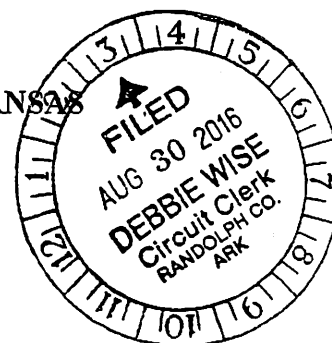


IN THE CIRCUIT COURT OF RANDOLPH COUNTY, ARKANSAS  
SECOND DIVISION



**KEEP REVENUE IN  
RANDOLPH COUNTY,  
ERIK WILLIAMS,  
MICHELLE COUNTS,  
and JASON SWANN**

**PLAINTIFFS**

vs.

**CASE NO. CV-2016-85**

**RHONDA BLEVINS in her official  
Capacity as Randolph County Clerk**

**DEFENDANT**

**JAMES HENRY ANDERSON,  
DELPHINE J. ANDERSON,  
and CAROLYN JOYCE LEE**

**INTERVENORS**

**THE STATE OF ARKANSAS**

**INTERVENOR**

**ORDER AND FINAL JUDGMENT**

Plaintiffs Keep Revenue in Randolph County (the "Committee"), Michele Counts, Erik Williams, and Jason Swann, have filed a Petition and Appeal and an Amended Petition and Appeal from Clerk's Certification (the "Appeal") regarding a local option petition filed by the Committee (the "Petition").

Defendant Rhonda Blevins ("Blevins"), the elected Randolph County Clerk, has filed an Answer to the Petition and Appeal.

Intervenors James Henry Anderson, Delephine J. Anderson, and Carolyn Joyce Ley (collectively "Anderson") filed a motion to intervene as a defendant in this matter, which the Court granted.

The State of Arkansas (the "State") filed a motion to intervene in defense of the constitutionality of Arkansas Code Annotated section 3-8-811(b)(6), which the Court granted.

In the Appeal, Plaintiffs challenge the constitutionality of Ark. Code Ann. § 3-8-811(b)(6) under Article 5, § 1 of the Arkansas Constitution and Ark. Code Ann. § 3-8-205(a)(2)(B) under the First Amendment to the United States Constitution. Plaintiffs seek an order from this Court declaring the Petition sufficient under Ark. Code Ann. § 14-14-915 and ordering the County Clerk to certify the Petition to the Randolph County Board of Election Commissioners and the Randolph County Quorum Court pursuant to Ark. Code Ann. § 3-8-205.

This matter was tried to the Court under an expedited scheduling order for three days beginning August 24, 2016. Based on the testimony, exhibits, pleadings, briefs, and arguments of counsel, the Court makes the following findings of fact and conclusions of law.

1. The Petition seeks to put before the voters of Randolph County, Arkansas the question of whether to allow the manufacture or sale of intoxicating liquors in Randolph County.

2. The Court finds that the Committee, which is a “sponsor” as defined by Ark. Code Ann. § 3-8-801(7) complied with Ark. Code Ann. § 3-8-806 in filing the form of the Petition with the County Clerk.

3. To qualify for the ballot, a local option petition must be signed by at least 38% of the registered voters in a county. *See* Ark. Code Ann. § 3-8-803.

4. To qualify for the ballot in Randolph County, the sponsors of the Petition were required to submit a total of 3,813 qualified signatures to the County Clerk.

5. On July 20, 2016, the Committee submitted the Petition to the County Clerk. The petition contained more than 3,813 total signatures. On July 28, 2016, the

County Clerk issued a letter certifying that the Petition was insufficient by 483 qualified signatures.

6. On August 7, 2016, the Committee filed an additional 115 pages of signatures to be added to the Petition. After examination of the additional pages, on August 12, 2016 the County Clerk certified that the Petition contained 3,452 signatures, being 361 signatures shy of the 38% threshold.

7. Acting pursuant to Ark. Code Ann. § 14-14-915, Plaintiffs filed the Appeal with this Court asking the Court to undertake a *de novo* review of the Petition to ascertain whether 38% of the registered voters of Randolph County signed it. See *Our Community Our Dollars v. Bullock*, 2014 Ark. 457, 452 S.W.3d 552, 558 (2014).

