IN THE CIRCUIT COURT OF PULASKI COUNTY, ARKANSAS
FOURTEENTH DIVISION

STATE SENATOR BRYAN KING and THE LEAGUE OF WOMEN VOTERS OF ARKANSAS	**PLAINTIFFS**
vs.	**CASE NO.: 60CV-23-1816**
COLE JESTER, IN HIS OFFICIAL CAPACITY AS THE ARKANSAS SECRETARY OF STATE	**DEFENDANT**

MEMORANDUM OPINION AND ORDER

On March 5, 2024, State Senator Bryan King and the League of Women Voters of Arkansas ("the League") filed their Amended Complaint against John Thurston, in his official capacity as the Arkansas Secretary of State. The Amended Complaint sought a declaratory judgment declaring that Act 236 of 2023 violates the Arkansas Constitution.[1] By Order dated July 7, 2024, the Court found that then-Plaintiff Senator King did not have standing, and he was dismissed from the case. Contrastingly, the Court found that Plaintiff League of Women Voters of Arkansas had "sufficiently prove[d] standing, owing to its past, current, and future involvement in voter initiatives."[2] On October 24, 2024, the League of Women Voters filed its Motion for Judgment on the Pleadings, which is currently before the Court.

[1] Amend. Compl. at ¶ 19.

[2] Order by Judge Herbert T. Wright, Jr., dated July 3, 2024.

Defendant Cole Jester,[3] in his official capacity as the Arkansas Secretary of State (the "State"), filed a timely Response.[4]

For its Motion, the League argues that it is entitled to judgment as a matter of law because an act of the General Assembly—Act 236 of 2023—directly contradicts Article V of the Arkansas Constitution. More specifically, the League explains that article V, § 1 regarding citizen-proposed initiatives and referenda requires submission of qualifying petition signatures from "at least fifteen counties of the state," and Act 236 changes this number to require such signatures from "at least fifty counties of the state." The State opposes the League's Motion primarily by contending that the constitution requires signatures from "at least fifteen counties" and fifty is a number exceeding fifteen and thus satisfies the constitution's "at least fifteen" mandate. It also pleads sovereign immunity as a bar to the present action.[5] Upon request of the parties, the Court held a hearing on September 3, 2025. The

[3] This matter was originally brought against John Thurston. However, due to Mr. Thurston being "sworn in as Arkansas' *[sic]* Treasurer," Governor Sarah Huckabee Sanders appointed Cole Jester as Secretary of State on January 1, 2025. *See* "Governor Sanders Appoints Jester as Secretary of State, Hiland and Bronni to the Supreme Court" Governor SHS website (Dec. 20, 2024). Available at https://governor.arkansas.gov/news_post/governor-sanders-appoints-jester-as-secretary-of-state-hiland-and-bronni-to-the-supreme-court/ (last visited Jan. 28, 2026).

[4] Official-capacity claims against state officials are regarded the same as a claim against the State of Arkansas. *Harris v Hutchinson*, 2020 Ark. 3, 7, 591 S.W.3d 778, 782.

[5] The State also argues that the League lacks standing, but this argument has already been considered and denied as explained by Judge Wright's Order dated July 3, 2024.

Court, being sufficiently advised, finds that the Motion should be and hereby is GRANTED, and judgment as a matter of law is to be entered for Plaintiff.

A. Background

The law of initiated acts has been the subject of frequent inquiry in recent years, and the present controversy is no exception. The following sections explain the applicable law pertaining to initiated acts as well as the relevant provisions of Act 236 of 2023.

1. Citizen-proposed initiatives and referenda

Enshrined in the Arkansas Constitution is the idea that the people of Arkansas have the power to create and enact the laws through statewide efforts—known as petitions—independent of any action by the General Assembly. The State's motto *Regnat Populus* (or "the People Rule") further embodies this sentiment. *Republican Party of Ark. v. State ex rel. Hall*, 240 Ark. 545, 549, 400 S.W.2d 660, 662 (1966). Article V, § 1 of the Arkansas Constitution states:

> 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.

Ark. Const. art. V, § 1. Article V, § 1 goes on to say:

> 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.

