

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

MOTION FOR PRELIMINARY INJUNCTION

This is an action brought pursuant to the Arkansas Civil Rights Act, §16-123-101 *et. seq.*, which challenges the constitutionality of Act 1413 of the 89th General Assembly of Arkansas, to be codified at Ark. Code Ann. §§9-7-101 to 9-7-601 (the "Act"). Plaintiffs seek a preliminary injunction pursuant to Rule 65 of the Arkansas Rules of Civil Procedure.

In support of this motion, plaintiffs rely on the following:

1. The complaint filed in this matter;
2. The affidavit of Paul Spencer, attached as Exhibit 1 to this motion;
3. The affidavit of Neil Sealy, attached as Exhibit 2 to this motion;
4. The affidavit of Jennifer Pierce, attached as Exhibit 3 to this motion;
5. The affidavit of Paul Jacob, attached as Exhibit 4 to this motion; and
6. The brief in support of this motion filed contemporaneously.

WHEREFORE, plaintiffs respectfully request that this Court:

For the reasons set forth above, plaintiffs respectfully request that the Court grant their motion for a preliminary injunction and enjoin defendant from enforcing any provision of the Act during the pendency of this litigation.

Respectfully Submitted,

David A. Couch PLLC
1501 N. University Ave., Suite 228
Little Rock, Arkansas 72207
Tel: (501) 661-1300
Fax: (501) 877-460-5674
Email: david@couchfirm.com

By  _____
David A. Couch (85033)

On behalf of the Arkansas Civil Liberties
Union Foundation, Inc. and the Arkansas
Public Law Center

and

Bettina E. Brownstein Law Firm
904 West 2nd Street, Suite 2
Little Rock, Arkansas 72201
Tel: (501)920-1764
FAX: (501) 376-1134
Email: bettinabrownstein@gmail.com

By _____
Bettina E. Brownstein (85019)

On behalf of the Arkansas Civil Liberties
Union Foundation, Inc. and the Arkansas
Public Law Center

ATTORNEYS FOR PLAINTIFFS

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

AFFIDAVIT OF PAUL SPENCER

Comes the affiant and after being duly sworn states:

1. I am Paul Spencer and a plaintiff in the captioned matter. I submit this affidavit in support of the motion for preliminary injunction filed in the case.
2. I have personal knowledge of the matters attested to in this affidavit.
3. I am a citizen and resident of Pulaski County, Arkansas and a teacher of government at Catholic High School in Little Rock, Arkansas.
4. I am president of an organization known as *Regnat Populus*, which was the sponsor of a petition drive to put certain ethical reforms on the 2012 general election ballot and a petition approved for circulation for the 2104 general election. In addition, *Regnat Populus* has pending another petition proposal for ballot title approval by the Attorney General to do with reform of corporate spending on elections.
5. I have experience as an initiative petition sponsor and canvasser and plan to continue to do so in the future. This experience includes working with both paid and unpaid canvassers.
6. Based upon my experience, I know that certain provisions of Act 1413 (as specified in the complaint) will make it significantly more difficult, if not

impossible, to collect a sufficient number of petition signatures to qualify an initiative for placement on a ballot. At the very least, they will increase the expense to sponsor a petition drive. This will eliminate the opportunity of some sponsors with limited financial resources to mount a petition drive.

7. I know that without paid canvassers to circulate petitions it is virtually impossible to succeed in gathering a sufficient number of signatures to place an initiative on the ballot.
8. In my opinion, there is no justification for treating paid and unpaid canvassers differently. In my experience, paid canvassers are no more likely than unpaid canvassers to commit fraud or forgery or submit false statements.
9. The provisions of Act 1413 have a chilling effect on my participation in the direct legislative process in the following ways:

(a) They shrink the pool or drive up the expense of potential canvassers by the requirement that paid canvassers have their name and residence address provided to the Secretary of State prior to obtaining any signatures because canvassers are reluctant to provide this information fearing intimidation tactics against them by those opposed to the petition. If a paid canvasser has a choice between working in a state without such a requirement and Arkansas, he or she will choose to go elsewhere.

(b) They shrink the pool or drive up the expense of potential canvassers by the requirement that paid canvassers have to submit a photograph taken within 90 days provided to the Secretary of State prior to obtaining any signature and verify by oath or affirmation that they have not plead to or been convicted of a

crime involving the violation of election laws, forgery, fraud or identity theft in any state.. If a paid canvasser has a choice between working in a state without such a requirement and Arkansas, he or she will choose to go elsewhere.