8. The parties stipulated that the following categories of otherwise valid signatures were excluded by the Clerk:

a. 272 signatures were excluded by the Clerk pursuant to Ark. Code Ann. § 3-8-811(b)(6), which will be referred to as the 811(b)(6) signatures. The 811(b)(6) signatures included the signatures of Plaintiff Michele Counts and Plaintiff Erik Williams, who are registered voters in Randolph County and who signed the Petition.

b. 208 signatures canvassed by Jason Swann were excluded by the Clerk pursuant to Ark. Code Ann. § 3-8-205(a)(2)(B), which will be referred to as the Swann Signatures.

c. 74 signatures notarized by Ariel Pointfield were excluded by the Clerk pursuant to Ark. Code Ann. § 3-8-811(b)(3), which will be referred to as the Pointfield Signatures.

### Motion to Dismiss

9. Intervenor Anderson and Defendant Blevins move to dismiss the Plaintiffs' petition and appeal as untimely. They cite the Plaintiffs' admission in both its Complaint and Amended Complaint that Blevins "certified" the insufficiency of Plaintiffs' petition on July 28, 2016. Since the petition and appeal was filed on August 12—more than 10 days from that certification—Anderson and Blevins also challenge the Court's jurisdiction. The motion to dismiss is denied.

The Arkansas General Assembly passed a new statute on local option elections in April 2015. Act 1251 of 2015, codified at Arkansas Code Annotated § 3-8-205, *et seq.*, significantly altered the laws applicable to local option elections. In the new section 3-8-803, the Clerk is required to verify the sufficiency of the petition "no later than ten (10) days after the petition is submitted." Ark. Code Ann. § 3-8-803(c). This determination includes certifications of both sufficiency and insufficiency, *Id.* The new statute allows an appeal within ten days of the Clerk's "certification:"

If an appeal is taken from the **certification of the county clerk**, it shall be **taken within ten (10) days** and shall be considered by the circuit court within ten (10) days, or as soon as practicable, after the appeal is lodged with the Court. The circuit court shall render its decision within thirty (30) days thereafter. Ark. Code Ann. § 3-8-205(b)(emphasis added).

The General Assembly added that, "[e]xcept as provided in this section, a petition for local option shall be governed by § 7-9-101, *et seq.*, and the Disclosure Act for Initiative Proceedings, § 3-8-701, *et seq.*"

The new statute does not reference Arkansas Code Annotated § 14-14-915, an older statute covering initiative and referendums. That statute provides an additional ten-day period after the first submission for the petitioners “to solicit and add additional signatures, or to submit proof tending to show that signatures rejected by the county clerk are correct and should be counted.” Ark. Code Ann. § 14-14-915(e). Under that statute, the clerk has an additional five days—not ten days as contemplated by Ark. Code Ann. § 3-8-803(c) and Ark. Code Ann. § 3-8-809—to certify the sufficiency of the supplemented petition. Any “taxpayer” aggrieved by the clerk’s “certifying the sufficiency or insufficiency of any initiative or referendum petition” can challenge that certification within fifteen days in Circuit Court. Ark. Code Ann. § 14-14-915(f).

Plaintiffs invoke Section 14-14-915 as the jurisdictional authority for their petition and appeal. They claim Act 1251 of 2015 did not alter the deadlines for appeal or otherwise change the framework for local option elections. Those arguments fail. The General Assembly clearly altered the process and framework for local option elections in Act 1251.

Plaintiffs next argue that Act 1251 contemplates a ten-day cure period after an initial submission. To that end, Plaintiffs claim Arkansas Code Annotated § 3-8-811 references an “initial filing of a petition” and an “initial count of the signatures.” So the statute must impliedly provide for a second filing and count, Plaintiffs argue, or those references are meaningless.

However, Section 3-8-811 appears to provide a two-step process for the Clerk. “Upon the initial filing of a petition,” the Clerk must first “[p]erform an initial count of the signatures” and “determine whether the petition contains, on its face and

before verification of the signatures of registered voters, the designated number of signatures” required by law. Ark. Code Ann. § 3-8-811(a). Second, the Clerk must also verify the signatures of registered voters, *Id.* This statute does not alter Arkansas Code Annotated § 3-8-205(b)’s clear ten-day deadline to appeal. Arkansas Code Annotated § 14-14-915 cannot apply in light of the new § 3-8-803 and § 3-8-809, both of which require the Clerk to certify the petition’s sufficiency within ten days from submission, not five days from a “supplemental” submission.