Ark. Const. art. V, § 1. As such, the Arkansas Constitution requires that there must be sufficient petition parts from "at least *fifteen* of the Counties of the State[,]" and those petition parts must bear "the signature of not less than one-half of the designated percentage of the electors of such county." Ark. Const. Art. V, § 1 (emphasis added).[6]

Additionally, while article V, § 1 requires initiative petitions to be submitted four months in advance of an election, it also includes an "amendment" provision for noncomplying petitions. Known as a "cure provision," this constitutional language requires that if the Secretary of State decides that a petition is insufficient, then it must permit at least 30 days from the date of notification to the petition sponsor to cure the insufficiency. *Id.* Importantly, in order to qualify for the "cure provision," the

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[6] For the proposal of a law, the petition sponsor must collect signatures of 8% of the legal voters across the state. To propose an amendment, the designated percentage for each county is 10%. And the designated percentage for referenda is 6%. The petition sponsor must also take care to ensure that the total number of state-wide signatures contains at least 1/2 of the designated percentage of qualified electors in fifteen counties. The Arkansas Secretary of State's Office has illustrated this to mean that:

> if one thousand (1000) people voted for governor in a particular county in the most recent general election and the petition is for a constitutional amendment, 5% (half of the designated 10%) would be fifty (50) qualified electors."

2026 Initiatives and Referenda Handbook, Arkansas Secretary of State Cole Jester. Available at http://www.sos.arkansas.gov/uploads/elections/2025-2026_I_R_Handbook_-_December_2025_(00000005)_Final_copy_12.31_.25_.pdf (last accessed February 9, 2026). The number of "qualified electors" is based on "[t]he total number of votes cast for the office of Governor in the last preceding general election." Ark. Const. art. V, § 1.

submitted petition must include at least 75% of the number of statewide legal voters necessary. It must also include at least 75% of the required number of voters of at least fifteen counties submitted. *Id.*

But then article V, § 1 also includes two additional provisions that frame our discussion. The first provision is one prohibiting laws that interfere with the "freedom of the people" of Arkansas to procure petitions for initiated acts and referenda:

> 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.

Ark. Const. art. V, § 1. And a second provision provides that the elements of article V, § 1 are self-executing and cannot be restricted:

> 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.

Ark. Const. art. V, § 1. Importantly, this provision labels the initiated-act-petition-process as a "right . . . reserved to the people." *Id.*

2. Act 236 of 2023

On March 7, 2023, Act 236 of 2023 was signed into law.[7] The Act makes two additions to Ark. Code Ann. § 7-9-126. First, it sets the county requirement as "at least fifty (50) counties."[8] *Id.* Additionally, the Act directs the official "charged with verifying the signatures" to declare a petition as insufficient when the above requirements have not been met. *Id*. Specifically, Act 236 provides that "[i]f the requirements [of obtaining 1/2 of a designated percentage of qualified electors in fifty counties] are less than the designated number of signatures or counties represented by petitions required by the Arkansas Constitution and statutory law" and the deadline for filing petitions has passed, the petition is declared insufficient, and no additional signatures are permitted to cure the insufficiency. *Id.*

C. Standard of Review

When reviewing a motion for judgment on the pleadings, the court views the facts "alleged in the complaint as true and in the light most favorable to the party seeking relief." *Arkansas Ctr. for Physical Med. & Rehab. v. Magee*, 2017 Ark. App. 657, 3, 536 S.W.3d 152, 154 (citation omitted). Granting such a motion should only occur "if the pleadings show on their face that there is no defense to the suit. "

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[7] Resp. at p. 2. The emergency clause provided for immediate effect. *See* Act 236 of 2023.

[8] In so doing, Act 236 doesn't change the percentage of signatures required from legal voters of those counties, which is 50%, or one-half of the designated percentage for the respective petitions.

LandsnPulaski, LLC v. Arkansas Dep't of Corr., 372 Ark. 40, 42, 269 S.W.3d 793, 795 (2007).

