutional challenges in this action. Dkt. 107.

During the most recent election cycle, LWVAR provided training and educational materials to support the canvassing effort to qualify SARD's proposed constitutional amendment for the ballot. Tr. at 67:19–77:2, 79:20–86:15 (Miller); *see also* PX23; PX24; PX25; PX26; PX27. LWVAR formed Ballot Question Committees ("BQCs") in 2020, 2022, 2024 and 2026 to place initiated measures on the ballot and then to advocate for their passage. Tr. at 29:1–33:19, 49:3–50:18, 54:13–56:12, 60:5–66:6 (Miller); *see also* PX09; PX12; PX16; PX17; PX18; PX22. LWVAR also formed Legislative Question Committees ("LQC") to advocate for or against acts

¹ LWVAR and SARD are referred to together as the "Sponsor Plaintiffs."

referred by the Legislature in 2020 and 2022, including successfully advocating against legislative questions in each of those years. Tr. at 19:14–20:22, 21:3–7, 31:13–22, 41:9–42:4, 53:13–54:8 (Miller). LWVAR is involved in both aspects of the ballot initiative process: (1) initiating ballot measures to be qualified for the ballot, and (2) then advocating for those measures once they have been added to the ballot. Tr. at 76:3–77:2, 79:20–81:6, 82:22–86:22 (Miller); *compare* PX26 with PX 27. It takes four-to-five years from initial planning to actual canvass for ballot initiatives to make it to the ballot itself, Tr. at 35:14–36:12, 65:7–66:6, and one year’s failure can be a spur to the next election cycle.

To qualify for the November 2026 ballot, Sponsor Plaintiffs had to collect at least 90,704 valid signatures from registered Arkansas voters for their proposed 2026 constitutional amendment, including the required minimum number of signatures from at least 50 of the state’s 75 counties, by July 3, 2026. Tr. at 44:14–22 (Miller); PX01 at 2. Sponsor Plaintiffs did not collect enough signatures by July 3, 2026 to qualify their amendment for the ballot. Tr. at 136:2–6 (Miller). Sponsor Plaintiffs’ inability to collect enough signatures was a direct result of the burdens placed on them by the Challenged Laws. Tr. at 88:1–24 (Miller). LWVAR plans to use the ballot measure process to qualify issues for the ballot in the future. Tr. at 67:24–68:4; 78:21–25, 128:19–129:6 (Miller).

II. LEGAL STANDARD

There are two types of injuries that give rise to standing to raise First Amendment claims: when a plaintiff alleges (1) “an intention to engage in a course of conduct arguably affected with a constitutional interest, but proscribed by a statute, and there exists a credible threat of prosecution thereunder,” or (2) “that it self-censored.” *Missourians for Fiscal Accountability v. Klahr*, 830 F.3d 789, 794 (8th Cir. 2016) (internal citations and quotations omitted). This Court has already

determined that Plaintiffs have standing to challenge certain laws at issue in this case. *League of Women Voters of Arkansas v. Jester*, No. 5:25-CV-5087, 2026 WL 1893401, at *11–12 (W.D. Ark. June 30, 2026).² “The requisite personal interest that must exist at the commencement of the litigation (standing) must continue throughout its existence (mootness).” *Friends of the Earth, Inc. v. Laidlaw Env’t Servs. (TOC), Inc.*, 528 U.S. 167, 170 (2000) (internal citation and quotation omitted).

Even when a case becomes moot, this Court has jurisdiction “when the challenged action is of too short a duration to be litigated fully prior to its cessation or expiration, and there is a reasonable expectation that the same complaining party will be subject to the same action again.” *Van Bergen v. State of Minn.*, 59 F.3d 1541, 1547 (8th Cir. 1995). The second requirement demands only “a reasonable showing that [one] will again be subjected to the alleged illegality” *Los Angeles v. Lyons*, 461 U.S. 95, 109 (1983). Election disputes are “among those most frequently saved from mootness by this exception.” *Van Bergen*, 59 F.3d at 1547. “Election issues are among those most frequently saved from mootness by this exception.” *Id.* (citing cases); *see also McLain v. Meier*, 637 F.2d 1159, 1162 (8th Cir. 1980) (“[E]lection law controversies tend not to become moot.”).

III. ARGUMENT

A. Sponsor Plaintiffs’ Inability to Qualify Their Amendment for the 2026 Ballot Does Not Moot Plaintiffs’ Claims for Relief.