Finally, Plaintiffs argue the Arkansas Supreme Court had judicially applied § 14-14-915 as the controlling procedure for local option petitions. In *Our Community, Our Dollars v. Bullock*, 2014 Ark. 457, 452 S.W. 3d 552, the Arkansas Supreme Court applied Sections 3-8-205 and 14-14-915 to the judicial review of the clerk’s decision. *Bullock* did not address Act 1432 of 2013, however, which added subsection (f) to § 3-8-205. Moreover, *Bullock* predates the new 2015 statute, which otherwise amended § 3-8-205 and significantly overhauled the local option petition process. The Court is not persuaded that *Bullock*’s application of Section 14-14-915 is controlling.

Nevertheless, the Court notes that the Plaintiff (the Committee) and the Defendant (Blevins) both proceeded under the (probably erroneous) presumption of a 10-day “cure period” before final certification by the Clerk. Therefore, to achieve the statute’s requirement of a quick and timely review, the Court denies the Defendants’ motion to dismiss and will presume subject matter jurisdiction and timely appeal by the Plaintiffs, thereby reaching the other issues in this case.

**Constitutionality of Arkansas Code Annotated § 3-8- 811(b)(6)**

10. The Court is persuaded by the State of Arkansas' arguments, joined by Defendant Blevins and Intervenor Anderson, in support of the constitutionality of § 3-8-811(b)(6). **The Court has signed a separate order on the constitutionality of Arkansas Code Annotated § 3-8-811(b)(6), which is incorporated herein by reference.** In short, the local option statutes are not governed by Article 5, Section 1 of the Arkansas Constitution. In addition to the findings of the separate order, the Court further finds that the General Assembly chose to exclude the application of the Arkansas Constitution to local option elections when it repealed Arkansas Code Annotated § 3-8-204.

**Section 811(b)(6) Signatures**

11. Arkansas Code Annotated § 3-8-811(b)(6) states that if a "petition part clearly and unmistakably contains signatures of petitioners from more than one (1) county" then the "petition part and all signatures appearing on the petition part shall not be counted for any purpose by the official charged with verifying the signatures, including the initial count of signatures" ... "unless each signature of a petitioner from another county is clearly stricken before the filing of the petition with the county clerk."

As previously noted, the parties stipulated the Clerk's exclusion of 272 signatures because they appeared on petition parts containing signatures of petitioners listing addresses in counties other than Randolph. **Upon *de novo* review, it is found**

**that the Plaintiffs have proved that 28 petitioners excluded because of Section 811(b)(6) violations should be counted as valid signatures.**

### Swann Signatures

12. Arkansas Code Annotated 3-8-802(a)(2)(B)(i) states that “before a signature is solicited by a paid canvasser” the sponsor of a local option petition is required to, among other things, “[p]rovide a complete list of all paid canvassers’ names and current residential addresses to the county clerk.” The Committee complied initially with § 3-8-802(a)(2)(B)(i) by providing its “complete list” of paid canvassers to the County Clerk on February 3, 2016. Section 3-8-802(a)(2)(B)(ii) requires the sponsor to provide updated lists to the clerk if additional paid canvassers are added after the initial list is provided to the Clerk, but it does not specify that the list be provided before the new canvassers collect signatures. This apparent oversight is cleared up, however, by Section 3-8-811(b)(3)(A), which disallows signatures collected by a paid canvasser “whose name and the information required under (section) 3-8-802 were not submitted by the sponsor to the county clerk before the petitioner signed the petition.”

Plaintiff Jason Swann was not among the paid canvassers on the initial list given to the Clerk on February 3. He testified he was hired by the canvassing company on February 24, but his hiring was not reported to the Clerk until an updated list was provided on May 4. He had collected 208 signatures by that time, all of which were disallowed by the Clerk.

Plaintiffs argue that A.C.A. 3-8-802(a)(2)(B)(ii)’s failure to establish a time for filing the updated list of canvassers is controlling, but such interpretation



requires the Court to ignore the plain language of section 3-8-811(b)(3)(A), which it declines to do.

