

IN THE CIRCUIT COURT OF PULASKI COUNTY, ARKANSAS

PAUL SPENCER and NEIL SEALY

PLAINTIFFS

v.

No.

MARK MARTIN, in his official capacity as  
Secretary of State for the State of Arkansas

DEFENDANT

COMPLAINT

Plaintiffs Paul Spencer and Neil Sealy, by and through their attorneys, David A. Couch and Bettina E. Brownstein, allege for their complaint:

I. Introduction

1. This is an action for declaratory and injunctive relief brought by citizens and residents of the State of Arkansas pursuant to the Arkansas Civil Rights Act, §16-123-101 *et.seq.* against the Arkansas Secretary of State, in his official capacity, which challenges portions of the state constitutionality of Act 1413 passed by the General Assembly in 2013 (“the Act”).

2. Arkansas is one of several states that guarantee its citizens the right to place proposed laws and constitutional amendments on the ballot through an initiative and referendum process. *See* Ark. Con., Art. 5, §1. In 2013 the Arkansas General Assembly passed Act 1413, attached as Exhibit 1, which plaintiffs contend places unwarranted and unconstitutional restrictions on the ability of citizens to circulate petitions and will prevent the placement of initiatives on the ballot for the general, statewide election in November of 2014.

3. Because the unwarranted and unconstitutional provisions of the Act violate Article 1, Section 5 and Article 2, Sections 2, 3, 4, 6, and 8 of the Arkansas

Constitution, plaintiffs seek equitable relief from this Court in the form of a declaration that the Act is unconstitutional and an order enjoining its enforcement.

## II. Jurisdiction and Venue

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

5. Venue lies in Pulaski County because plaintiffs reside here, the cause of action arose in Pulaski County and defendant is an officer of the state. *See* Ark. Code Ann. §§16-60-102, 103.

## III. Parties

6. Neil Sealy is a citizen and resident of Pulaski County. He is the Executive Director of Arkansas Community Organizations. He has helped organize and participated in committees that have sponsored statewide and local ballot initiatives and has been a canvasser in several statewide and local petition drives to place initiated acts and ordinances on the ballot in Arkansas. Sealy would like to continue in the future with petition sponsorship and canvassing however, he feels constrained being able to do so successfully by the unwarranted and/or undue burdens placed on the process by various provisions of the Act.

7. Paul Spencer is a citizen and resident of Pulaski County, Arkansas. He is a teacher of government at Catholic High School in Little Rock, Arkansas. He is founder and co-chair of an organization known as Regnant Populous, which was the sponsor of a petition drive to put certain ethical reforms on the 2012 general election ballot and obtained approval for circulation for the 2014 general election of an initiative petition.

Regnant Populous currently has pending another proposed measure for approval by the Attorney General of Arkansas. He would like to continue in the future with petition sponsorship and canvassing however, he believes various provisions of the Act place unwarranted restrictions on his ability to do so and will prevent him from exercising his rights under the Arkansas Constitution.

8. Mark Martin is Secretary of State for the State of Arkansas. In that capacity, he regulates, implements, monitors and enforces initiative and referendum petition laws and procedures. His office is responsible for counting and validating petition signatures, deciding the sufficiency of statewide petitions, and certifying them.

#### IV. The Act

9. The Act is entitled:

“AN ACT CONCERNING INITIATIVES AND REFERENDUMS; TO REQUIRE SPONSORS TO FILE CERTAIN INFORMATION REGARDING PAID CANVASSERS OF INITIATIVE AND REFERENDUM PETITIONS WITH THE SECRETARY OF STATE BEFORE CANVASSING; TO REQUIRE NOTICE TO THE STATE POLICE OR TO COUNTY PROSECUTING ATTORNEYS OF SUSPECTED FORGERY OF SIGNATURES ON PETITIONS; TO REQUIRE SPONSORS OF STATEWIDE PETITIONS TO ASSUME THE BURDEN OF DEFENDING THE SUFFICIENCY OF POPULAR NAMES AND BALLOT TITLES IN JUDICIAL PROCEEDINGS; TO REGULATE THE COUNTING OF SIGNATURES ON INITIATIVE AND REFERENDUM PETITIONS; TO REPEAL PROVISION OF ARKANSAS LAW PROVIDING FOR REVIEW OF THE LEGAL SUFFICIENCY OF STATEWIDE INITIATIVE PETITIONS AND BALLOT TITLES BEFORE COMPLETED PETITIONS ARE FILED; TO DECLARE AN EMERGENCY; AND FOR OTHER PURPOSES.”