D. Discussion

Having explained the standards, presumptions, and facts before us, the Court now turns to the unifying question of both Plaintiff's request for relief and the Defendant's responses: does Act 236 of 2023 clearly and unmistakably violate the Arkansas Constitution?[9] In other words, does the change from "at least fifteen" to "at least fifty" counties alter the rights bestowed on Arkansans under the Arkansas Constitution? To answer this question, we first analyze the statutory text of Act 236 of 2023 to determine its meaning, then to determine whether it conflicts with article V, § 1 of the Arkansas Constitution, and finally to analyze whether the present challenge is barred by the doctrine of sovereign immunity.

a. The Meaning of the Statutory Text

Article V, § 1 requires initiated act petitions to reflect qualifying signatures from "at least fifteen counties," and Act 236 of 2023 requires signatures "from at least fifty." Additionally, Act 236 removes the possibility of a "cure period" in the event that an initiative petition fails to provide qualifying signatures from "at least fifty counties." Plainly, "fifteen" and "fifty" are different words with different meanings,

[9] To be clear, Defendant's position is that sovereign immunity applies here because Act 236 *does not* violate the Arkansas Constitution and therefore this matter is barred from adjudication. *See* Resp. to Plf.'s Mot. for Judgment on the Pleadings at p. 1. Whereas Plaintiff is seeking a declaration that the Act *does* violate the Arkansas Constitution. *See* Mot. for Judgment on the Pleadings at ¶¶ 8-12.

therefore the task for the Court is to determine whether this distinction diminishes, impairs, or impedes the constitutional guarantees of article V, § 1 of the Arkansas Constitution.

When interpreting a statute, the role of the court is to construe the statute in such a way "that no word is left void, superfluous or insignificant, and [to] give meaning and effect to every word in the statute." *Great Lakes Chem. Corp. v. Bruner*, 368 Ark. 74, 82, 243 S.W.3d 285, 291 (2006) (citations omitted). One must construe the statute "just as it reads, giving the words their ordinary and usually accepted meaning in common language." *Harris v. Crawford Cnty. Bd. of Election Commissioners*, 2022 Ark. 160, 3–4, 651 S.W.3d 703, 706. *See also Miller v. Thurston*, 2020 Ark. 267, 605 S.W.3d 255. The phrase "at least" is defined by the Cambridge Dictionary to mean "as much as, or more than, a number or amount."[10] Other sources have defined the term as "the number or amount [that] is the smallest that is possible or likely and that the actual number or amount may be greater,"[11] or "at the minimum."[12]

Both Article V of the Arkansas Constitution and Act 236 include this "at least" language. Therefore, taking the above distinctions into account, article V provides that the smallest number of counties from which petition sponsors need signatures is

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[10] Available at: https://dictionary.cambridge.org/us/dictionary/english/at-least (last visited Jan. 28, 2026).

[11] Available at: https://www.collinsdictionary.com/us/dictionary/english/at-least (last visited Jan. 28, 2026).

[12] Available at: https://www.merriam-webster.com/dictionary/at-least (last visited Jan. 28, 2026).

fifteen, whereas Act 236 provides that the smallest number of counties from which sponsors need signatures is fifty. Before assessing the implications of this statutory modification, it is at least plain that the minimum restriction imposed by the Arkansas Constitution differs from the statute.

b. Conflict between statute and constitution

When a statute and a constitutional provision are irreconcilably in conflict, the constitution will trump the statute. *Henley v. Goggin*, 241 Ark. 348, 351, 407 S.W.2d 732, 734-735 (1966); *Holloway v. Arkansas State Bd. of Architects*, 352 Ark. 427, 101 S.W.3d 805 (2003). This conflict generally manifests itself by a legislative act that is out of step with the Arkansas Constitution. *See*, *e.g.*, *MMSC, LLC v. Washington Cnty.*, 2025 Ark. App. 328, 16, 717 S.W.3d 547, 558 (2025), *review granted* (Sept. 25, 2025) (statute declared void where it violated the separation of powers doctrine by providing judicial review of a city legislative body's actions in a manner contrary to a provision of the constitution); *Bd. of Trs. of Univ. of Arkansas v. Andrews*, 2018 Ark. 12, 535 S.W.3d 616 (2018) (declaring act unconstitutional that allowed for an action against the state for unpaid overtime wages where constitution barred actions against the state for money damages).