Further, Plaintiffs contend the Swann signatures should be counted because they were not notified of their rejection until two days before the expiration of the extension time for submitting additional petition parts, and thus had no time to cure the problem. The argument is not persuasive, because (1) the petition procedure is mandatory, not merely directive; (2) it is specifically set out in the local-option statute; and (3) the Court in a *de novo* review is also bound by the statutory provisions.

Finally, Plaintiffs allege the statutory requirement that Jason Swann's identifying information as a paid canvasser be on file with the Clerk before his collection of signatures violates his First Amendment rights under U.S. Constitution. This argument is rejected. Plaintiff Swann's First Amendment rights were not violated. At all times relevant to this lawsuit, he was free to exercise his right to speak freely about the issue covered by the petitions he was circulating. He could freely associate with anyone he chose in collecting such signatures, and he not prevented from signing the local option petitions if he chose to do so. However, if he expected the signatures he collected to be used to advance the local option issue to the November ballot, he is bound by the statutory safeguards protecting the validity of the petitions.

**The 208 Swann signatures were properly rejected by the Clerk.**

#### **Pointfield Signatures**

13. The Clerk properly struck 74 signatures of petitioners where the petition parts were notarized by Ariel Pointfield, an employee of the paid canvassing company, on dates prior to the actual dates of the petitioners' signatures. This is a direct violation of A.C.A. 3-8-

811(b)(5). The Clerk allowed signatures on petitions parts notarized by Ms. Pointfield where she had made and initialed corrections to the notarization dates before submitting them to the Clerk. **However, the evidence adduced at trial requires the Court in this *de novo* review to disallow those 114 signatures.** It is noted that isolated notarization mistakes by other notaries were not stricken by the Clerk and will not be stricken by the Court, but the improper notarizations by Ms. Pointfield do not appear to be isolated mistakes, but rather a pattern of predating stacks of petition forms for later completion. The unfortunate result is that 114 citizens have been deprived of their right to petition the government, not by some technicality but by a deliberate attempt to circumvent prudent statutory safeguards on the integrity of the petition process.

#### **Additional Corrections**

14. Plaintiffs adduced evidence that 16 additional registered Randolph County voters<sup>1</sup>, originally excluded as being nonregistered voters, were in fact registered voters of Randolph County and should have been counted toward the sufficiency of the Petition. **These 16 signatures are declared to be valid, and therefore allowed, to the extent that they were not also rejected for another cause in accordance with this order.**

15. The Intervenors presented the testimony of Dawn Phillips, a forensic handwriting examiner. Ms. Phillips reviewed 66 petition pages selected by the attorney for the Intervenors and found 45 pages containing “common authorship” in the signature and information lines. Specifically, Ms. Phillips found that there were eight pages in which the last name of a signature had common authorship. **Plaintiffs agreed to stipulate to this number,**

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<sup>1</sup> Those registered voters are Leeann Loren Ivy, Nina Darlene Cox, Faye Marie Berry Davis, Judy Ann Richardson, Austin Michael Hibbard, Billy Lee Carter, Douglas Jacob Hutsell, Edward Boyd Wolverton, April Joy Russell, Mindy Sue Wicker, Madison Marie Presley, Barbara S. Wess, Scott Hardy, Bridgette R. Rose, Fantasha N. Rutledge, and Jeffery Alan Robinson.

**which affects 12 total signatures. Therefore, the Court will subtract 12 signatures from the count of the County Clerk.**

16. The remaining 37 petition pages contain common authorship in the printed name, address, date of birth, city of residence, or the date of signing. These pages total 74 signatures. However, because one of the challenged signatures was in the hand of the person signing the petition, only 37 of the 74 remaining challenged signatures should be stricken. In addition, two people, Susan Maynard and Joe Simpson, testified that the challenged writings were in their hand on their lines only, removing four instances of common authorship in the Phillips report, which will reduce the number of non-forgery, common-authorship entries to 33. **The signatures identified by Dawn Phillips will reduce the County Clerk's tally of valid signatures by an additional 33.**

17. Based on the forgoing, the Court finds with respect to the signature count that the Petition contains a total of 3,337 valid signatures of registered Randolph County voters.<sup>2</sup> Accordingly, upon its *de novo* review, the Court finds that the Petition is not sufficient to allow the local option election called for by the Petition to be placed on the November 8, 2016 general election ballot.

IT IS SO ORDERED this 30<sup>th</sup> day of August, 2016.