(c) They make the collection of an adequate numbers 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, if the notarization is defective, or there is a “material defect”. In addition, “material defect” is not defined and its meaning is not apparent.

(d) They make 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, even though it is not difficult for a petitioner to make a mistake as to what the county of his voter registration.

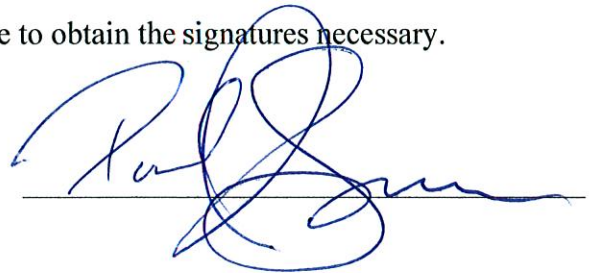
(e) They shrink the pool of potential canvassers and make collection of valid petition parts difficult because they provide that a canvasser commits a Class A misdemeanor if he or she prints a name, address, birth date, and date of signing for a person unless the person has a disability because “disability” is not defined, and there is no means for determining if a person has a “disability” to trigger this provision of the Act. This creates uncertainty for a canvasser and the risk of committing a crime. If a canvasser has a choice between working in a state without such a requirement and Arkansas, he or she will choose to go elsewhere.

(f) They create uncertainty for sponsors because of the definition of “paid canvasser” as one who is paid money or “anything of value”. “Anything of value” is not defined and could be interpreted to encompass volunteer canvassers who do not receive remuneration for soliciting petition signatures but who, for example, might receive a meal or transportation. This uncertainty has a chilling effect on sponsors’ participation in the initiative process.

(g) They make it extremely difficult to obtain the signatures necessary to qualify an initiative for the ballot by the prohibition against gathering additional signatures while the Secretary of State determines sufficiency of the initial filing. This is because paid canvassers will not wait and remain in the state 30 days without working nor are they likely to return after 30 days to resume signature gathering.

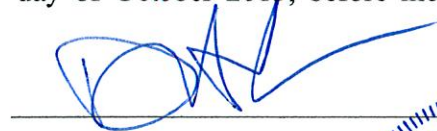
10. I believe that a preliminary injunction is necessary to prevent irreparable harm to my ability to obtain a sufficient number of signatures on the petitions *Regnat Populus* will circulate to place initiated acts on the ballot in 2014. If the preliminary injunction is not granted, there will not be sufficient time to obtain the signatures necessary.

FURTHER AFFIANT SAYETH NOT



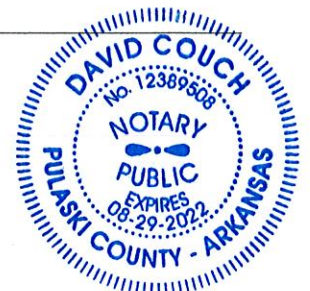
ACKNOWLEDGMENT

SUBSCRIBED AND SWORN TO this 9th day of October 2013, before me, a Notary Public



My Commission Expires:

8/29/2022



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

AFFIDAVIT OF NEIL SEALY

Comes the affiant and after being duly sworn states:

1. I am Neil Sealy and a plaintiff in the captioned matter. I submit this affidavit in support of the motion for preliminary injunction filed in the case.
2. I have personal knowledge of the matters attested to in this affidavit.
3. I am a citizen and resident of Pulaski County, Arkansas and executive director of Arkansas Community Organization. I have helped organize and have participated in committees that have sponsored statewide and local ballot initiatives and have been a canvasser in several statewide and local petition drives to place initiated acts and ordinances on the ballot in Arkansas. I plan to continue these activities in the future. My experience includes working with both paid and unpaid canvassers.
4. I have read Act 1413. Based upon my experience, I know that certain provisions of Act 1413 (as specified in the complaint) will make it significantly more difficult, if not impossible, to collect a sufficient number

of petition signatures to qualify an initiative for placement on a ballot. At the very least, they will increase the expense to sponsor a petition drive. This will eliminate the opportunity for some sponsors with limited financial resources to mount a petition drive.