It was enacted with an emergency clause and went into effect when approved by Mike Beebe, Governor of the State of Arkansas on April 22, 2013.

10. The Act is divided into 22 sections and amends Ark. Code Ann. §§7-9-101 through 7-9-601.<sup>1</sup>

11. Plaintiffs challenge the constitutionality of section 3, §7-9-103; section 11, §7-9-109 (a), section 13; §7-9-111 (a); section 15, §7-9-111 (a) and (f); section 18, §7-9-126, and section 21, §7-9-601 of the Act.

#### V. The Act's Findings of Fact

12. In passing the Act, the General Assembly made certain findings, *inter alia*:

- (a) Sponsors and paid canvassers may have an incentive to knowingly submit forged or otherwise invalid signatures in order to obtain additional time to gather signatures and submit supplemental petitions. *See* §1 (a) (3);
- (b) Of three petitions submitted [to the Secretary of State in 2012], there were widespread instances of apparent fraud, forgery, and false statements in the signature-gathering process. *See* §1 (a) (6);
- (c) If an effort is not made to address these issues, untrained paid canvassers will continue to obtain and submit forged and otherwise facially invalid signatures. *See* §1 (b) (1).

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<sup>1</sup> Section 1 contains the Act's legislative findings; section 2 amends §7-9-101, "Definitions"; section 3 amends §7-9-103 (signing of petitions); section 4 amends §7-9-104 (a) (form of initiative petition); section 5 amends §7-9-104 (form of petition and sufficiency of signatures); section 6 amends §7-9-105 (a) (form of referendum petition); section 7 amends §7-9-105 (form of referendum petition); section 8 amends §7-9-107 (d) (certification of ballot titles); section 9 amends §7-9-107 (e) (f) (approval and publication of ballot title); section 10 amends §7-9-108 (b) (procedures for circulating petitions); section 11 amends §7-9-109 (a) (form of verification for petitioners); section 12 amends §7-9-110 (designation of number and popular name); section 13 amends §7-9-111 (a) (sufficiency of petitions); section 14 amends §7-9-111 (d) (sufficiency of signatures); section 15 amends §7-9-111 (f) (filing of petitions); section 16 amends §7-9-112 (a) (b) (failure of Secretary of State to act on petition); section 17 amends §7-9-125 (a) (definitions); section 18 amends §7-9-126 (counting of signatures); section 19 amends §7-9-204 (constitutional amendments proposed by a General Assembly); section 20 repeals §7-9-501-506; section 21 amends §7-9-601 to add subchapter on paid canvassers; and section 21 contains emergency clause.

- (d) Unscrupulous sponsors and canvassers will continue to have an incentive to submit forged and otherwise facially invalid signatures and make false statements to the Secretary of State. *See* §1 (b) (2);
13. The General Assembly further determined that if the Act becomes law:
- (a) Sponsors and canvassers of proposed initiative measures will be held more accountable for their actions in gathering signatures from registered voters. *See* §1 (c) (1);
- (b) Earlier determination of the insufficiency of petitions rife with false statements, forged signatures, and otherwise facially invalid signatures will result in less confusion and frustration with the initiative process. *See* §1 (c) (2);
- (c) Sponsors and canvassers will be more accountable to the people of this state, facilitate the initiative process, conserve state resources and help restore the confidence and trust of the people to the initiative process. *See* §1 (d) (2);<sup>2</sup>

#### VI. Chilling Effect of Act on Plaintiffs

14. The Act unconstitutionally chills each plaintiff from engaging in the petitioning process in the following ways;
- (a) It unwarrantably shrinks the pool of potential canvassers by requiring that paid canvassers have their name and residence address provided to the Secretary of State prior to obtaining any signatures.

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<sup>2</sup> Plaintiffs contend these legislative findings and determinations are unsupported by evidence.



(b) It unwarrantably shrinks the pool of potential canvassers and places burdens on sponsors by requiring them to collect oaths of each canvasser verifying that they have not pled to or been convicted of a crime involving the violation of election laws, forgery, fraud or identity theft in any state prior to obtaining any signatures.

