

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF ARKANSAS  
FAYETTEVILLE DIVISION**

BONNIE HEATHER MILLER, ROBERT  
WILLIAM ALLEN, ADELLA DOZIER  
GRAY, and ARKANSAS VOTERS FIRST,

*Plaintiffs,*

v.

JOHN THURSTON, in his official capacity  
as Secretary of State of Arkansas,

*Defendant.*

Case No. 5:20-cv-05070-pkh

Hon. Paul K. Holmes, III

**BRIEF IN SUPPORT OF PLAINTIFFS' MOTION FOR PRELIMINARY  
INJUNCTION**

**EXHIBIT 1**  
Declaration of Brett Kincaid

### **DECLARATION OF BRETT KINCAID**

1. I am an operations and management consultant and currently serve as the Director of Arkansas Voters First (AVF). I began looking into the prospects of a ballot initiative supporting independent redistricting in May 2019 and formally became director of Arkansas Voters First when the organization was chartered in February 2020.
2. AVF is a nonprofit, nonpartisan corporation that supports an independent citizens' redistricting commission. AVF seeks to ensure that voters pick their politicians rather than the other way around. AVF submitted its Statement of Organization as a Ballot Question Committee (Exhibit 1), to initiate and manage a petition drive to place a constitutional amendment on the ballot in November. AVF's polling shows that 54 percent of Arkansas voters favor independent redistricting. The proposed constitutional amendment, if approved by voters, would create a citizens' redistricting commission with exclusive authority to draw legislative districts.
3. I have experience with petition drives in Arkansas, and getting a referendum on the ballot is onerous. Under Arkansas law, AVF must collect more than 89,000 valid signatures from at least 15 counties by July 3, 2020, in support of a petition that would allow voters to decide whether or not to adopt a constitutional amendment. Each individual collecting signatures, known as a canvasser, must submit an affidavit, sworn to before a notary, attesting that he or she was present when each registered voter signed the petitions the canvasser is presenting. The procedures are so detailed that the Secretary of State has published a 61-page "Initiatives and Referenda Handbook" to explain them.
4. To meet the statutory deadline and comply with the statutory procedures, AVF hired and paid \$210,076 to a firm with extensive experience in handling petition drives. The firm interviewed and made initial offers to dozens of staff, conducted state and federal background checks on these canvassers (per Arkansas law), and opened offices in three Arkansas cities. AVF also hired lawyers to assist with the legal aspects of the petition drive, negotiated with printers, and coordinated with other nonprofit organizations seeking reform of the redistricting process.
5. In addition, AVF recruited its own volunteers to solicit signatures. I personally intended to do so. Other groups also were recruiting volunteer canvassers.
6. After this rigorous preparation, AVF launched its petition drive on March 5, 2020, and had canvassers in the field about a week later. Within days after this canvassing began, the Governor issued the first of a series of increasingly restrictive Executive Orders dealing with the devastating COVID-19 pandemic. Within a short time, the Governor closed the schools, limited gatherings of more than 10 people, closed bars and restaurants to dine-in service, and shut down other indoor entertainment venues.
7. The pandemic is taking a terrible toll on the people of Arkansas. As of April 21, 2020, 43 Arkansans have died and 2227 have tested positive for COVID-19. Forecasts project

more than 195 deaths in Arkansas due of COVID-19 by August 1, 2020. In addition, the economic effects of the disease have been catastrophic.

