

**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

PLAINTIFFS' STATEMENT OF FACTS

A. Plaintiffs

a. Plaintiff Bonnie Heather Miller

1. Plaintiff Bonnie Heather Miller is a resident and eligible, registered voter in the State of Arkansas who has expressed a desire to serve as a canvasser for the “Arkansas Citizens’ Redistricting Commission Amendment” to the Arkansas Constitution (the “Proposed Amendment”) as well as to recruit others to do the same. Compl. ¶ 6, ECF No. 2; Miller Dec. ¶ 8, ECF No. 7-17.

2. Plaintiff Miller is the Director of Arkansas Voters First, Inc (“AVF,” a 501(c)(4) organization), and the Chairperson of Arkansas Voters First ballot question committee and has held those roles since their inception. Miller Dec. ¶ 1, ECF No. 7-17.

3. Plaintiff Miller is the President of the League of Women Voters of Washington County, a board member of the League of Women Voters of Arkansas, and the Chair of

Redistricting Initiatives with the League of Women Voters of Arkansas. Miller Dec. ¶ 2, ECF No. 7-17.

4. Plaintiff Miller has been a member of the League since 2017 and has expressed that she was motivated to join the League when she attended an event discussing redistricting reform and it seemed to her that the League was the only group pursuing redistricting reform in Arkansas at the time. Miller Dec. ¶ 2, ECF No. 7-17.

5. Plaintiff Miller has expressed that she been passionate about redistricting reform for many years. In summer of 2019, the national League launched its second ever nationwide campaign (the first nationwide campaign was for universal suffrage in 1920), entitled People Powered Fair Maps. In October 2019, Plaintiff Miller was selected by the League of Women Voters of Arkansas to attend a training in Washington, D.C. to learn how to be a “Redistricting Champion” in Arkansas. Miller Dec. ¶ 4, ECF No. 7-17.

6. In her role with the League Plaintiff Miller has conducted many voter registration drives, she has offered trainings on how to run voter registration drives, she has put together candidate forums, and has spoken to university students about the importance of voting and guided them through voter registration. Plaintiff Miller also engages with League members (and the broader community) through social media. The League’s Facebook account posts agendas for city council meetings, Quorum Court, information about candidates and upcoming elections, and other neighborhood civic news. One event that Plaintiff Miller helped organize was a celebration of 100 years of the local League. That event was held on March 1, 2020 and around 200 people attended. Miller Dec. ¶ 5, ECF No. 7-17.

7. In 2020 Plaintiff Miller organized information sessions, town hall style meetings, and sent weekly emails specifically on the topic of promoting the Proposed Amendment. Plaintiff

Miller organized approximately 6-7 of these events between January 1 and March 1, 2020. Miller Dec. ¶ 6, ECF No. 7-17.

8. Plaintiff Miller knows that the procedures for gathering signatures for a constitutional amendment are very particular and she has a printed copy of the Arkansas Secretary of State's "2019-2020 Initiatives and Referenda Handbook" (available at https://www.sos.arkansas.gov/uploads/2019-2020_I__R_Handbook_-_Jan_2020.pdf) with her whenever she is working on the AVF campaign, so that she and her volunteers are prepared to be able to collect legally compliant signatures to place AVF on the ballot. Miller Dec. ¶ 7, ECF No. 7-17.

9. As of February 26, 2020 Plaintiff Miller had a group of thirty volunteers ready to be trained as canvassers to collect signatures for the Proposed Amendment. AVF launched their signature petition drive on March 5. By March 11 though, Plaintiff Miller believed that due to the developing public health crisis she should postpone training her volunteers on signature gathering. After a number of additional postponements, it became clear that AVF will not be able to gather signatures for the Proposed Amendment in-person in the coming months. Miller Dec. ¶ 8, ECF No. 7-17.

10. Plaintiff Miller is aware of the increasingly urgent and escalating recommendations that have come from the CDC and the Arkansas Department of Health advising people to avoid social gatherings and to maintain social distancing. Miller Dec. ¶ 9, ECF No. 7-17.

11. With all the recommendations for social distancing in place, Plaintiff Miller and her volunteer signature gatherers would be unable to approach other people to collect many signatures, let alone the 89,151 signatures required to place AVF on the ballot. If Plaintiff Miller were to have herself and her volunteers attempt to engage in petition circulation, this would put

herself, her volunteers, and the signers at grave risk, given the information from the CDC as to the highly infectious nature of COVID-19. Miller Dec. ¶ 12, ECF No. 7-17.

12. Plaintiff Miller has expressed her intention to circulate petitions for AVF at large gatherings - either events that she had organized like town hall style meetings, information sessions, or at existing events like the Fayetteville Farmers' Market that occurs three times a week in the Town Square, and at library events. Plaintiff Miller's volunteers are based in both Washington and Benton counties and would have been able to attend events across northwest Arkansas to gather signatures. Plaintiff Miller expressed her plans to work with AVF to arrange town hall events with associated media in six areas of the state (and to circulate petitions at these events). Those events would have been in the following areas: Northwest Arkansas, Central Arkansas, Texarkana, Jonesboro, Fort Smith, and Pine Bluff. Plaintiff Miller believes she and AVF are no longer safely able to arrange events like information sessions, town halls, or to attend places like the Farmers' Market or the Library because public events are cancelled and large gatherings of people are not allowed. Miller Dec. ¶ 13, ECF No. 7-17.

13. Plaintiff Miller had also intended to circulate petitions outside grocery stores, and even though these stores remain open, any attempt by her (or her volunteers) to gather signatures there would be futile because nearly all Arkansas are observing public health advice that people remain at least 6 feet apart. Miller Dec. ¶ 14, ECF No. 7-17.