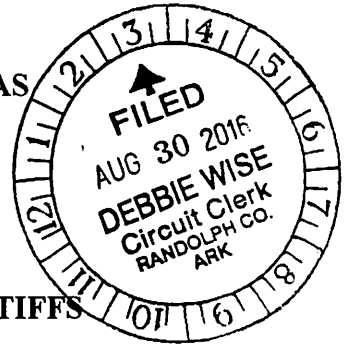


CIRCUIT JUDGE

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<sup>2</sup> The Court arrived at this number by starting with the 3,452 signatures certified by the County Clerk on August 12, 2016 and adding the allowed 811(b)(6) signatures (28), the signatures of registered voters identified during trial who should have been counted (16). This totaled 3,496 signatures from which the Court subtracted the 114 disallowed Pointfield signatures, and the 45 signatures identified by Dawn Phillips and not cured. This produced a total of 3,337 signatures, which is 476 short of the 3,813 threshold necessary for certification by the County Clerk.

IN THE CIRCUIT COURT OF RANDOLPH COUNTY, ARKANSAS  
SECOND DIVISION



**KEEP REVENUE IN RANDOLPH COUNTY;  
ERIK WILLIAMS; and  
MICHELLE COUNTS**

**PLAINTIFFS**

**Vs.**

**Case No. CV-2016-85**

**RHONDA BLEVINS, in her official capacity  
as Randolph County Clerk**

**DEFENDANT**

**JAMES HENRY ANDERSON,  
DELPHINE J. ANDERSON, and  
CAROLYN JOYCE LEY**

**INTERVENOR-DEFENDANTS**

**And**

**THE STATE OF ARKANSAS**

**INTERVENOR-DEFENDANT**

**ORDER ON THE CONSTITUTIONALITY OF  
ARK. CODE ANN. § 3-8-811(b)(6)**

Plaintiffs Keep Revenue in Randolph County (KRIR), Erik Williams, and Michelle Counts challenge the constitutionality of Ark. Code Ann. § 3-8-811(b)(6), a provision of the local-option statute that governs the sufficiency of a local-option petition when the petition is filed with a county clerk. KRIR is a Local-Option Ballot Question Committee as defined by Ark. Code Ann. § 3-8-702. Complaint, ¶ 2 & Exhibit 1. Erik Williams and Michelle Counts are citizens and residents of Randolph County, Arkansas. Complaint, ¶¶ 5 & 6. Plaintiffs have filed a brief regarding the constitutionality of section 3-8-811(b)(6).

Defendant Rhonda Blevins is the Randolph County Clerk. Clerk Blevins has filed an answer to the complaint, and has filed a pleading regarding the constitutionality of section 3-8-811(b)(6). The State of Arkansas has intervened in defense of the constitutionality of section 3-8-

811(b)(6). The Court has granted the State's intervention motion by separate order, and the State has filed a brief regarding the constitutionality of section 3-8-811(b)(6).

James Henry Anderson, Delphine J. Anderson, and Carolyn Joyce Ley, citizens and residents of Randolph County, have intervened in defense of Clerk Blevins's determination that the local-option petition failed to include sufficient signatures for placement on the ballot. The Anderson Intervenors also have filed a brief regarding the constitutionality of section 3-8-811(b)(6).

At the hearing held on August 24, 2016, counsel for the parties presented oral argument regarding the constitutionality of section 3-8-811(b)(6), among other issues that will be addressed by separate order(s).

Ark. Code Ann. § 3-8-811(b)(6) provides that a local-option "petition part and all signatures appearing on the petition part shall not be counted for any purpose by the official charged with verifying the signatures . . . if . . . [t]he petition part clearly and unmistakably contains signatures of petitioners from more than one (1) county unless each signature of a petitioner from another county is clearly stricken before the filing of the petition with the county clerk[.]" As the language of the provision plainly indicates, a local-option sponsor can avoid the consequence of having all signatures on a petition part omitted from its submission by striking signatures of petitioners from other counties prior to submission to the Clerk.

In this case, KRIR did not avail itself of the pre-filing remedy available in section 3-8-811(b)(6). KRIR submitted petition parts containing signatures of petitioners from both Randolph County and other counties, and the Clerk properly declined to count the signatures on those petition parts under section 3-8-811(b)(6). Plaintiffs now seek a determination that section 3-8-811(b)(6) is unconstitutional.