8. The restrictions imposed by the Governor, as well as the public fear caused by COVID-19, made it infeasible for AVF to continue canvassing for signatures, and it suspended its petition drive after obtaining less than 100 of the requisite 89,000 signatures. Among other reasons, canvassing is most productive at large public gatherings, such as fairs and farmers' markets, where the canvasser can encounter many potential signatories in a short time. Restaurants and bars are also productive venues for canvassing. Because of COVID-19 and the restrictions imposed to combat it, those opportunities are no longer available, and it is not clear when they will be. In addition, AVF was concerned for the health of the canvassers, who, as part of their jobs, necessarily come into close contact with many individuals. AVF could not risk the health of these canvassers by sending them into stores or the few public venues that were still open, or asking them to go door to door soliciting signatures.
9. AVF has explored alternatives to direct in-person solicitation of potential signatories, but the requirement of Arkansas law that the canvasser personally witness, and attest to, the petitioner signing his or her name makes it difficult, if not impossible to undertake the otherwise feasible alternatives of soliciting and receiving signatures through the mail or electronically. AVF believes that this requirement is not necessary to prevent fraud. Services such as DocuSign allow individuals to sign documents electronically in a manner that is verifiable and secure. These services satisfy rigorous security standards, and tens of millions of people around the world rely on them in critically important transactions. Using this type of service, AVF could obtain electronic signatures without increased risk to the integrity of the referendum process.
10. Before the COVID-19 pandemic, the widespread public anxiety it engendered, and the limitations on public activities it dictated, AVF was confident that the petition drive would collect the requisite signatures by the statutory deadline. With the current restrictions, AVF cannot do so. Even if the COVID-19 restrictions are gradually phased out, it is still highly unlikely that AVF can collect the required number of signatures so long as the canvassers must swear that they personally witnessed petitioners signing their names.

I declare under penalty of perjury that the foregoing statements are true and correct. Executed on

04/21/2020, by

  
Brett Kincaid

## BALLOT QUESTION COMMITTEE (BQC)\* STATEMENT OF ORGANIZATION

To be filed with:  
Arkansas Ethics Commission  
Post Office Box 1917  
Little Rock, AR 72203  
Phone (501) 324-9600  
Fax (501) 324-9606

(Arkansas Ethics Commission File Stamp)

FILED

MAR 10 2020

ARKANSAS ETHICS  
COMMISSION

BY 

☐ Check if this is an amendment to a previously filed statement of organization

### Section One: BQC Name

Name of BQC (in full): Arkansas Voters First

### Section Two: BQC Address & Phone Number

If BQC has no office address, use the address of the BQC officer authorized to receive notices on behalf of the BQC.

Address: 417 N Main St

City: Little Rock State: AR Zip: 72211 Telephone Number: \_\_\_\_\_

### Section Three: BQC Officers and Directors

Provide the name, title, address, and telephone number of the treasurer and other principal officers and directors of the BQC.

Name: Bonnie Miller Title: Chair

Address: 21 E. Center St. #203 City: Fayetteville State: AR Zip: 72701

Telephone Number: (760) 792-5289

Name: T.J. Boyle Title: Treasurer

Address: 425 W. Capitol Ave #3300 City: Little Rock State: AR Zip: 72201

Telephone Number: (501) 376-9241

Name: Brett Kincaid Title: Director

Address: 8 Red Maple Ct City: Little Rock State: AR Zip: 72211

Telephone Number: (479) 530-1122

Name: \_\_\_\_\_ Title: \_\_\_\_\_

Address: \_\_\_\_\_ City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Telephone Number: \_\_\_\_\_

\* The term "ballot question committee" is defined in Ark. Code Ann. § 7-9-402(2)(A) and (B) and § 600(c)(1) and (2) of the Ethics Commission's Rules on Ballot and Legislative Question Committees.

**Section Four: Financial Information**

Provide the name and address of each financial institution in which the BQC deposits money or anything else of monetary value.

Name of Financial Institution: Arvest

Address: 500 Broadway City: Little Rock State: AR Zip: 72201

Name of Financial Institution: \_\_\_\_\_

Address: \_\_\_\_\_ City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

**Section Five: Members**

Provide the name of each person who is a member of the committee. A person that is not an individual may be listed by its name without also listing its own members, if any.

Nell Matthews, Carol Young, Terri Berkshire, John Krebs, Michelle Rhoden,

League of Women Voters Arkansas

**Section Six: Brief Statement**

Provide a brief statement identifying the substance of each ballot question as to which the BQC will expressly advocate the qualification, disqualification, passage, or defeat, and, if known, the date each ballot question shall be presented to a popular vote at an election.

To support the Arkansas Citizens' Redistricting Commission Amendment

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

3/10/2020

Date

M. Byrle

Signature of BQC Officer