14. Plaintiff Miller had also intended to go, and to encourage her volunteers to go, door-to-door to seek signatures for the AVF campaign, but in light of public health warnings many individuals are declining to risk close contact with an unknown person, making these efforts futile. Miller Dec. ¶ 15, ECF No. 7-17.

15. On Friday April 10, Plaintiff Miller hosted a virtual version of the regular in-person event she coordinates each month called “Drinks and Dialogue” with Fayetteville League members. This online event was a success with around 40 people “attending.” Plaintiff Miller intends to continue organizing virtual meetings like this to promote the issue of redistricting reform and AVF. Miller Dec. ¶ 18, ECF No. 7-17.

16. If Plaintiff Miller is, and other canvassers are, able to gather signatures electronically (without having to witness people signing the petition) she believes AVF will be able to gather many thousands of signatures via virtual events, personal contacts, and social media promotion. Miller Dec. ¶ 19, ECF No. 7-17.

17. Plaintiff Miller believes that, given that AVF has already lost around six weeks of signature gathering time due to COVID-19, a deadline beyond July 3 will be needed to get as many signatures as her volunteers and her were planning to get for the campaign. Miller Dec. ¶ 20, ECF No. 7-17.

b. Plaintiff Robert William Allen

18. Plaintiff Robert William Allen is a resident and eligible, registered voter in the State of Arkansas who has expressed a desire to sign the petition in support of the Proposed Amendment. Due to health concerns, Dr. Allen is unable to comply with the Arkansas petition requirements for a constitutional amendment while adhering to guidance issued by the CDC, Arkansas Department of Health, and his doctor’s orders. Compl. ¶ 7, ECF No. 2; Allen Dec. ¶¶ 1, 2, 6, ECF No. 7-19.

19. Plaintiff Allen was diagnosed three years ago with bladder cancer. His cancer has not responded to treatment and has progressed to stage IV. In an effort to prolong his life, Plaintiff Allen is currently undergoing intensive chemotherapy. Allen Dec. ¶ 2, ECF No. 7-19.

20. Plaintiff Allen is a longtime voter and has been involved in environmental advocacy and was on the board of the Arkansas chapter of the Sierra Club until recently, when he stepped back because of his illness. He also writes on issues of public concern at the intersection of science, the environment, and politics in a column published by my local newspaper and his personal blog. Allen Dec. ¶ 3, ECF No. 7-19.

21. Plaintiff Allen votes on ballot measures that come before him as a voter and also regularly signs petitions to support adding ballot initiatives to the ballot. Allen Dec. ¶ 5, ECF No. 7-19.

22. Plaintiff Allen has not been able to sign the petition for the Proposed Amendment because COVID-19 has made it extremely unsafe for him to leave his home. Even before he began intensive chemotherapy three weeks prior to April 21, 2020, he was unable to leave his home because of the risk of COVID-19. Because the chemotherapy has rendered Plaintiff Allen severely immunocompromised, the risk of leaving his house has grown exponentially. Plaintiff Allen's doctors have advised that he has contact with as few people as possible. If Plaintiff Allen were to contract the common cold or get a tick bite, it could be life threatening. Aside from his healthcare providers, the only person Plaintiff Allen sees is his wife, who takes care of all the grocery shopping and errands. Because of Plaintiff Allen's condition and the risks of COVID-19 both he and his wife limit their in-person contacts to only those that are necessary. Allen Dec. ¶ 6, ECF No. 7-19.

23. Plaintiff Allen lives in an isolated rural area, about half a mile from his nearest neighbor. Although he has access to the internet and a landline phone, Plaintiff Allen's contact with other people is restricted. Because his house is in a valley, Plaintiff Allen does not have access to radio, cellphone, or cable service. Allen Dec. ¶ 7, ECF No. 7-19.

24. Plaintiff Allen has not been able to sign the petition for the Proposed Amendment but he has expressed a desire to sign it and to vote to support it in November. If it were possible for Plaintiff Allen to provide an e-signature without him or his wife having to have contact with a third-party then he would sign AVF's petition. Allen Dec. ¶ 8, ECF No. 7-19.

c. Plaintiff Adella Dozier Gray

25. Plaintiff Adella Dozier Gray is a resident and eligible, registered voter in the State of Arkansas who has expressed a desire to sign the petition in support of the Proposed Amendment. Plaintiff Gray resides in Butterfield Trail Village, a continuing care retirement community, and thus is unable to comply with the Arkansas petition requirements for a constitutional amendment in light of the COVID-19 pandemic. Compl. ¶ 8, ECF No. 2; Gray Dec. ¶¶ 1, 2, 7,8, ECF No. 7-18.

26. Plaintiff Gray is 80 years old and has lived in Fayetteville since 1973. She feels strongly about the right to vote and civic participation has long been a central part of her life. Plaintiff Gray votes in every election she is able to, including on any ballot measures that come before her. Plaintiff Gray is a former elected official, having served three four-year terms as an alderwoman on the Fayetteville City Council from 2007 to 2019. Plaintiff Gray also ran unsuccessfully to serve her district in the Arkansas House of Representatives in 2012. Gray Dec. ¶¶ 1, 2, ECF No. 7-18.

27. Plaintiff Gray has expressed how important she believes ballot measure are for the democratic system. Plaintiff Gray believes ballot measures give voters a unique and important opportunity to learn about policy issues and to empower them to make decisions on issues of significance for the state. Gray Dec. ¶¶ 3, ECF No. 7-18.

28. Although Plaintiff Gray has expressed her support for adding the Proposed Amendment to the ballot and hopes to vote for it in November, she has not been able to sign her name to the petition to indicate her support due to COVID-19 and the restrictions it has placed on access to her retirement community. Plaintiff Gray does not believe she will be able to sign the petition in the near future because of the restrictions due to COVID-19. Gray Dec. ¶ 6, ECF No. 7-18.