In this action, Plaintiffs seek declaratory and injunctive relief holding the Challenged Laws unconstitutional on their face and as-applied. *See* Dkt. 107. The State ignores Plaintiffs’ facial

² The State challenged Plaintiffs’ standing only to their constitutional challenges to the (1) pre-collection disclosure requirement, (2) disqualifying offenses provision, (3) reading requirement, and (4) publication cost requirement. *See id.* The State did not—and does not now—challenge Plaintiffs’ standing to bring their constitutional challenges to the other Challenged Laws.

challenges completely. But whether facial or as-applied, Plaintiffs’ constitutional claims have never been limited to canvassing for measures to be placed on the 2026 ballot. The State’s Motion improperly equates the absence of a measure eligible for the November 2026 ballot with the absence of any effective relief. *See* Dkt. 160 at 4. Sponsor Plaintiffs, who intend to advocate for ballot measures through BQCs and LQCs committees in the future, “continue to have ‘adverse legal interests, of sufficient immediacy and reality to warrant the issuance of a declaratory judgment.’” *Missourians for Fiscal Accountability v. Klahr*, 830 F.3d 789, 795 (8th Cir. 2016) (the passage of an election deadline does not necessarily moot a constitutional challenge to election laws that remain in force and will govern a plaintiff’s future conduct) (citation omitted). The same is true for the claims of the Individual Plaintiffs, which the State’s Motion does not address.

LWVAR’s participation in the ballot initiative process is not limited, as the Motion suggests, to the measures that LWVAR sought to advance during the 2026 cycle. LWVAR has an ongoing institutional role in educating Arkansas voters about the power reserved to them under the Arkansas Constitution, including through publishing a handbook for all Arkansans explaining the initiative and referendum process. PX19 at 17–18. LWVAR also publishes canvasser instructions for each election cycle and revises those instructions as needed to ensure that canvassers are accurately advised of the governing requirements. Tr. at 66:7–23, 67:19–70:13, 71:9–22 (Miller); *compare* PX23 with PX24. But LWVAR’s role is not merely educational. LWVAR participates directly in the ballot initiative process, both by working to qualify measures for the ballot and by advocating for measures once qualified. Tr. at 76:3–77:2, 79:20–81:6, 82:22–86:22 (Miller); *compare* PX26 with PX 27. LWVAR’s ongoing participation in the process is why the passage of the 2026 deadline does not leave the Court without effective relief to grant here.

The State argues that Sponsor Plaintiffs’ failure to qualify a measure for the 2026 ballot

resulted from inadequate fundraising, not the burdens of the Challenged laws. Dkt. 160 at 3–4. But the record does not support the State’s account.³ Ms. Miller, LWVAR’s then-President, testified that signature collection alone for the 2026 campaign was expected to cost between \$1.5 million and \$2 million. Tr. at 227:19–228:2. She repeatedly explained that the Challenged Laws foreclosed LWVAR’s use of canvassers necessary to collect sufficient signatures because in-state volunteers alone could not meet the requirement. *See, e.g.*, Tr. at 39:15–16, 54:19–22, 57:24–25, 58:23–25 (Miller). That Sponsor Plaintiffs could not raise enough money nor get enough signatures to get their 2026 initiative on the ballot is a direct result of the burden created by the laws challenged in this litigation. As Ms. Miller testified, referring to the Challenged Laws, “with especially this suite of laws, it was really challenging to find volunteers to collect under those conditions.” Tr. at 47:17–48:18; *see also id.* at 86:16–22 (“[I]t was really challenging to raise money for this campaign, given – even with the relief that we got with the preliminary injunction, people just did not want to donate.”); *id.* at 88:1–24.

The evidence showed that the Challenged Laws—if left in effect—will continue to unconstitutionally restrict Plaintiffs’ participation in Arkansas’ initiative and referendum process. A declaration that the Challenged Laws are unconstitutional and a permanent injunction of the same remain effective relief that this Court can grant for Plaintiffs.

B. Even if The State Could Show That Plaintiffs’ Claims Are Moot, the Challenged Restrictions Are Capable of Repetition Yet Evading Review.

But even if the State could show that Plaintiffs’ 2026 claims are moot, their claims survive because (1) this “action is of too short a duration to be litigated fully prior to its cessation or

³ The State also cannot defend a restriction on protected political activity on the ground that Sponsor Plaintiffs could have raised more money or redirected resources from other protected activity to overcome it. *See, e.g., Buckley v. Valeo*, 424 U.S. 1, 19 (1976); *Nat’l Republican Senatorial Comm. v. Fed. Election Comm’n*, 146 S. Ct. 2404, 2412 (2026).

expiration,” and (2) “there is a reasonable expectation that [Plaintiffs] will be subject to the same action again.” *Van Bergen*, 59 F.3d at 1547. Because LWVAR’s work on initiatives and referenda takes years of preparation and extends well beyond the two measures it pursued in 2026, the capable-of-repetition-yet-evading-review exception applies. *Fed. Election Comm’n v. Wisconsin Right To Life, Inc.*, 551 U.S. 449, 462–63 (2007); *see also Van Bergen*, 59 F.3d at 1547 (holding that an election-related challenge was not moot despite the passing of the election because there was a reasonable expectation that the plaintiff would continue political activity subject to the challenged restrictions).