For the reasons outlined in the State's motion to dismiss and brief in support of thereof, and the reasons argued by counsel for the State at the hearing on August 24, 2016, the Court holds that Ark. Code Ann. § 3-8-811(b)(6) is constitutional.

The substantive law governing local-option petitions and elections is found in Ark. Code Ann. § 3-8-801 et seq. and other provisions of Title Three, Chapter Eight of the Arkansas Code. Plaintiffs' constitutional challenge against section 3-8-811(b)(6) is premised on an incorrect conflation of (1) local-option petitions, whose substantive law is governed exclusively by statute, and (2) initiatives, which are governed by Article 5, Section 1 of the Arkansas Constitution as amended by Amendment 7 to the Constitution, and enabling legislation. The relevant and controlling authority establishes that section 3-8-811(b)(6) does not violate the Arkansas Constitution, and Plaintiffs' challenge against section 3-8-811(b)(6) therefore is denied and dismissed.

In Count II of the complaint, Plaintiffs ask the Court to declare Ark. Code Ann. § 3-8-811(b)(6) unconstitutional "because it is a statute enacted beyond the power granted to the General Assembly in Article 5 of the Constitution[.]" Complaint, ¶ 31. Plaintiffs rely on *McDaniel v. Spencer*, 2015 Ark. 94, 457 S.W.3d 641 in support of their position. However, *Spencer* is not controlling or applicable. Initiatives are governed by Article 5, Section 1 of the Arkansas Constitution as amended by Amendment 7. The *Spencer* case involved a statewide initiative and constitutional challenges against regulations adopted by the General Assembly under its expressly limited authority to regulate initiatives as set forth in Amendment 7. *Spencer* has no application to the constitutional challenge levied in this case against a statute regulating the sufficiency of *local-option petitions*.

Importantly, a local-option petition (such as KRIR's petition in this case) is *not* an

initiative within the meaning of Article 5 and Amendment 7. Local-option petitions and local-option elections are creatures of statute, created and governed exclusively by statutes such as Ark. Code Ann. § 3-8-801 et seq. (including the statute challenged by Plaintiffs, section 3-8-811(b)(6)).

The Arkansas Supreme Court has repeatedly and consistently made clear that local-option petitions and statutes regulating the sufficiency of local-option petitions are not governed by or subject to the provisions of Article 5 and Amendment 7. “[I]t is firmly settled that Amendment 7 has no application to local option petitions, which are governed by statute.” *McFerrin v. Knight*, 265 Ark. 658, 660, 580 S.W.2d 463, 464 (1979) (citing *Brown v. Davis*, 226 Ark. 843, 846, 294 S.W.2d 481 (1956) (“At the outset we point out that we have consistently held that local option elections, as here, are not initiated measures within the meaning of Amendment 7”)). See also *Armstrong v. Sturch*, 235 Ark. 571, 574-75, 361 S.W. 2d 77 (1962) (“Amendment 7 to the Constitution has nothing whatever to do with local option elections on liquor questions.”); *Yarbrough v. Beardon*, 206 Ark. 553, 177 S.W. 2d 38, 39 (1944) (“Amendment No. 7 to the constitution has no application. This is not an initiated act as provided for in that amendment. It is merely a submission to the legal voters of the county on the question of the sale of liquor[.]”); *Johnston v. Bramlett*, 193 Ark. 71, 97 S.W.2d 631, 632 (1936) (same).

Although the *procedure* to get a local-option question onto the ballot after the filing of a *sufficient* local-option petition with a clerk may be conducted in the same manner provided for initiatives under Amendment 7, “the pre-filing requirements for local-option measures are not governed by Amendment 7.” *Our Community, Our Dollars v. Bullock*, 2014 Ark. 457, at 17, 452 S.W.3d 552. See also *Dean v. Williams*, 339 Ark. 439, 454-55, 6 S.W.3d 89 (1999) (“once

such local-option petitions are prepared under the provisions of the *local-option statutes*, and are filed with the county clerk, the subsequent *procedure* must be governed by Amendment 7”) (emphasis added). The Arkansas Supreme Court has explained that Amendment 7 applies only to guide the procedure for placing a sufficient local-option petition onto the ballot, but has no application to statutes such as Ark. Code Ann. § 3-8-811(b)(6), regulating the sufficiency of a local-option petition: “ ... after such local option petition is prepared *in accordance with* [the local-option statutes], and filed with the County Clerk, thereafter *in order to get the question on the ballot* at the regular biennial November general election in an orderly way such petition shall be handled in the same manner, and the same procedure followed, as if it were in fact a county initiative measure.” *Armstrong v. Sturch*, 235 Ark. at 576 (emphasis added).