29. Plaintiff Gray's retirement community, Butterfield Trail Village, is taking every measure possible to keep COVID-19 out of the community. There are approximately 415 Seniors living in Butterfield Trail Village, all of whom are at increased risk because of their age. All residents have been advised to limit their contact with other people as much as possible. Because of the pandemic, Plaintiff Gray almost never leaves her home, except to go on occasional walks that she takes a safe distance from others. The only direct contact Plaintiff Gray has with anyone else is with her husband, who lives with her. The communal dining spaces, gyms, and other programming usually open to people in the Butterfield Trail Village have been shut down and visitation from friends or family from outside is being strongly discouraged in an effort to limit possible exposure to COVID-19. The community has also begun no-contact grocery deliveries where groceries are left at residents' doors for them to pick up. All staff are required to take protective steps, including wearing masks at all times. Gray Dec. ¶ 7, ECF No. 7-18.

30. If visitors wish to enter Butterfield Trail Village they must enter through a single monitored entrance where they must be checked in and have their temperature taken. These rules are enforced by on-site security. Plaintiff Gray does not believe a canvasser would be able to gain access to the Butterfield Trail Village to collect signatures for fear they would risk exposing residents to COVID-19. Gray Dec. ¶ 8, ECF No. 7-18.

d. Plaintiff Arkansas Voters First

31. Plaintiff AVF is an Arkansas ballot question committee responsible for the organization of the signature-gathering effort to certify the Proposed Amendment to the November 3, 2020 general election ballot, and to support its passage by Arkansas voters. Compl. ¶ 9, ECF No. 2; Kincaid Dec. ¶ 2, ECF No. 7-1.

32. To meet the July 3 deadline, 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 legal aspects of the petition drive, negotiated with printers, and coordinated with other nonprofit organizations seeking reform of the redistricting process. Kincaid Dec. ¶ 4, ECF No. 7-1.

33. AVF recruited volunteers to solicit signatures, including Brett Kincaid and Bonnie Allen. Kincaid Dec. ¶ 5, ECF No. 7-1; Miller Dec. ¶¶ 12, 13, ECF No. 7-19.

34. AVF launched its petition drive on March 5, 2020 and had canvassers in the field about a week later. Kincaid Dec. ¶ 6, ECF No. 7-1; Miller Dec. ¶ 8, ECF No. 7-17.

35. 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 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 are still open, or asking them to go door to door soliciting signatures. Kincaid Dec. ¶ 8, ECF No. 7-1.

36. 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. Kincaid Dec. ¶ 9, ECF No. 7-1

37. 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 interactions. Using this type of service, AVF could obtain electronic signatures without increased risk to the integrity of the referendum process. Kincaid Dec. ¶ 9, ECF No. 7-1.

38. Before the COVID-19 pandemic, the widespread public anxiety it engendered, and the limitations on public activities it dictates, 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 canvassers must swear that the personally witnessed petitioners are signing their names. Kincaid Dec. ¶ 10, ECF No. 7-1.

B. Defendant

[all facts stipulated]

C. Arkansas Voters First

39. On March 10, 2020, AVF filed its “Statement of Organization” with the Arkansas Ethics Commission and officially became a ballot question committee as defined in Ark. Code. Ann. § 7-9-402(2)(A) and (B). New Ballot and Legislative Question Committees, Arkansas Ethics Commission, <http://www.arkansasethics.com/new-lo-bqcs-bqcs-and-lqcs/>; Compl. ¶ 17, ECF No. 2.

40. AVF has also used resources to hire consultants, seek legal advice, print campaign materials, and conduct public opinion polling. Kincaid Dec. ¶¶ 2, 4, ECF No. 7-1; Compl. ¶19, ECF No. 2.

41. In late 2019, AVF began developing a broad network of volunteer petition canvassers, who anticipated gathering signatures over the permissible period. Compl. ¶ 20, ECF No. 2.

42. On March 5, 2020, AVF launched its petition drive and had canvassers in the field within a week. Shortly thereafter, and after collecting fewer than 100 signatures, AVF was forced to suspend its campaign due to the ongoing COVID-19 pandemic. Compl. ¶ 23, ECF No. 2; Kincaid Dec. ¶ 8, ECF No. 7-1.

D. Signature gathering for constitutional amendment petitions under ordinary circumstances

[all facts stipulated]

E. The official response to COVID-19

43. The United States and Arkansas are in a declared state of emergency as a result of a worldwide pandemic caused by a novel coronavirus. The respiratory disease caused by the virus, COVID-19, is highly contagious and can result in serious illness and death. Compl. ¶ 35, ECF No. 2.

44. Beginning in January 2020, health experts and federal, state, and local government officials released an escalating series of warnings and emergency advisories, emphasizing the importance of protective measures including “social distancing,” defined as maintaining physical space from affected or potentially affected persons. Compl. ¶ 36, ECF No. 2.

45. On January 30, 2020, the World Health Organization (“WHO”) declared that the novel coronavirus constitutes a Public Health Emergency of International Concern. Statement on the Second Meeting of the International Health Regulations Emergency Committee Regarding the Outbreak of Novel Coronavirus (2019-nCov), World Health Organization (Jan. 30, 2020), [https://www.who.int/news-room/detail/30-01-2020-statement-on-the-second-meeting-of-the-international-health-regulations-\(2005\)-emergency-committee-regarding-the-outbreak-of-novel-coronavirus-\(2019-ncov\)](https://www.who.int/news-room/detail/30-01-2020-statement-on-the-second-meeting-of-the-international-health-regulations-(2005)-emergency-committee-regarding-the-outbreak-of-novel-coronavirus-(2019-ncov)).

