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ACLU and APLC Challenge to the Constitutionality of Arkansas Initiative and Referendum Process Obstacles Gains Ground

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LITTLE ROCK, AR — Late yesterday, an Arkansas circuit court judge halted enforcement of a law enacted in 2013 that placed restrictions on Arkansans' rights to propose and enact or repeal state and local laws.

The law was challenged in state court by the American Civil Liberties Union of Arkansas and the Arkansas Public Law Center in Pulaski Circuit Court in Little Rock, Arkansas on behalf of Paul Spencer, the president of Regnat Populus, and Neil Sealy, the executive director of Arkansas Community Organization ("ACO"). 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. 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 and marriage equality to expanding gambling to legalizing medical marijuana and regulating alcohol sales.

"This law made the initiative and referenda process so difficult and expensive that it chilled sponsors from wanting to move forward," said ACLU executive director Rita Sklar, "the expense and bureaucracy it heaped onto this right was nothing but a burden with one cause: to squelch this right of the people."

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”. Act 1413 of 2013 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 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.

The Court agreed that ACLU and APLC showed that the restrictions hamper and impair the rights of Arkansans and issued preliminary injunction preventing the enforcement of the Act. The Court, in issuing its Order found, “the effects of Act 1413 are crushing to the citizens who wish to bring their issues directly to the people. The effects of Act 1413 seem to impact the citizens rather than the special interests who always seem to have the money to further their goals.” ACLU and APLC are also seeking a permanent injunction declaring the challenged provisions of the Act unconstitutional.

“We are grateful for this decision especially now because many Arkansans are working to utilize the petition process and these restrictions were hampering their ability to plan and move forward,” said ACLU legal director Holly Dickson, “we’ll work now in an effort to keep these obstacles permanently out of the way.”

A copy of the order can be found: [Spencer v. Arkansas Preliminary Injunction Order](#)
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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