(c) It unwarrantably shrinks the pool of potential canvassers by requiring them to provide a photograph taken within 90 days prior to obtaining any signatures.

(d) It makes the collection of an adequate number of signatures unwarrantably difficult by requiring that an entire petition part be invalidated if a paid canvasser has not submitted the information required by §7-9-601.

(e) It makes the collection of an adequate number of signatures unwarrantably difficult by requiring that an entire petition part be invalidated if it contains the signature of a petitioner from more than one county unless each signature of a petitioner from another county is clearly stricken before the filing of the petition.

(f) It unwarrantably shrinks the pool of potential canvassers by requiring that a petition shall have attached an affidavit of the canvasser stating that his or her current residence address appearing on the verification is correct.

(g) It chills the pool of potential canvassers and makes collection of valid petition parts unwarrantably difficult because it provides that a canvasser commits a Class A misdemeanor if he or she prints a name, address, birth date,

and date of signing for a person unless the person has a disability because “disability” is not defined, and there are no means for determining if a person has a “disability” to trigger this provision of the Act.

(h) It unwarrantably chills the pool of potential canvassers and makes the collection of an adequate number of signatures more difficult by requiring that the entire petition part be invalidated if one signature has a material defect, because what constitutes a “material defect” is not defined in the Act and there are no means of determining what constitutes a material defect.

(I) It unwarrantably chills the pool of potential canvassers because the definition of “paid canvasser” as one who is paid money or “anything of value” will limit, and possibly eliminate, the pool of potential canvassers, as “anything of value” is not defined and could be interpreted to encompass volunteer canvassers who do not receive remuneration for soliciting petition signatures.

(j) It unwarrantably restricts the ability of the sponsor to obtain adequate signatures by invalidating an entire petition part if the petition lacks the signature, printed name and residence address of the canvasser or is signed by more than one canvasser

(k) It unwarrantably restricts the ability of the sponsor to obtain adequate signatures by invalidating an entire petition part if the notarization is defective.

(l) It unwarrantably restricts the ability of the sponsor to obtain adequate signatures by requiring a signer to print his name, address, and birth date unless

he or she has a disability and requiring the canvasser to print his or her name in the margin of the petition.

**COUNT 1 - §7-9-601 –  
Violations of Article 5, Section 1 of Arkansas Constitution  
(Unwarranted Restrictions)**

15. Paragraphs 1 through 14 are incorporated herein as if set out word for word.

16. Section 7-9-601 (a) (1) (C) (i) prohibits a person from providing money or anything of value to another person for obtaining signatures on a statewide initiative or referendum petition unless the sponsor provides a complete list of all paid canvassers' names and current residential addresses to the Secretary of State.

17. Sections 7-9-601 (b) (1), (2), (3) and (6) prohibit a paid canvasser from obtaining a signature on an initiative or referendum petition unless he or she provides to the sponsor his or her full name and any assumed name, his or her current residence address and permanent domicile address if the latter is different from the former, and a signed statement taken under oath or solemn affirmation that the person has not pled guilty or *nolo contendere* to or been found guilty of a criminal offense involving a violation of the election laws, fraud, forgery, or identification theft in any state, and a photograph taken within 90 days.

18. Section 7-9-601(d) defines "paid canvasser" as "a person who is paid or with whom there is an agreement to pay money or anything of value before or after a signature on an initiative or referendum petition is solicited in exchange for soliciting or obtaining a signature on a petition."



19. The requirements of § 7-9-601 are unwarranted restrictions prohibited by Article 5, Section 1 of the Arkansas Constitution because they interfere with the freedom of the people in procuring petitions, reduces the pool of potential canvassers and increases the expense of obtaining canvassers, making it unwarrantably difficult to obtain the requisite number of signatures to appear on the ballot.

20. The definition of “paid canvasser” in §7-9-601 is vague in that “anything of value” is undefined and subjects canvassers and sponsors to uncertainty as to whom will be considered a paid canvasser under the Act and thus will have a chilling effect on all potential canvassers and sponsors. This interferes with the freedom of the people in procuring petitions, reduces the pool of potential canvassers and increases the expense of obtaining canvassers, and thus makes it unwarrantably difficult to obtain the requisite number of signatures to appear on the ballot.