46. On January 31, President Donald Trump suspended entry into the United States by all foreign nationals who had traveled to China in the past 14 days. On February 24, 2020, President Trump asked Congress to allocate \$1.25 billion for a coronavirus response. Proclamation on Suspension of Entry as Immigrants and Nonimmigrants of Persons who Pose a Risk of Transmitting 2019 Novel Coronavirus, White House (Jan. 31, 2020), <https://www.whitehouse.gov/presidential-actions/proclamation-suspension-entry-immigrants-nonimmigrants-persons-pose-risk-transmitting-2019-novel-coronavirus/>; Letter Requesting \$1.25 Billion in Coronavirus Funding (Feb. 24, 2020), https://delauro.house.gov/sites/delauro.house.gov/files/Coronavirus_Supplemental_Request_Letter.pdf; Compl. ¶ 37, ECF No. 2.

47. On February 25, 2020, the Director of the National Center for Immunization and Respiratory Diseases at the Centers for Disease Control and Prevention (“CDC”) announced that

“[d]isruption to everyday life may be severe” as a result of the virus. Regarding the spread, the Director stated that “[i]t’s not so much a question of if this will happen anymore but rather more of a question exactly when this will happen,” and called upon the American public to “work with us to prepare[.]” Preparedness Measures Urged in Anticipation of More Covid-19 cases in U.S.: CDC, American Academy of Pediatrics (Feb. 25, 2020), <https://www.aappublications.org/news/2020/02/25/preparedness022520>; Compl. ¶ 38, ECF No. 2.

48. On February 26, 2020, CDC officials stated that “[n]on-pharmaceutical interventions or NPIs will be the most important tools in our response to this virus,” and that such NPIs included “social distancing measures.” Transcript for the CDC Telebriefing Update on Covid-19, CDC (Feb. 26, 2020), <https://www.cdc.gov/media/releases/2020/t0225-cdc-telebriefing-covid-19.html> Compl. ¶ 39, ECF No. 2.

49. On February 27, 2020, the CDC issued further guidance recommending that affected local communities practice “social distancing” measures, including reducing the frequency of large gatherings and limiting the number of attendees. Community Mitigation Guidance for COVID-19 Response in the United States: Nonpharmaceutical Intervention for Community Preparedness and Outbreak Response, CDC (Feb. 27, 2020), <https://web.archive.org/web/20200228190416/https://www.cdc.gov/coronavirus/2019-ncov/preparing-individuals-communities.html>; Compl. ¶ 40, ECF No. 2.

50. On March 11, 2020, Arkansas Governor Asa Hutchinson issued an Executive Order declaring a State of Emergency and ordered the “Arkansas Department of Health to take action to prevent the spread of COVID-19.” Gov. Hutchinson’s E.O. 20-03, ECF No. 7-2; Compl. ¶ 41, ECF No. 2.

51. On March 11, 2020, the Director-General of the WHO declared COVID-19 to be a global pandemic. WHO Director-General's Opening Remarks at the Media Briefing on COVID-19 – 11 March 2020, WHO (March 11, 2020), <https://www.who.int/dg/speeches/detail/who-director-general-s-opening-remarks-at-the-media-briefing-on-covid-19---11-march-2020>; Compl. ¶ 42, ECF No. 2.

52. On March 12, 2020, the CDC updated its coronavirus-related guidance to reflect recommendations to consider cancelling or postponing mass gatherings, and noting that person-to-person spread of the virus happens most frequently within a distance of six feet. Interim Guidance for Coronavirus Disease (COVID-10), CDC (March 15, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/community/large-events/mass-gatherings-ready-for-covid-19.html>; Compl. ¶ 43, ECF No. 2.

53. On March 13, 2020, President Trump declared a national emergency retroactive to March 1, 2020. Proclamation on Declaring a National Emergency Concerning the Novel Coronavirus Disease (COVID-10) Outbreak, White House (March 13, 2020), <https://www.whitehouse.gov/presidential-actions/proclamation-declaring-national-emergency-concerning-novel-coronavirus-disease-covid-19-outbreak/>; Compl. ¶ 44, ECF No. 2.

54. On March 13, 2020, Governor Hutchinson amended his previous Executive Order noting that “[c]itizens of this state have been advised to take precautions to prevent the spread of COVID-19, including the advisement to minimize person to person contact, [and to] avoid large gatherings.” That order suspended requirements that physicians establish an in-person relationship with patients before engaging in telehealth services. Compl. ¶ 45; ECF No. 2; Gov. Hutchinson's E.O. 20-05, ECF No. 7-3.

55. On March 15, 2020, the CDC advised that no gatherings of fifty or more people occur over the next eight weeks, including weddings, festivals, parades, concerts, sporting events, and conferences. Interim Guidance for Coronavirus Disease (COVID-10), CDC (March 15, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/community/large-events/mass-gatherings-ready-for-covid-19.html>.

56. On March 16, 2020, President Trump advised citizens to avoid groups of more than 10. Compl. ¶ 46, ECF No. 2. Remarks by Pres. Trump, Vice Pres. Pence, and Members of the Coronavirus Task Force in Press Briefing, White House (March 16, 2020), <https://www.whitehouse.gov/briefings-statements/remarks-president-trump-vice-president-pence-members-coronavirus-task-force-press-briefing-3/>.

57. On March 23, 2020, the Governor amended the Emergency declaration to extend the tax filing deadline to July 15, 2020. Gov. Hutchinson's E.O. 20-09, ECF No. 7-5.

58. On April 4, 2020, the Governor further amended the Emergency declaration, explaining that “[a]ll Arkansas citizens must observe proper social distancing” and reiterating the previous prohibits. This order included additional requirements for those entities remaining open, including that they “[l]imit the number of people who can enter into the facility at any one time to ensure that people in the facility can easily maintain a minimum six-foot distance from one another,” mark six-foot increments on the ground where lines form, provide sanitizer at the entrance, and provide contactless payment systems. Gov. Hutchinson's E.O. 20-13, ECF No. 7-12.

