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ACLU and APLC Challenge the Constitutionality of New Obstacles to Participating in the Arkansas Initiative and Referendum Process

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LITTLE ROCK, AR — Today the American Civil Liberties Union of Arkansas and the Arkansas Public Law Center filed suit in Pulaski Circuit Court in Little Rock, Arkansas to uphold the rights of Arkansas citizens to petition their government. APLC is a non-profit advocacy group dedicated to public justice and upholding the Constitution. The lawsuit challenges the constitutionality of several provisions of a state law passed this year restricting the right of Arkansans, under the Arkansas Constitution, to petition the government. The suit was filed on behalf of Paul Spencer, the president of Regnat Populus, and Neil Sealy, the executive director of Arkansas Community Organization. Regnat Populus is a group that seeks to restore the influence of ordinary citizens in the democratic process it believes was undermined by the campaign finance reform case decided by the U.S. Supreme Court in June. ACO is a grassroots organization working for economic and social justice for low income and working families.

The Arkansas Constitution gives Arkansans the right to propose statewide or local legislative measures and statewide amendments to the Constitution, known as “initiated acts”; the Constitution also reserves to the people the right to place on the ballot a “referendum,” an opportunity to approve or reject an act passed by state or local government. Act 1413, unreasonably restricts the ability of ordinary people to gather signatures on statewide petitions to place initiated acts and referenda on the ballot, the lawsuit asserts. The bill passed with bipartisan support, with 110 out of 135 Arkansas legislators supporting it.

“Under our state Constitution, Arkansans have both the right and the ability to be involved in the direct legislative process,” said ACLU executive director Rita Sklar, “a precious right found in only one third of the states. In the past, Arkansas initiatives and referenda have run the gamut from right to left, motivated by social issues or monetary gain: from limiting gay and lesbian parenting to expanding gambling to legalizing medical marijuana; in other words, there is something for everyone to hate, or

love, and that's democracy. It is not any point of view the ACLU and APLC are hoping to promote, but the right to promote it."

Article 5, §1, of the Arkansas Constitution explicitly grants to the people the power "to propose legislative measures, laws, and amendments to the Constitution" and states that "no legislation shall be enacted to restrict, hamper or impair the exercise of the rights herein reserved to the people." Article 2, §4 states the right of the people to petition the government "shall never be abridged". The ACLU and APLC contend that provisions of Act 1413 constitute restrictions that hamper and impair the rights of Arkansans granted by Article 5, §1 and Article 2 and are asking the court to grant a preliminary injunction preventing the enforcement of the Act and a permanent injunction declaring the challenged provisions of the Act unconstitutional.

The lawsuit states that the law complicates the initiative and referendum process in various ways: a) by requiring the voter to list his or her name, address, and birthdate on the petition, while the Arkansas Constitution only requires a name, b) by shortening the period for collecting more signatures (a.k.a., the "cure period") if the number is found by the Secretary of State to be insufficient, and c) by disallowing a entire petition page if signatures from another county are on that page, whereas the current rule strikes only the wrong county signature, not the whole page.

One of the more serious problems with the law, the ACLU and APLC say, is that it creates two classes of petition canvassers, paid and unpaid, and treats paid canvassers as more likely to commit fraud than unpaid ones, contrary to a 1988 U.S. Supreme Court case rejecting that assertion. Moreover, the lawsuit alleges, the definition of "paid canvasser" is vague, and says that by defining a paid canvasser as anyone who receives money or "anything of value" all canvassers could be included, whether paid money or not.

According to the ACLU/APLC lawsuit, the law also encumbers paid petitioners by requiring their sponsoring individual or entity to provide information to the Secretary of State about them that is not required about unpaid canvassers—information that appears designed to harass paid canvassers. "The effect of these and other provisions of the Act is to discourage Arkansans from engaging in petition drives and to drive up the expense for those who do still venture to exercise the rights given to them by the Arkansas Constitution," said ACLU/APLC cooperating attorney Bettina Brownstein, who filed the lawsuit along with David Couch of Little Rock. "Act 1413 is an attempt to make the initiative and referenda process so difficult and expensive that few sponsors, if any, will attempt to use this direct legislative process and for those that do try it, the expense will likely be burdensome."

A copy of the complaint can be found: [Spencer v Arkansas Complaint](#)

The motion for injunction can be found: [Spencer v Martin Motion](#)

The brief in support of motion for injunction can be found: [Spencer v Martin Brief](#)

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