5. I know that without paid canvassers to circulate petitions it is virtually impossible to succeed in gathering a sufficient number of signatures to place an initiative on the ballot.
6. In my opinion, there is no justification for treating paid and unpaid canvassers differently. In my experience, paid canvassers are no more likely than unpaid canvassers to commit fraud or forgery or submit false statements.
7. The provisions of Act 1413 have a chilling effect on my participation in the direct legislative process in the following ways:
 - (a) They shrink the pool or increase the expense of potential canvassers by the requirement that paid canvassers have their names and residence addresses provided to the Secretary of State prior to obtaining any signatures because canvassers are reluctant to provide this information fearing intimidation tactics against them by those opposed to the petition. If a paid canvasser has a choice between working in a state without such a requirement and Arkansas, he or she will choose to go elsewhere.

- (b) They shrink the pool or increase the expense of potential canvassers by the requirement that paid canvassers have to submit a photograph taken within 90 days provided to the Secretary of State prior to obtaining any signature and verify by oath or affirmation that they have not plead to or been convicted of a crime involving the violation of election laws, forgery, fraud or identity theft in any state.. If a paid canvasser has a choice between working in a state without such a requirement and Arkansas, he or she will choose to go elsewhere.
- (c) They make the collection of an adequate numbers 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, if the notarization is defective, or there is a "material defect". In addition, "material defect" is not defined and its meaning is not apparent.
- (d) They make 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, even though it is not difficult for a petitioner to make a mistake regarding the county of his or her voter registration.

- (e) They shrink the pool of potential canvassers and make collection of valid petition parts difficult because they provide 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 is no means for determining if a person has a "disability" to trigger this provision of the Act. This creates uncertainty for a canvasser and exposes them to the risk of committing a crime. If a canvasser has a choice between working in a state without such a requirement and Arkansas, he or she will choose to go elsewhere.
- (f) They create uncertainty for sponsors because of the definition of "paid canvasser" as one who is paid money or "anything of value." "Anything of value" is not defined and could be interpreted to encompass volunteer canvassers who do not receive remuneration for soliciting petition signatures but who, for example, might receive a meal or transportation. This uncertainty has a chilling effect on sponsors' participation in the initiative process.
- (g) They make it extremely difficult to obtain the signatures necessary to qualify an initiative for the ballot because of the prohibition against gathering additional signatures while the Secretary of State determines sufficiency of the initial filing. This is because paid canvassers will not wait and remain in the state 30 days without

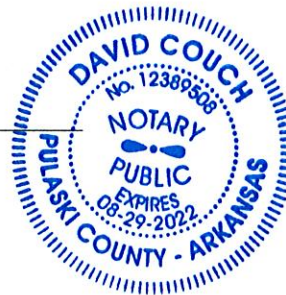
working nor are they likely to return after 30 days to resume signature gathering.

FURTHER AFFIANT SAYETH NOT



ACKNOWLEDGMENT

SUBSCRIBED AND SWORN TO this 9th day of October 2013, before me, a Notary Public



My Commission Expires:

8/29/2022

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

AFFIDAVIT OF JENNIFER PIERCE

Comes the affiant and after being duly sworn states:

1. My name is Jennifer Pierce and I am a citizen and resident of Saline County, Arkansas. I have a Bachelors degree in History and Secondary Education and a Masters degree in Public History for UALR. I am currently enrolled in the Heritage Studies PhD program at Arkansas State University.

2. I am employed as a teacher in Pulaski County.

3. I was a volunteer and paid canvasser for Regnant Populous in 2012.

In addition I was one of the organizers of the Regnant Populous initiative effort.

4. I am currently in the process of obtaining approval as a sponsor for a popular name and ballot title for a proposed constitutional amendment concerning same sex marriage. I plan to and would like to continue sponsoring and canvassing for initiatives in the future. I have read Act 1413 of 2013 and the 2013 -2014 handbook published the Arkansas Secretary of State concerning initiatives and referendums in Arkansas.

5. I have personal knowledge of the matters attested to in this affidavit.

6. Based upon my experience as an organizer and canvasser for Regnant Populous it is my opinion that there is no justification for treating paid and unpaid canvassers differently. In my experience paid canvassers are no more likely than unpaid canvassers to commit fraud or forgery or submit false statements. I personally was an unpaid canvasser and at some point became a paid canvasser. This had no effect on my continuing to be an honest canvasser.