59. The April 4 order also limited the category of persons who may occupy commercial lodgings; ordered school athletic and extracurricular events to remain canceled; required continued remote working for state employees; required bars, clubs, and restaurants to be closed for dine-in

service; required gyms, barbers and other personal care providers to remain closed; and requires casinos to remain closed. Gov. Hutchinson's E.O. 20-13, ECF No. 7-12.

60. Moreover, the April 4 order permitted cities and counties to take additional measures, including by "imposing curfews and closing city or county parks and facilities." Gov. Hutchinson's E.O. 20-13, ECF No. 7-12.

61. On March 26, 2020, Arkansas Secretary of Health Nathaniel Smith issued a directive prohibiting gatherings of more than 10 people in any confined indoor or outdoor space (including community, civic, public, leisure, commercial, or sporting events, concerts, conferences, conventions, fundraisers, parades, fairs, and festivals) until further notice. Compl. ¶ 47, ECF No. 2; Sec'y of Health Directive, March 26, 2020, https://www.healthy.arkansas.gov/images/uploads/pdf/Gatherings_Directive_FINAL_3.26.20.pdf.

62. This directive does not apply to "gatherings of ten (10) or more people in unenclosed, outdoor spaces such as parks, trails, athletic fields and courts, parking lots, golf courses, and driving ranges where social distancing of at least six (6) feet can be easily achieved." It also does not apply to "businesses, manufacturers, construction companies, places of worship, the Arkansas General Assembly, municipal or county governing bodies, or the judiciary; however these entities are advised to limit person-to-person contact and maintain appropriate social distancing of at least six (6) feet to prevent the spread of this virus." Sec'y of Health Directive, March 26, 2020, https://www.healthy.arkansas.gov/images/uploads/pdf/Gatherings_Directive_FINAL_3.26.20.pdf; Compl. ¶ 48, ECF No. 2.

63. On March 26, 2020, Governor Hutchinson amended the March 11, 2020 Executive Order to re-state the ongoing state of emergency and "prohibited until further notice" gatherings of more than ten people, and noted that this applied to, "without limitation, community, civic,

public, leisure, commercial, or sporting events, concerts, conferences, conventions, fundraisers, parades, fairs, and festivals.” Gov. Hutchinson’s E.O. 20-10, ECF No. 7-6; Compl. ¶ 49, ECF No. 2.

64. Even where the prohibition did not apply, the Governor advised entities to “limit person-to-person contact and maintain appropriate social distancing of at least six (6) feet to prevent the spread of the virus.” The Executive Order stated that “citizens of the state have been advised to take precautions to prevent the spread of COVID-19, including the advisement to minimize person-to-person contact, avoid large gatherings, and to stay home if they feel ill,” and “[t]he entire state is impacted by COVID-19 [thus] the entire state [is] an emergency disaster area.” Gov. Hutchinson’s E.O. 20-10, ECF No. 7-6; Compl. ¶ 49, ECF No. 2.

65. The March 26, 2020 Executive Order also stated that “Pursuant to Ark. Code Ann. § 20-7-101, violation of a directive from the Secretary of Health during this public health emergency is a misdemeanor offense, and upon conviction thereof is punishable by a fine of not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500) or by imprisonment not exceeding one (1) month, or both.” Gov. Hutchinson’s E.O. 20-10, ECF No. 7-6; Compl. ¶ 50, ECF No. 2.

66. On March 30, 2020, Governor Hutchinson issued an Executive Order that allows for electronic notary services and removed the requirement that a notary has to witness a signature in person for certain documents.¹ The Governor explained that Arkansas law requires two witnesses in the presence of testators to effectuate a will and in-person notarization of legal documents. Because “[t]he elderly and disabled populations of the state are among the most

¹ See Governor Hutchinson Executive Order https://governor.arkansas.gov/images/uploads/executiveOrders/EO_20-14._pdf (accessed April 17, 2020)

vulnerable to serious risk of harm to their health and finances because of COVID- 19,” nursing facilities are restricting the ability of visitors. “These vulnerable populations are being deprived of the ability to obtain services and complete essential legal documents necessary to protect themselves, their property, and their loved ones.” Gov. Hutchinson’s E.O. 20-12, ECF No. 7-9.

67. In the March 30 Executive Order, the Governor further explained that “[t]he requirement of in-person witnessing was established for the protection of Arkansas residents, but it now may prevent our most vulnerable populations from receiving legal services in a time of great need.” Noting that “[v]ideoconferencing technology and electronic signature technology have improved significantly, diminishing the risks of remote witnessing,” the Governor suspended the in-person witnessing requirements for wills and notarization of legal documents. Gov. Hutchinson’s E.O. 20-12, ECF No. 7-9.

68. Specifically, the Governor noted that documents could be signed in counterparts and that “real- time audio and visual means may be considered to be either ‘in the presence of,’ or as an ‘in person’ witness.” The Governor provided that acceptable videoconferencing technologies included “Skype, Zoom, FaceTime and other similar technologies.” Gov. Hutchinson’s E.O. 20-12, ECF No. 7-9.

69. On April 9, 2020, the Governor expanded the scope of documents that the order applied to, but did not list petitions seeking ballot access. Gov. Hutchinson’s E.O. 20-14, ECF No. 7-10.

70. On April 10, 2020, the Governor suspended provisions of state law requiring that corporations and banks hold in-person shareholder meetings, explaining that such meetings should occur “by remote communication.” Gov. Hutchinson’s E.O. 20-15, ECF No. 7-11.

71. Governor Hutchinson's executive orders do not contain any exceptions for petition canvassers, volunteers, or campaigns working to gather signatures. *See, e.g.*, Gov. Hutchinson's Executive Orders, ECF Nos. 2-6, 9-12; Compl. ¶ 51, ECF No. 2.