In other cases, statutes have been upheld in the face of perceived conflict with constitutional provisions. In *Thurston v. League of Women Voters of Arkansas*, 2024 Ark. 90, 687 S.W.3d 805, the Arkansas Supreme Court upheld a voting-procedure law that merely "placed restrictions on absentee ballots and required valid photographic identification" and yet did not "implicate [the] fundamental right to vote." And in

another case, the Arkansas Supreme Court upheld procedural, service-of-process statutes where they were deemed not to undercut the principles of due process. *Bullock's Kentucky Fried Chicken, Inc. v. City of Bryant*, 2019 Ark. 249, 582 S.W.3d 8.

Similarly, in *Landers v. Stone*, 2016 Ark. 272, 496 S.W.3d 370, the Arkansas Supreme Court was faced with the question whether a law that determined the eligibility of judges receiving retirement benefits past the age of seventy unconstitutionally interfered with Amendment 80 of the Arkansas Constitution. The governing statute provided that a judge who seeks election after reaching the age of seventy forfeits any retirement benefits. *Id.* In that case, the Supreme Court found that the retirement benefit statute did not "prohibit any judge from holding office past the age of seventy." *Id.* at 9, 496 S.W.3d 370, 377. In doing so, the Arkansas Supreme Court reasoned that while a forfeiture of retirement benefits may cause a sitting judge to retire by foregoing a new term of office, depriving retirement benefits isn't tantamount to a denial of judicial office. The court thus found that the statute did "not constitute an additional qualification in contravention of the constitution." *Id.* at 9, 496 S.W.3d 370, 378.

Here, unlike the above-referenced cases where the statutory measures were found to be consistent with their constitutional predicates, the change from fifteen to fifty is not simply a condition placed on citizen petition sponsors. Nor, as in *Landers*, is it simply a method outside of the fifteen-county-minimum, constitutional regime to cause the same result. Rather, Act 236 raises the fifteen-county minimum supremely

established by the people in the Arkansas Constitution and imposes a fifty-county minimum instead. As such, it reflects a facial variance and an added burden altogether.

The above finding is further fortified by the manner in which the opposite finding would conflict with the so-called "cure period" provided by the Arkansas Constitution. As noted above, article V, § 1 provides that a petition declared insufficient must be granted at least 30 additional days to cure—so long as its original submissions included 75% of the designated percentage of statewide legal voters as well as 75% of the designated percentage of voters of at least 15 counties. But Act 236 eliminates any "cure period" so long as "the *requirements* [of Act 236] are less than the designated number of signatures or counties represented by petitions required by the Arkansas Constitution *and statutory law*." Act 236 of 2023 (emphasis added). Accordingly, it follows that if Act 236's statutory-law change to the fifty-county minimum governed initiative petitions, then it would effectively eliminate the "cure period," as provided by the Arkansas Constitution.

While the State explains in its Response that the League abandoned any argument on this point, which the League originally stated in its Complaint, we don't consider the argument here for its merits.[13] Rather, we mention it only to illustrate the conflict that Act 236's change from fifteen counties to fifty counties injects into the initiative petition construct altogether.

[13] State's Resp. to Pl. Mot. for J. on the Pleadings dated Nov. 7, 2024, at p. 8.

But even if the above procedural and textual conflicts alone were not enough, article V, § 1 of the Arkansas Constitution also restricts the creation of statutes that curtail its provisions. First, it states that "[n]o law shall be passed . . . to prohibit the circulation of petitions, nor in any manner interfering with the freedom of the people in procuring petitions." Second, it explains that "[n]o legislation shall be enacted to restrict, hamper or impair the exercise of the rights herein reserved to the people." These provisions guard against the enactment of laws that do anything but help to "facilitate its operation" and to prevent "perjury, forgery, and all other felonies or other fraudulent practices, in the securing of signatures or filing of petitions." Ark. Const., Art V, § 1. But Act 236 doesn't fit into this category of constitutionally permitted statutory enhancements.