First, the Challenged Laws operate within the compressed timeframe of an election cycle, which illustrates why that period is too short to permit full judicial review based on a single initiative. Even with a preliminary injunction barring enforcement of some of the laws beginning November 19, 2025, LWVAR still could not obtain the requisite signatures to qualify this initiative for the ballot under the remaining restrictions and the cumulative impact of all the Challenged Laws. Tr. at 47:17–48:18, 86:16–22, 88:1–24 (Miller). The State now argues that Sponsor Plaintiffs’ claims became moot when the July 3, 2026 petition deadline passed. Dkt. 160 at 2–3. But that argument demonstrates exactly why the Challenged Laws are capable of evading complete judicial review.⁴

Second, there is a reasonable expectation that all of the Plaintiffs will again be subject to the Challenged Laws. Protecting Arkansas’s initiative and referendum process remains one of LWVAR’s advocacy priorities, to which LWVAR has continuously devoted organizational resources. Tr. at 74:12–75:23 (Miller); PX19. This commitment is reflected in LWVAR’s history

⁴ Because Ark. Code Ann. § 7-9-107(j) effectively bars sponsors from submitting a proposed ballot title until after the November election, LWVAR and SARD are prohibited from pursuing a ballot measure at this time.

of participation in BQCs in 2020, 2022, 2024, and 2026, as well as LWVAR's participation in LQCs in 2020 and 2022. Tr. at 19:14–20:22, 21:3–7, 29:1–33:19, 41:9–42:4, 49:3–50:18, 53:13–54:8, 54:13–56:12, 60:5–66:6 (Miller). As Ms. Miller explained, the 2026 initiatives were the result of five years of planning, polling members to determine priorities, testing popular sentiment, crafting language and then navigating the multiple layers of preliminary approvals required for each BQC. Tr. at 65:7–66:8 (“We started working on this policy in 2021. ... So it’s been in the works for some years. ... This policy went through so much research, many different iterations ... I don’t even know how to quantify how many hours and how much work went into that, actual years. So before anyone sees it, [] it’s almost like a little grown adult walking on its own.”); *see also* Tr. at 17:2–9, 35:13–37:25, 38:14–39:2, 46:15–21, 61:5–24, 62:22–63:23, 64:17–25 (Miller); PX16; PX17; PX18. That same commitment underlies every initiative Plaintiffs have sought since 2018. Tr. at 74:11–75:23 (Miller).

LWVAR's evident advocacy role guarantees the League's future involvement in the initiative process, even if it has not yet identified the particular measure it will campaign for in the next election cycle. The State places undue weight on the fact that Ms. Miller did not identify an exact ballot measure that LWVAR intends to sponsor in a future election. Dkt. 160 at 4 (citing Tr. 145:10–13). The State's observation is too cute by at least half: the question was posed to an LWVAR officer on the eve of her retirement and her answer was that *she* did not know because that question should be directed to her successor; her testimony certainly did not establish that LWVAR has abandoned future participation in the initiative process. Tr. at 145:2–13 (Miller). To the contrary, the State's suggestion that “Plaintiffs provided no evidence that they intend to sponsor a ballot measure beyond their failed 2026 measures,” Dkt. 160 at 4, ignores Ms. Miller's testimony that LWVAR plans to use the ballot measure process to qualify issues for the ballot in the future.

Tr. at 67:24–68:4; 78:21–25, 128:19–129:6 (Miller).⁵

Finally, as a matter of law, Sponsor Plaintiffs need not identify the particular measure they will pursue in a future election. LWVAR is already at work planning for its next initiatives. It will participate in the initiative process again, as will the Individual Plaintiffs. All that is required here is a reasonable expectation of future exposure to the challenged restrictions. *See Van Bergen*, 59 F.3d 1541 at 1547. Plaintiffs demonstrated that reasonable expectation.

IV. CONCLUSION

For these reasons, Plaintiffs respectfully request that the Court deny Defendant’s Motion to Dismiss for Mootness.

Dated: August 18, 2026

/s/ Michael Dockterman

Michael Dockterman
Cara Lawson
Emma Goodman-Fish
McDermott Will & Schulte LLP
444 West Lake Street
Suite 4000
Chicago, IL 60606
(312) 372-2000
mdockterman@mcdermottlaw.com
clawson@mcdermottlaw.com
egoodmanfish@mcdermottlaw.com

*Counsel for Plaintiff League of Women
Voters of Arkansas*

David A. Couch
PO Box 7530
Little Rock, AR 72227

⁵ Ms. Miller is stepping down from her leadership role within LWVAR to attend law school. She testified that LWVAR’s decision to sponsor or support a particular measure depends on the issues its members choose to pursue. Tr. at 9:20–22, 145:7–13 (“As I mentioned, at the onset of this, my term is ending August 1...what the League decides to do in terms of ballot measures...will again be driven by our members and what they are wanting...I don’t want to speak for them or the members for the future.”).

(501) 661-1300
david@davidcouchlaw.com

Counsel for Plaintiffs

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CERTIFICATE OF SERVICE

I hereby certify that on August 18, 2026, I filed the foregoing on the CM/ECF system, which will serve notice on counsel for all parties.

/s/ Michael Dockterman

Michael Dockterman

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