72. Additionally, public facilities across Arkansas have closed and multiple events have been cancelled through at least August 2020. For example, the Little Rock Convention and Visitors Bureau has reported that more than 50 events – at an economic impact of \$7.4 million – have been canceled. The 50 canceled events were expected to draw 45,000 attendees. Little Rock Events Calendar, <https://www.littlerock.com/event-calendar?startingDate=&endingDate=&keywords=&categoryIds=&locationName=&areaId=>; LRCVB Canceled Events Total \$7.4M in Economic Impact, Arkansas Business (Apr. 6, 2020), <https://www.arkansasbusiness.com/article/130733/lrcvb-canceled-events-total-74m-in-economic-impact>.

73. The Central Arkansas Library System, which is the largest public Arkansas library system, is now closed indefinitely. In 2015, the library system averaged over 160,000 visits per month, and around 2 million visits for the year. Public Health and the Public Library, Central Arkansas Library System (Apr. 27, 2020), <https://cals.org/blog/public-health-and-the-public-library/>; Our History, Central Arkansas Library System; Compl. ¶ 52, ECF No. 2.

74. Public and private universities throughout Arkansas closed, enacted online instruction measures in lieu of in-person classes, and sent their students away from campus for the remainder of the semester. The University of Arkansas, which is the largest university in the state, announced that on-campus housing would close beginning April 3, 2020. Colleges in Arkansas Shift to Online-Only, Arkansas Democrat Gazette (March 13, 2020), <https://www.arkansasonline.com/news/2020/mar/13/colleges-in-state-shift-to-online-only-/>; Letter From the Chancellor: March 18, 2020, University of Arkansas,

<https://health.uark.edu/coronavirus/letter-from-chancellor-march-18-2020.php>; Compl. ¶ 53, ECF No. 2.

75. The City of Fayetteville has asked residents to only visit parks or trails at times when they are unlikely to encounter others, urged them to maintain a distance of six feet from each other, posted signs demonstrating what six feet looks like, and encouraged residents to actually “give more than six feet if you can – the more space between you and others, the better.” The Mayor of Fayetteville suspended the Fayetteville Farmers’ Market on March 30, 2020, because it “draws a sizeable crowd of people of all age groups, who come into close contact with each other for hours at a time – and those are all the things we must avoid to slow community spread of this COVID-19 pandemic.” See City of Fayetteville, *COVID-19* (Coronavirus Updates & Information, <https://www.fayetteville-ar.gov/3883/Coronavirus-Updates> (last visited April 21, 2020); Compl. ¶ 54, ECF No. 2.

76. On March 26, 2020, the mayor of Little Rock established a curfew, generally requiring people to stay in their homes in the evening, and noting that the Surgeon General of Arkansas had “announced a coming ‘wave’ of COVID-19 infections and urged citizens of Arkansas to abide social distancing and quarantine restrictions.” Little Rock Curfew Order, ECF No. 7-7.

77. The mayor of Little Rock issued a Declaration on April 6, 2020, noting that the President and Governor had recommended Americans wear cloth masks when outside the home, and prohibiting a caravan of five or more vehicles traveling to a location with the intent to exit the vehicles near one another. Little Rock Declaration, ECF No. 7-8.

78. On April 4, 2020, Governor Hutchinson amended the Emergency declaration reiterating his previous declarations but also requiring that the entities that remain open must

“[l]imit the number of people who can enter into the facility at any one time to ensure that people in the facility can easily maintain a minimum six-foot distance from one another” mark six-foot increments on the ground where lines form, provide sanitizer at the entrance, and provide contactless payment systems. *Id.* Gov. Hutchinson’s E.O. 20-13, ECF No. 7-12; Compl. ¶ 55, ECF No. 2.

79. On April 6, 2020, Governor Hutchinson ordered public schools to remain closed for the rest of the school year. Gov. Hutchinson Press Release Announcing All Schools to Remain Closed for Remainder of Academic Year (Apr. 6, 2020), <https://governor.arkansas.gov/news-media/press-releases/governor-hutchinson-announces-all-schools-to-remain-closed-for-remainder-of>

80. On March 19, 2020, he closed all gyms, restaurants, and indoor entertainment venues. Arkansas Extends School Closures, Closes Dine-in and Bars, *Texarkana Gazette* (Mar. 19, 2020), <https://www.texarkanagazette.com/news/arkansas/story/2020/mar/19/arkansas-extends-school-closures-closes-dine--and-bars/821340/>; Compl. ¶ 56, ECF No. 2.

81. On March 16, 2020 the federal district court for the Western District of Arkansas issued Administrative Orders 2020-1. That order was updated on April 20, 2020 by Administrative Order 2020-4. These orders continued all criminal and civil trials, provided for video conference hearings, cancelled naturalization ceremonies, increased screening for access to the courthouse, and encouraged the public to “use online Court resources or contact the Court by telephone.” W.D. Ark. Admin. Order 2020-1, ECF No. 7-13; W.D. Ark. Admin. Order 2020-4, ECF No. 7-16; Compl. ¶ 57, ECF No. 2.

82. On March 31, 2020, the federal district court for the Western District of Arkansas implemented further provisions of the CARES Act providing for video and telephone conference hearings for criminal matters. W.D. Ark. Admin. Order 2020-3, ECF No. 7-14.

83. On April 3, 2020, the Supreme Court of Arkansas extended its suspension of in-person proceedings through May 1, 2020, and noted that the suspension could be extended. Ark. Sup. Ct. Order, ECF No. 7-15; Compl. ¶ 58, ECF No. 2.

84. On April 23, 2020, the Supreme Court of Arkansas issued per curiam order 2020 Ark. 163. The order, among other things, extended the “previous suspension of all in-person proceedings in all appellate, circuit, and district courts...through May 15, 2020.” Order 2020 Ark. 163, Supreme Court of Arkansas (Apr. 23, 2020), <https://opinions.arcourts.gov/ark/supremecourt/en/469797/1/document.do>.