While the State suggests that Act 236 of 2023 merely "facilitates"—rather than conflicts with—the procedure of article V, § 1 of the Arkansas Constitution, it is plain that Act 236 materially alters and limits the protections guaranteed to petitioning parties by the constitution. More specifically, Act 236 of 2023's alteration of the fifteen-county-minimum signature requirement reduces the minimum guarantees of article V, § 1—guarantees that protect the "freedom of the people in procuring petitions." Based on the plain meaning outlined above, the decision to require petition signatures from a minimum of fifty counties rather than fifteen serves to burden the procurement of petitions further than article V, § 1 requires or even allows. It thus represents an unmistakable and irreconcilable conflict between Act 236 of 2023 and the Arkansas Constitution.

c. Sovereign Immunity

In analyzing the State's sovereign immunity defense, we note that "Article V, Section 20, of the Arkansas Constitution provides that '[t]he State of Arkansas shall never be made [a] defendant in any of her courts.'" *LandsnPulaski, LLC v. Arkansas Dep't of Corr.*, 372 Ark. 40, 42, 269 S.W.3d 793, 795 (2007) (citing Ark. Const. Art. 5, § 20). Sovereign immunity applies when [a] judgment would "operate to control the action of the State or subject it to liability." *Id.* However, there is an exception to sovereign immunity when the actions alleged by the state are unconstitutional. *Arkansas Lottery Comm'n v. Alpha Mktg.*, 2013 Ark. 232, 428 S.W.3d 415.

The Supreme Court of Arkansas has held that acts of the General Assembly are presumed to be constitutional and will be upheld "unless the conflict between it and the [c]onstitution is clear and palpable." *Beaty v. Humphrey*, 195 Ark. 1008, 115 S.W.2d 559, 560 (1938); *see also Buzbee v. Hutton*, 186 Ark. 134, 52 S.W.2d 647, 648 (1932) ("It is the well-known rule . . . that statutes are presumed to be framed in accordance with the [c]onstitution, and should not be held invalid for repugnance thereto, unless such conflict is clear and unmistakable . . . . All doubts as to the constitutionality of a statute are therefore to be resolved in favor of the statute.").

In its Answer as well as its Response to the League's Motion for Judgment on the Pleadings, the State argues that it is entitled to sovereign immunity, which would operate as a bar to the present suit. The State concedes that sovereign immunity does not bar "declaratory-judgment actions against the State if the complaint alleged illegal and unconstitutional acts." *Ark. Dept. of Ed. v. McCoy*, 2021 Ark. 136, at *7,

624 S.W.3d 687, 692, but it argues that such exception only applies where the complaint pleads facts sufficient to afford relief.

The Arkansas Rules of Civil Procedure provide that:

> [a] pleading which sets forth a claim for relief, whether a complaint, counterclaim, crossclaim, or third party claim, shall contain (1) a statement in ordinary and concise language of facts showing that the court has jurisdiction of the claim and is the proper venue and that the pleader is entitled to relief, and (2) a demand for the relief to which the pleader considers himself entitled.

Ark. R. Civ. P. 8. Here, the League has pled in its March 10, 2023 Complaint that the Arkansas "Secretary of State is responsible for certifying statewide initiative and referendum measures for the ballot . . . ."[14] It has further pled facts reflecting the provisions of article V, § 1 of the Arkansas Constitution as well as the provisions of Act 236 of 2023.[15] Finally, it sought a declaration that Act 236 is unconstitutional.[16] Here, the League has satisfied these pleading requirements. Additionally, we have found above that Act 236 of 2023—as pled in the League's Complaint—is unconstitutional due to its conflict with article V, § 1 of the Arkansas Constitution. As such, sovereign immunity does not act as a bar to the present action.

D. Conclusion

While the enactments of the Arkansas General Assembly—a body of distinguished public servants charged with setting the policy of the State of

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[14] Compl. at ¶ 8.

[15] Compl. at ¶¶ 9-14.

[16] Compl. at ¶¶ 15-19.

Arkansas—are presumed constitutional, we cannot under any set of facts find Act 236 of 2023 to survive constitutional scrutiny. In faithful adherence to the precedents of our appellate courts, this measure impermissibly restricts the right of the people to petition for initiated acts—a reserved power expressly guaranteed by the Arkansas Constitution.

Accordingly, for the reasons stated above, Act 236 of 2023 clearly and unmistakably conflicts with article V, § 1 of the Arkansas Constitution and is thus unconstitutional on state law grounds. And for this reason, the State's sovereign immunity defense lacks merit. Plaintiff's Motion for Judgment on the Pleadings is GRANTED, the State is enjoined from enforcing Act 236 of 2023, and judgment as a matter of law is to be entered for Plaintiff.

IT IS SO ORDERED this 12th day of February, 2026.

SHAWN J. JOHNSON
CIRCUIT JUDGE