7. While an unpaid canvasser I received, food, drinks, a t-shirt that were paid for by the sponsor. Act 1413 provides that a person who accepts "anything of value" is considered a paid canvasser and subject to the requirements imposed on a paid canvasser. In addition, volunteers who had not canvassed previously would attend these events where food and drink are served, pick up petitions and begin canvassing. Under Act 1413, by accepting food, drinks, and/or a t-shirt these volunteers could be considered paid canvassers and could not begin to canvass until they had "registered" with the Secretary of State. This certainly creates confusion for a canvasser or a sponsor, as they would not know if they would have to comply with the requirements of a paid canvasser or not..

8. As a canvasser the requirement that a paid canvasser is required to give their names and resident address to the Secretary of State prior to obtaining signatures is an unwarranted restriction and has a chilling effect on canvassers. I personally don't want my residence address readily available to individuals who

may oppose the petition I am trying to circulate, as I could be the subject of harassment and intimidation.

9. Act 1413 now requires that the person signing the petition to also print their name, address, birth date and date of signing. Previously this information was not required and was not required to be in the handwriting of the individual signing the petition. In my experience as a canvasser, the requirement that someone be required to print in his or her own handwriting is an unwarranted restriction on the petitioning process. Many individuals are willing to sign a petition but due to time constraints or other reasons request that the canvasser fill in the information and if these individuals are required to fill in this information themselves they may not sign the petition. Also Act 1413 provides that the canvasser can fill in this information if the person signing "requires assistance due to a disability." There is no definition as to what constitutes a "disability" and what constitutes a disability would require a judgment call on behalf of the canvasser. If the canvasser judgment is incorrect they could be found guilty of a Class A misdemeanor. The potential criminal liability has a chilling effect on the petitioning process.

10. As a canvasser I am aware of instances where an individual may not know what county he is registered to vote in. For example they may have moved and not changed their registration. Some individuals have an address in one county but are registered to vote in another county that can cause confusion. Act 1413 requires that an entire petition part be invalidated if it contains a

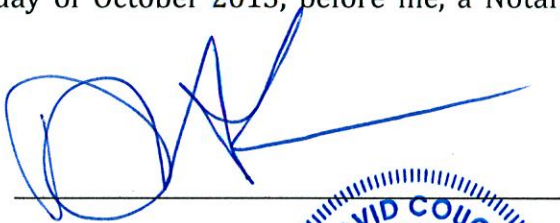
signature of a petitioner from more than one county. If a mistake is made with respect to the county of registration all of the individuals who signed that petition part and not just the one signature would be invalidated. This is an unwarranted restriction on the petitioning process and in my opinion denies the individuals who are from the correct county their constitutional right to petition.

FURTHER THE AFFIANT SAYETH NOT



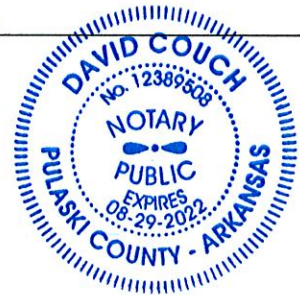
ACKNOWLEDGMENT

SUBSCRIBED AND SWORN TO this 9th day of October 2013, before me, a Notary Public



My Commission Expires:

8/29/2022



In the Circuit Court of Pulaski County, Arkansas
_____ Division

Neil Sealy and Paul Spencer

Plaintiffs

v.

No.

**Mark Martin, Secretary of State
for the State of Arkansas, in his official
capacity**

Defendant

State of Virginia)
)
County of Prince William)

AFFIDAVIT OF PAUL JACOB

1. I am Paul Jacob. I submit this affidavit in support of the motion for preliminary injunction filed in the captioned case.
2. I was formerly a citizen and resident of Arkansas. I presently am a citizen and resident of Virginia.
3. I am president of Citizens in Charge, a group working to protect and expand the initiative and referendum rights of every American without regard to politics or party, and the Citizens in Charge Foundation, a charitable foundation conducting research on direct democracy, educating the public and litigating in courts to defend the First Amendment right to petition.