85. On April 23, 2020, Arkansas Attorney General Leslie Rutledge announced that Sherwin-Williams was donating 3,000 N95 facemasks to law enforcement and first responders in the State of Arkansas. Attorney General Rutledge stated that “with this health crisis it is even more important for us to use every resource to protect those who protect us.” News Release: Rutledge Brings 3,000 Facemasks to Arkansas Law Enforcement and First Responders (Apr. 23, 2020), <https://arkansasag.gov/media-center/news-releases/rutledge-brings-3-000-facemasks-to-arkansas-law-enforcement-and-first-responders/>.

86. On April 7, 2020, Arkansas Secretary of State John Thurston wrote a letter to the U.S. Election Assistance Commission seeking \$4,703,886 to “prevent, prepare for, and respond to coronavirus, domestically or internationally, for the 2020 Federal election cycle.” Secretary Thurston also stated that “[t]o address the effects of the coronavirus on the 2020 November general election, we will work closely with local election officials to ensure that the safety of voters and

election staff is provided for, adequate machinery and staff are in place to safely, accurately, and securely process the anticipated influx of absentee ballots, and that any changes to the voting process resulting from the coronavirus are communicated accurately and timely to Arkansans.” Arkansas Sec’y of State Letter to U.S. Election Assistance Commission (Apr. 7, 2020), https://www.eac.gov/sites/default/files/paymentgrants/cares/AR_CARES_Disbursement_RequestLetter.pdf.

87. As a result of the public health crisis presented by the coronavirus, expert warnings and advisories, news coverage, recommendations from public officials, and public health measures, numerous public gatherings in Arkansas have been cancelled or postponed. Numerous categories of businesses and other public accommodations have closed or shifted to remote operation only, and are likely to remain in this state for an unknown period of time. As a result, public encounters have been drastically reduced. Compl. ¶ 59, ECF No. 2.

88. COVID-19 continues to spread in Arkansas and it is not clear when the pandemic will end. Compl. ¶ 73, ECF No. 2.

89. The most recent numbers of known coronavirus cases and deaths in the U.S. and in Arkansas are tracked by the Arkansas Department of Health, updated three times daily, and are available online at Arkansas COVID-19 Update, Ark. Dep’t of Health, <https://www.healthy.arkansas.gov/programs-services/topics/novel-coronavirus>.

90. As of April 22, 2020, the Arkansas Department of Health reported that 2,392 positive cases of the virus have been confirmed by testing in Arkansas. Forty-four Arkansans have died as a result of this virus. As of April 22, 2020, in the United States, there were 825,306 cases and 45,075 deaths. <https://www.5newsonline.com/article/news/health/coronavirus/arkansas->

coronavirus-updates-april/527-dc43a26e-4009-4fad-b25c-994ebc79230b; Compl. ¶ 74, ECF No. 2.

91. As of April 30, 2020, at 10:15 AM Central time, in Arkansas there were 3,210 known cases of coronavirus and 59 deaths; and in the United States there were 1,042,874 known cases of coronavirus and 61,123 deaths. Arkansas COVID-19 Update, Ark. Dep't of Health, <https://www.healthy.arkansas.gov/programs-services/topics/novel-coronavirus>.

92. On March 29, 2020 President Trump announced that federal social distancing guidelines would remain in place through at least April 30, 2020. Remarks by Pres. Trump, Vice Pres. Pence, and Members of the Coronavirus Task Force in Press Briefing, White House (March 30, 2020), <https://www.whitehouse.gov/briefings-statements/remarks-president-trump-vice-president-pence-members-coronavirus-task-force-press-briefing-14/>; Compl. ¶ 75, ECF No. 2.

F. Changes to election laws in light of COVID-19

93. On March 20, 2020, Governor Hutchinson issued an Executive Order suspending provisions of the Arkansas code that limited the availability of absentee ballots to certain excuses “so that all eligible qualified electors” could vote absentee in the March 31, 2020 primary and provided additional time for voters to request absentee ballots. Gov. Hutchinson’s E.O. 20-08, ECF No. 7-4; Compl. ¶ 77, ECF No. 2.

G. Burdens on AVF

94. Redistricting in Arkansas will occur in 2021, following the decennial census. Thus, in order to reform the redistricting process before new maps are drawn, the Proposed Amendment must be on the November 3, 2020 ballot. Compl. ¶ 25, ECF No. 2.

95. Had the COVID-19 pandemic, and the resulting halt to signature gathering, not occurred, AVF would have gathered the required 89,151, signatures by July 3, 2020. Kincaid Dec. ¶ 10, ECF. 7-1.

96. There are now less than eight weeks until the July 3 deadline, by which time AVF will need to have submitted at least 66,864 witnessed, notarized, valid signatures from 15 counties. Ark. Ann. Code § 7-9-111(d)(1); Ark. Const. art. 5, § 1. This would require nearly 1,200 signatures to be gathered every day.

97. It will be incredibly hard, if not impossible, for AVF to meet this requirement, even if the social distancing recommendations were removed today. It will take time for people to return to public places and to feel comfortable going within six feet of a canvasser. Kincaid Dec. ¶ 10, ECF No. 7-1.

98. The COVID-19 pandemic makes in-person signature gathering impossible. Kincaid Dec. ¶¶ 8-10, ECF No. 7-1; Compl. ¶ 60, ECF No. 2.

99. In normal times, collecting signatures in-person is both time and labor intensive. Collectively, canvassers must make hundreds of thousands of interpersonal contacts with the general public. Kincaid Dec. ¶¶ 3, 8, ECF No. 7-1; Compl. ¶ 61, ECF No. 2.

100. Canvassers rely heavily on public events, large gatherings, and public buildings such as sporting events, festivals, parades, public libraries, and concerts in order to meet people to ask to sign. Kincaid Dec. ¶ 8, ECF No. 7-1; Compl. ¶ 62, ECF No. 2.