**COUNT 2 - § 7-9-126 -  
Violations of Article 5, Section 1 of Arkansas Constitution  
(Unwarranted Restrictions)**

21. Paragraphs 1 through 20 are incorporated herein as if set out word for word.

22. Section 7-9-126 (b) provides that a petition part and all the signatures appearing on the petition part shall not be counted for any purpose by the official charged with verifying the signatures, including the initial count of signatures, if, *inter alia*, one of the following occurs:

(a) The petition lacks the signature, printed name, and residence address of the canvasser or is signed by more than one canvasser. *See* §126 (b) (2)

(b) The canvasser is a paid canvasser whose name and the information required under §7-9-601 were not submitted by the sponsor to the Secretary of State before the petitioner signed the petition. *See* §7-9-126 (b) (3) (A)

(c) The canvasser verification is not notarized, is notarized by more than one notary, or lacks a notary signature or a notary seal. *See* §7-9-126 (b) (4)

(d) The petition is part of a statewide petition clearly and unmistakably contains signatures of petitioners from more than one (1) county unless each signature of a petitioner from another county is clearly stricken before the filing of the petition with the Secretary of State. *See* 7-9-126 (b) (7).

(e) The petition part has a material defect that, on its face, renders the petition part invalid. *See* 7-9-126 (b) (8).

23. Section 7-9-126 (d) provides that if the initial count of signatures is less than the designated number of signatures 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 Act prohibits the acceptance of any additional signatures to cure the insufficiency of the petition on its face.

24. It is not uncommon for mistakes to occur with regard to a canvasser's residence address or notarization or to mistakenly sign the wrong petition. Such mistakes will invalidate all signatures on a petition part.

25. It is not uncommon for petitioners to be mistaken as to the county in which they are registered to vote. Under the Act, a mistake by one petitioner will invalidate all signatures on the petition part.

26. The term "material defect" is not defined and is unconstitutionally vague in that no one could reasonably understand what constitutes a material defect.

27. Section 7-9-126 contains unwarranted restrictions prohibited by Article 5, Section 1 of the Arkansas Constitution because it invalidates without reason or justification valid petition signatures and thus unwarrantably interferes with the freedom of the people in procuring petitions.

**COUNT 3 -§7-9-103 -  
Violations of Article 5, Section 1 of Arkansas Constitution  
(Unwarranted Restrictions)**

28. Paragraphs 1 through 27 are incorporated herein as if set out word for word.

29. Section §7-9-103 (a) (1) (A) require a person signing a petition to in addition to signing his or her own name, birth date and date of signing but also print his or her name, and address unless the signer requires assistance due to a disability. *See* §7-9-103 (a) (2) (A), (B)

30. Section 7-9-103(a) (3) prohibits anyone less than eighteen years of age from acting as a canvasser.

31. Section 7-9-103(a)(4) prohibits a paid canvasser from soliciting signatures on a statewide initiative or referendum petition if the sponsor has not provided the information required under §7-9-610 to the Secretary of State before soliciting signatures on a petition.

32. Under Section 7-9-103 (c) (5) a person commits a Class A misdemeanor if a person acting as a canvasser, notary, sponsor or agent of a sponsor accepts or pays money or anything of value for obtaining signatures on a petition when the person acting as a canvasser, sponsor, or agent of a sponsor knows that the name or address of a person acting as a canvasser is not included on the sponsor's list filed with the Secretary of State under §7-9-601.

33. The term "anything of value" is not defined and is unconstitutionally vague in that no one could reasonably understand what constitutes "anything of value" or knows to whom the criminal penalty applies.

34. The term "disability" is not defined and no one could reasonably understand what constitutes a disability such that a canvasser may print the name, address, birth date and date of signing for another.

35. The requirement that a person must print his or her own name, address and birth date unless he or she has a disability is in violation of Article 5, §1 in that it only requires signatures of legal voters and no other verification except an affidavit of the person circulating the petition.

36. Section 7-9-103 imposes unwarranted restrictions in violation of Article 5, Section 1 of the Arkansas Constitution because it has a chilling effect on canvassers and sponsors reduces the pool of potential canvassers and thus unwarrantably interfere with the freedom of the people in procuring petitions.