This case raises issues related entirely to the substantive *sufficiency* of the local-option petition filed with the Randolph County Clerk. It has nothing to do with the proceedings for placement of a local-option petition on the ballot *after* the filing of a sufficient local-option petition with the Clerk. Under the controlling cases discussed above, Article 5 and Amendment 7 have no application to this case, and no application to Plaintiffs’ constitutional challenge against Ark. Code Ann. § 3-8-811(b)(6). Applying Amendment 7 principles to the statute governing the sufficiency of local-option petitions directly contravenes the Arkansas Supreme Court cases discussed above.

Ark. Code Ann. § 3-8-811(b)(6) is not “a statute enacted beyond the power granted to the General Assembly in Article 5 of the Arkansas Constitution[.]” Complaint, ¶ 31. As explained above, it is well-settled that Article 5 and Amendment 7 do not apply to local-option petitions and elections as they apply to initiatives. The local option is a creature of statute, and the General Assembly has full legislative authority to regulate (or even eliminate) the local option



without the limitations imposed on initiatives by Article 5 and Amendment 7.

In *Spencer*, the petition's sponsor challenged a statute striking of all signatures on a petition part if the page contained one or more signatures of out-of-county petitioners. The court properly found that statute an unconstitutional restriction on the people's right to initiative petition protected by Article 5 and Amendment 7. But the present case involves a county-wide local option in which the State has a compelling interest in protecting the integrity of the petition process by limiting petitioners to residents of the county. The Court therefore declines to apply *McDaniel v. Spencer*, as Article 5 and Amendment 7 have no application to section 3-8-811(b)(6).

The General Assembly has created a process by which local voters can exercise direct lawmaking authority over the sale of liquor in their counties—but, as the Arkansas Supreme Court has repeatedly held, the local option is not enshrined in the Arkansas Constitution, and is not governed by Amendment 7. Therefore, Amendment 7 does not substantively restrict the General Assembly's authority to regulate the local-option process as it does in the initiative context.

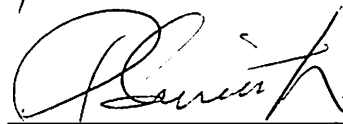
In the proper context of local-option elections regarding whether liquor sales will be allowed in a particular county, the regulation at issue in this case is rational and plainly furthers the government's compelling interests in preventing election fraud and promoting the integrity of elections. Local-option elections are confined to the voters of the county considering a local-option question. But it is easy to surmise that voters and businesses in neighboring counties may have personal or business interests at stake regarding the outcome of such an election. Of course those voters in a neighboring county may not participate in the local-option election, and their signatures should not be counted in a local-option petition. Given the readily-apparent risk of

improper influence by interests outside the county, it is imminently reasonable for the legislature to require clerks to reject petition parts containing out-of-county signatures. The petition sponsor has the ability to prevent such a consequence by conducting its own review and striking such prior to submitting the petition to the clerk.

Ark. Code Ann. § 3-8-811(b)(6) protects the integrity of local-option petitions and elections, and serves as a rational incentive for sponsors and canvassers to help insure that integrity through their own effort to omit ineligible petitioners. Section § 3-8-811(b)(6) is constitutional under Arkansas law.

Ark. Code Ann. § 3-8-811(b)(6) is also constitutional under the United States Constitution and *Buckley v. Am. Constitutional Law Foundation, Inc.*, 525 U.S. 182 (1999). Although Plaintiffs cite the U.S. Constitution and *Buckley* in their Complaint (¶ 31), Plaintiffs' brief on the constitutional question offers no argument that section 3-8-811(b)(6) is unconstitutional under federal law, and Plaintiffs' counsel made no argument at the hearing regarding federal law. The Court holds that section 3-8-811(b)(6) is constitutional under federal law for the reasons explained in the State's brief.

IT IS SO ORDERED this 30<sup>th</sup> day of August, 2016.



CIRCUIT JUDGE PHILIP G. SMITH