4. I have experience working as a canvasser starting in 1979. I have worked in Arkansas, Connecticut, Washington D.C., Florida, Kansas, Kentucky, Maine, Maryland, Massachusetts, Michigan, Mississippi, Missouri, New Hampshire, Ohio, Rhode Island, Texas and Wisconsin.
5. I have also served as a petition drive coordinator. I ran the Ron Paul for President ballot drive campaign in 1988, which achieved ballot status in 47 states. In 1990, I worked on the Tax Accountability Amendment petition in Illinois.
6. From 1990 to 2001, I was involved in managing 50 statewide term limits petition drives in 25 states, including Alaska (2), Arkansas (2), Arizona (1), California (2), Colorado (2), Washington, DC (1), Florida (1), Idaho (3), Illinois (1), Maine (2), Massachusetts (2), Michigan (1), Mississippi (2), Missouri (4), Montana (2), Nebraska (5), Nevada (2), North Dakota (3), Ohio (1), Oklahoma (2), Oregon (2), South Dakota (1), Utah (1), Washington (3) and Wyoming (3). In addition, I have been involved in managing a campaign in Washington D.C.
7. I have also been involved in local petition efforts in cities and counties in Florida, Kansas, Maryland, Minnesota, New Mexico, Tennessee, Texas and Wisconsin.
8. I have been involved in petition drives for new political parties supporting term limits in Connecticut, Illinois and New York.
9. In 2005-2006, I was involved in 21 petition drives in 13 states: Arizona (1), California (1), Colorado (2), Idaho (1), Maine (1), Michigan (1), Missouri (2), Montana (3), Nebraska (2), Nevada (2), Oklahoma (2), Oregon (2) and Washington (1).

10. I have authored articles discussing practice and policy for two books on initiative and referendum: "The Initiative Process: Where People Count", Dangerous Democracy? The Battle over Ballot Initiative in America, edited by Larry J. Sabato, Howard R. Ernst and Bruce A. Larson, Rowman & Littlefield Publishers, 2001, and "Silence Isn't Golden", The Battle Over Citizen Lawmaking, edited by M. Dane Waters, Carolina Academic press, 2001.
11. I have personal knowledge of the matters attested to in this affidavit.
12. I have reviewed Act 1413 and based upon my knowledge and experience, I know that certain provisions of Act 1413 (as specified in the complaint) will make it significantly more difficult, if not impossible, to collect a sufficient number of petition signatures to qualify an initiative for placement on a ballot. At the very least, they will drive up the expense to sponsor a petition drive. This will eliminate the opportunity for some sponsors with limited financial resources to mount a petition drive.
13. I know that without paid canvassers to circulate petitions it is virtually impossible to succeed in gathering a sufficient number of signatures to place an initiative on the ballot.
14. In my opinion, there is no justification for treating paid and unpaid canvassers differently. In my experience, paid canvassers are no more likely than unpaid canvassers to commit fraud or forgery or submit false statements.
15. The provisions of Act 1413 have a chilling effect on participation in the direct legislative process in the following ways:

each signature of a petitioner from another county is clearly stricken before the filing of the petition, even though it is not difficult for a petitioner to make a mistake as to what the county of his voter registration.

(e) They shrink the pool of potential canvassers and make collection of valid petition parts difficult because they provide 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 is no means for determining if a person has a “disability” to trigger this provision of the Act. This creates uncertainty for a canvasser and the risk of committing a crime. If a canvasser has a choice between working in a state without such a requirement and Arkansas, he or she will choose to go elsewhere.

(f) They create uncertainty for sponsors because of the definition of “paid canvasser” as one who is paid money or “anything of value”. “Anything of value” is not defined and could be interpreted to encompass volunteer canvassers who do not receive remuneration for soliciting petition signatures but who, for example, might receive a meal or transportation. This uncertainty has a chilling effect on sponsors’ participation in the initiative process.

(g) They make it extremely difficult to obtain the signatures necessary to qualify an initiative for the ballot by the prohibition against gathering additional signatures while the Secretary of State determines sufficiency of the initial filing. This is because paid canvassers will not wait and remain in

the state 30 days without working nor are they likely to return after 30 days
to resume signature gathering.

FURTHER AFFIANT SAYETH NOT



County/City of P. Wm
Commonwealth of Virginia
On this 8 day of Oct, 2013
Paul Jacob
personally appeared before me and acknowledged that
he/she executed the foregoing instrument. TT
William L. James Notary Public
My commission expires 6/30/2015