**COUNT 4 - 7-9-103, 7-109, 7-9-111(f)**  
**Violations of Arkansas Constitution**  
**(Equal Protection)**

37. Paragraphs 1 through 36 are incorporated herein as if set out word for word.

38. Section 7-9-103 (a) (4) provides that a person shall not act as a paid canvasser on a statewide initiative or referendum petition if the sponsor has not provided the information required under §7-9-601.

39. Under Section 7-9-109 (c) (5), a person commits a class A misdemeanor if that person, acting as a canvasser, notary, sponsor, or agent of a sponsor accepts or pays money or anything of value for obtaining signatures on a petition when the person acting as a canvasser, sponsor, or agent of a sponsor knows that the name or address of a person acting as a canvasser is not included on the sponsor's list filed with the Secretary of State under §7-9-601.

40. Section 9-7-111(f) requires paid canvassers, when filing petitions, to submit a statement identifying the paid canvasser by name, to sign a statement indicating that the sponsor has provided a copy of the most recent edition of the Secretary of State's initiative and referenda handbook to each paid canvasser before the paid canvasser solicited signatures and explained the requirements under Arkansas law for obtaining signatures on an initiative or referendum petition to each paid canvasser before the paid canvasser solicited signatures. *See* § 7-9-111 (f) (2) (A), (B), (i), (ii)

41. Sections 7-9-103 (a) (4), 7-9-109 (c) (5), and 9-7-111(f) violate Article 2, Section 3 of the Arkansas Constitution in that they treat paid and unpaid canvassers differently and deny the latter the equal protection of state law.

**COUNT 5 - § 7-9-103, 7-9-109, 7-9-111, 7-9-126, 7-9-601 –  
Violations of Arkansas Constitution  
(Due Process)**

42. Paragraphs 1 through 41 are incorporated herein as if set out word for word.

43. Section 7-9-103 (a) (1) (A), (B) provides that a person must sign and print his or her own name, address, birthdate, and date of signing unless the person requires assistance due to a disability. If there is a disability, another person can sign for him or her.

44. Under Section 7-9-109 (c) (5), a person commits a class A misdemeanor if that person, acting as a canvasser, notary, sponsor, or agent of a sponsor accepts or pays money or anything of value for obtaining signatures on a petition when the person acting as a canvasser, sponsor, or agent of a sponsor knows that the name or address of a person acting as a canvasser is not included on the sponsor's list filed with the Secretary of State under §7-9-601.

45. Section 7-9-109 (a) requires a verification form for canvasser that indicates whether one is a paid or unpaid canvasser.

46. Section 9-7-111(f) requires paid canvassers, when filing petitions, to submit a statement identifying the paid canvasser by name, to sign a statement indicating that the sponsor has provided a copy of the most recent edition of the

Secretary of State's initiative and referenda handbook to each paid canvasser before the paid solicited signatures and explained the requirements under Arkansas law for obtaining signatures on an initiative or referendum petition to each paid canvasser before the paid canvasser solicited signatures. *See* § 7-9-111 (f) (2) (A), (B), (i), (ii)

47. Section 7-9-126 (b) (3) (A) invalidates a petition part and all signatures appearing on the petition part if the canvasser is a paid canvasser whose name and the information required under §7-9-601 were not properly submitted by the sponsor to the Secretary of State before the petitioner signed the petition.

48. Section 7-9-126 (b) (3) (B) defines "paid canvasser" as one who is paid money or anything of value for soliciting signatures before or after the signatures are obtained.

49. Section 7-9-126 (c) (2) invalidates a signature on a petition if it is "obviously not that of the purported petitioner." What is meant by this provision (nor the means to determine this type of signature determined) is not included in the Act.

50. Section 7-9-601(d) defines a "paid canvasser" to be a person who is paid or with whom there is an agreement to pay money or anything of value before or after a signature on an initiative or referendum petition is solicited in exchange for soliciting or obtaining a signature on a petition.



51. Sections 7-9-111 (f) (2) (A), (B), (i), (ii), 7-9-126 (b) (3) (A), 7-9-126 (b) (3) (B), 7-9-109 (c) (5), 7-9-126 (b) (3) (B), and 7-9-601(d) violate Article 2, Sections 4 and 6 of the Arkansas Constitution in that they are undefined, unconstitutionally vague and chill the exercise of free speech, violating the due process rights of the canvasser and sponsor.