101. The public events, gatherings, and businesses at which canvassers collect signatures have all been shuttered or are subject to social distancing requirements. *See, e.g.*, Gov. Hutchinson's E.O. 20-10, ECF No. 7-6; Gov. Hutchinson's E.O. 20-13, ECF No. 7-12.

102. The directors of the Rodeo of the Ozarks, a popular event in Arkansas, postponed the annual event until at least until July 29 – August 1, 2020 because of COVID-19. Cowboys Must Wait for Rodeo of the Ozarks, Northwest Arkansas Democrat Gazette (Apr. 22, 2020), https://www.nwaonline.com/news/2020/apr/22/cowboys-must-wait-for-rodeo-of-the-ozar/?utm_medium=social&utm_source=twitter_nwademgaz.

103. Canvassers also depend on meeting eligible voters in front of businesses and retail locations such as restaurants, movie theaters, amusement parks, and office buildings. These establishments also allow canvassers to make contact with large numbers of signatories and are vital to the signature collection process. Kincaid Dec. ¶ 8, ECF No. 7-1; Compl. ¶ 63, ECF No. 2.

104. Door-to-door collections are also impossible during this pandemic. In light of public warnings and orders recommending social distancing, many individuals, both canvassers and the individuals they solicit, simply cannot risk close contact with others. Kincaid Dec. ¶ 8, ECF No. 7-1; Compl. ¶ 64, ECF No. 2.

105. Merely exchanging pens and petition papers back-and-forth between the canvassers and the voters creates a risk of transmission. New Coronavirus Stable for Hours on Surfaces, Nat'l Insts. of Health (Mar. 17, 2020), <https://www.nih.gov/news-events/news-releases/new-coronavirus-stable-hours-surfaces>; Compl. ¶ 65, ECF No. 2.

106. Arkansas's requirement that voters sign an initiative with a "wet" signature on paper (rather than an electronic signature) in the presence of a witness, and that the canvasser sign the affidavit in the presence of a notary, are impossible to satisfy while social distancing recommendations are in place. Kincaid Dec. ¶ 10, ECF No. 7-1.

107. Plaintiff Allen reasonably fears that contact with an unknown canvasser will present an undue risk of exposure and potentially adverse health effects. Compl. ¶ 66, ECF No. 2; Allen Dec. ¶ 6, ECF No. 7-19.

108. Plaintiff Gray's continuing care retirement facility is taking every measure possible to prevent the spread of COVID-19 in her community by restricting access to the campus by anyone from the outside. Plaintiff Gray cannot meet with a canvasser to witness her signature. Compl. ¶ 67, ECF No. 2; Gray Dec. ¶¶ 7, 8, ECF No. 7-18.

109. Thus, Plaintiffs Allen and Gray will be unable to sign a petition in support of the Proposed Amendment in a manner that is consistent with both the formal requirements of Arkansas law related to the ballot initiative process and the orders issued by the CDC, Governor Hutchinson, and Secretary Smith. Gray Dec. ¶¶ 6-8, ECF No. 7-18; Allen Dec. ¶¶ 6-8, ECF No. 19; Compl. ¶ 68, ECF No. 2.

110. Plaintiff Miller reasonably fears that she cannot successfully or safely recruit or mobilize individuals who otherwise would have been willing to become a canvasser, as doing so will potentially expose both herself and others to serious illness. Compl. ¶ 69, ECF No. 2; Miller Dec. ¶¶ 8-12, ECF No. 7-17.

111. Thus, Plaintiff Miller will be unable to collect signatures for the Proposed Amendment petition and unable to recruit or mobilize others in a manner consistent with both the formal requirements of Arkansas law related to the ballot initiative process and the orders issued by the CDC, Governor Hutchinson and Secretary Smith. Compl. ¶ 70, ECF No. 2; Miller Dec. ¶ 12, ECF No. 7-17.

112. As a result of these circumstances, Plaintiff AVF will be unable to collect the required 89,151 signatures prior to the July 3, 2020 filing deadline, or meet the other formal

requirements of Arkansas constitutional and statutory law. Kincaid Dec. ¶¶ 8-10, ECF No. 7-1; Compl. ¶ 71, ECF No. 2.

113. The Arkansas Citizens Redistricting Commission is also very popular in Arkansas across party lines, with AVF's polling showing that 54 percent of Arkansas voters favor independent redistricting. Kincaid Dec. ¶ 2, ECF No. 7-1.

114. If the Proposed Amendment lacks public support, then it will fail at the ballot in November.

H. Additional Relevant Facts

115. Currently in Arkansas no citizen-initiated constitutional amendment has qualified for the ballot, though at least thirteen (including AVF) have submitted measures to the Secretary of State's office, and eight have actively campaigned. *Arkansas 2020 Statewide Ballot Issues and COVID-19*, <https://www.uaex.edu/business-communities/voter-education/state-ballot-issues.aspx>

116. Services like DocuSign have numerous procedures in place to ensure "comprehensive security from start to finish" including a digital audit trail, anti-tampering control, and unalterable, systematic capture of signing data. DocuSign, *Product security*, <https://www.docusign.com/trust/security/product-security>. The state has recognized as much during the present crisis. Gov. Hutchinson's E.O. 20-12, ECF No. 7-9 (suspending various in-person witnessing and notarization requirements and acknowledging the security of electronic signature and video services).

117. Arkansas could still prevent fraud and ensure widespread support for the AVF amendment by allowing for collection of digital signatures using a service such as DocuSign, by reducing the required number of signatures to six percent, to mirror the number of signatures

required in the Arkansas Constitution to place a referendum on the ballot, and by extending to September 3, 2020 the deadline to submit signatures to the Secretary of State.

Date: May 11, 2020

Respectfully submitted,

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