52. Sections 7-9-126 (b) (3) (A), 7-9-109 (c) (5), 7-9-111 (f) (2) (A), (B), (i), (ii), 7-9-126 (b) (3) (B), and 7-9-601(d) violate Article 2, Section 8 of the Arkansas Constitution in that the terms "disability" and "anything of value" are undefined, unconstitutionally vague, and subject canvassers to a criminal penalty without knowing what conduct is prohibited and what status is regulated.

**COUNT 6 -- §7-9-111 (a)**  
**Violation of Arkansas Constitution**  
**(Free Speech, Right to Petition, Unwarranted Restriction)**

53. Paragraphs 1 through 52 are incorporated herein as if set out word for word

54. Section 7-9-111 (a) prohibits a canvasser from circulating a petition or collecting additional signatures for the petition after it has been filed until the Secretary of State determines its sufficiency.

55. Section 7-9-111 (a) is an unwarranted restriction on the powers of the people given in Article 1, Section 5 of the Arkansas Constitution in that it will make the retention of canvassers, who will be unable to work during the Secretary of State's determination period, much more difficult thus severely hindering the ability of sponsors to collect an adequate number of signatures.



56. Section 7-9-111 (a) is also a violation of Article 2, Sections 4 and 6 in that it restricts the rights of petition and free speech.

**COUNT 7 -- 7-9-111**  
**Violations of Arkansas Constitution**  
**(Exercise of Right of Petition and Free Speech)**

57. Paragraphs 1 through 56 are incorporated herein as if set out word for word.

58. Sections 7-9-111(f) (see ¶ 36) and 7-9-126 (b) (3) (A), (B) (see ¶¶ 42, 43) violate Article 2, Sections 4 and 6 of the Arkansas Constitution in that they chill potential canvassers from engaging in protected speech and further chill plaintiffs in pursuit of their exercise of the right of free speech.

**COUNT 8 - §7-9-601 –**  
**Violations of Arkansas Constitution**  
**(Exercise of Right of Petition and Free Speech)**

59. Paragraphs 1 through 58 are incorporated herein as if set out word for word.

60. Sections 7-9-601 (a) (1), (C) (1) (i) (ii) (see ¶16), 7-9-601 (b) (1), (2), (3), (see ¶17), and 7-9-601 (d) (see ¶18) violate Article 2, Sections 4 and 6 of the Arkansas Constitution in that they chill potential canvassers from engaging in protected speech and further chill plaintiffs in pursuit of their exercise of the right of free speech.

**COUNT 9 - §7-9-126 -  
Violations of Arkansas Constitution  
(Exercise of Right of Petition and Free Speech)**

61. Paragraphs 1 through 56 are incorporated herein as if set out word for word.

62. Sections 7-9-126 (b) (3) (A) (see ¶ 22) (B) (7) (see ¶ 23), (8) (see ¶ 8) violate the Article 2, Sections 4 and 6 of the Arkansas Constitution in that they chill potential canvassers from engaging in protected speech and further chill plaintiffs in pursuit of their exercise of the right of free speech.

**COUNT 10 -§7-9-103 -  
Violations of Arkansas Constitution  
(Exercise of Right of Petition and Free Speech)**

63. Paragraphs 1 through 58 are incorporated herein as if set out word for word.

64. Sections 7-9-103 (a) (4) (*see* ¶ 28)) and (c) (5) (*see* ¶ 29) violate Article 2, Sections 4 and 6 of the Arkansas Constitution in that they chill potential canvassers from engaging in protected speech and thus chill plaintiffs in pursuit of their exercise of the right of free speech.

WHEREFORE, plaintiffs respectfully request that this Court:

- (1) Enter judgment in their favor on their complaint in its entirety and against defendant;
- (2) Declare Act 1413 to be unconstitutional and invalid under the Arkansas Constitution;

- (3) Award plaintiffs all relief allowed by law and equity, including but not limited to declaratory, preliminary and permanent injunctive relief;
- (4) Award them attorneys' fees and costs;
- (5) Award any other relief the Court deems proper.

Respectfully Submitted,

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Public Law Center

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