

IN THE CIRCUIT COURT OF WASHINGTON COUNTY, ARKANSAS

PROTECT FAYETTEVILLE, f/k/a REPEAL 119;
PAUL SAGAN; PETER TONNESSEN;
and PAUL PHANEUF

PLAINTIFFS

vs.

Case No.: CV-¹⁵⁻1510-1

THE CITY OF FAYETTEVILLE, ARKANSAS; WASHINGTON COUNTY, ARKANSAS; LIONELD JORDAN, in his official capacity as MAYOR OF THE CITY OF FAYETTEVILLE, WASHINGTON COUNTY, ARKANSAS; ADELLA GRAY, SARAH MARSH, MARK KINION, MATTHEW PETTY, ALAN LONG, AND JUSTIN TENNANT Individually and, in their official capacities as ALDERMEN OF THE FAYETTEVILLE CITY COUNCIL; MARTIN W. SCHOPPMAYER JR., AND JOHN LA TOUR, in their official capacities as ALDERMEN OF THE FAYETTEVILLE CITY COUNCIL; THE HON. RENEE OELSCHLAEGER, THE HON. MAX DEITCHLER, AND THE HON. BILL ACKERMAN, in their official capacities as the COMMISSIONERS of the WASHINGTON COUNTY ELECTION COMMISSION

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DEFENDANTS

165/S

VERIFIED COMPLAINT
AND MOTION FOR DECLARATORY JUDGMENT

COMES NOW, Protect Fayetteville, an Arkansas Ballot Question Committee (hereinafter Protect Fayetteville”) Paul Sagan, Peter Tonnessen, and Paul Phaneuf (collectively Sagan, Tonnessen, and Phaneuf are referred to as “Taxpayers”) (with Protect Fayetteville and Taxpayers being hereinafter referred to collectively as “Plaintiffs”), by and through their attorneys of the Story Law Firm, PLLC, and for their Complaint against The City of Fayetteville (hereinafter “City of Fayetteville”), Washington County, Arkansas (hereinafter “Washington County”), Lioneld Jordan, in his official capacity as Mayor of the City of Fayetteville, Washington County, Arkansas (hereinafter “Mayor”); Adella Gray, Sarah Marsh, Mark Kinion, Matthew Petty, Alan Long, Justin Tennant, individually and in their official capacities as Aldermen of the Fayetteville

City Council (hereinafter “Alderman voting for 5781”), and Martin W. Schoppmeyer Jr., John La Tour, and in their official capacities as Aldermen of the Fayetteville City Council (hereinafter “Alderman voting against 5781”). (hereinafter both the Alderman voting for 5781 and Alderman voting against 5781 shall be known as the “Fayetteville City Counsel”); The Hon. Renee Oelschlaeger, The Hon. Max Deitchler, and The Hon. Bill Ackerman, in their official capacities as the Commissioners of the Washington County Election Commission (hereinafter “Election Commission”) (all collectively known as “Defendants”) states the following:

PARTIES, JURISDICTION AND VENUE

1. Protect Fayetteville is an Arkansas ballot question committee, formerly known as Repeal 119, organized with the Arkansas Ethics Commission on September 15, 2014. Protect Fayetteville is the Sponsor of the successful repeal petition which repealed Fayetteville City Ordinance 5307 on December 9th, 2015, and consists and represents all of the 7,523 registered voters residing in the City of Fayetteville, Washington County, Arkansas whom voted to defeat Ordinance 5703.

2. Plaintiff Paul Sagan is a resident and taxpayer of the City of Fayetteville, Washington County, Arkansas.

3. Plaintiff Peter Tonnessen is a resident and taxpayer of the City of Fayetteville, Washington County, Arkansas.

4. Plaintiff Paul Phaneuf is a resident and taxpayer of the City of Fayetteville, Washington County, Arkansas.

5. Defendant City of Fayetteville is the legally incorporated town under the Arkansas Constitution and by virtue of its population is considered a City of the first class and has the mayor-council form of government pursuant to Arkansas Statute.

6. Defendant Washington County, Arkansas, is a county in Arkansas and is the county seat, which includes the incorporated town of Fayetteville, Arkansas.

7. Defendant Lioneld Jordan is the duly elected Mayor of the City of Fayetteville, Washington County, Arkansas, and is named only in his official capacity as the Mayor of the City of Fayetteville.

8. Defendants Adella Gray, Sarah Marsh, Mark Kinion, Matthew Petty, Alan Long and Justin Tennant are six (6) of the eight duly elected Aldermen, comprising the Fayetteville City Council, and are named only in their official and individual capacities as Aldermen of the Fayetteville City Council.

9. Defendants Martin W. Schoppmeyer Jr. and John La Tour are the other two duly elected Aldermen, comprising the Fayetteville City Council, and are named only in their official capacities as Aldermen of the Fayetteville City Council.

10. Defendant The Hon. Renee Oelschlaeger, The Hon. Max Deitchler, and The Hon. Bill Ackerman, are the duly appointed and serving Commissioners of the Washington County Election Commission and are named only in their official capacities.

11. This Court has jurisdiction over the parties and subject matter of this Complaint, and venue is properly in this Court.

STATEMENT OF FACTS

12. On or around August 20, 2014, the Aldermen of the Fayetteville City Council passed by a 6-2 vote Ordinance No. 5703, which enacted Chapter 119 of the Fayetteville, Arkansas City Code.

13. Because Separate Plaintiff Protect Fayetteville (then known as Repeal 119) secured over 4,200 signatures of registered voters of the city of Fayetteville, the issue to “Repeal,

in its entirety, Ordinance No. 5703 which enacted Chapter 119 of the Fayetteville, Arkansas City Code” was to be voted on during a special election held on December 9th, 2014.

14. Thereafter, on October 9, 2014, the Defendant Election Commissioners voted to place the measure on the ballot at a special election to be held on December 9, 2014.

15. At the special election, duly called under the repeal process reserved by the people of Arkansas in the Arkansas Constitution, on December 9, 2014, a majority of voters of the City of Fayetteville, Arkansas voted to repeal Ordinance 5703, also known as Chapter 119 of the Fayetteville, Arkansas City Code. See Ordinance 5703, attached as **Exhibit A**, and incorporated by reference as if stated word-for-word herein.

16. The law provides that the City of Fayetteville bear the expense for the special election held on December 9th, 2015, which cost the City of Fayetteville approximately \$36,000.00 of tax payers’ money.

17. On February 24, 2015, Act 137, or the Intrastate Commerce Improvement Act, became law and thereafter went into effect on July 22, 2015. The Intrastate Commerce Improvement Act provides that “a county, municipality, or other political subdivision of the state shall not adopt or enforce an ordinance, resolution, rule, or policy that creates a protected classification or prohibits discrimination on a basis not contained in state law.”

18. Currently, in Arkansas, “the right of an otherwise qualified person to be free from discrimination because of race, religion, national origin, gender, or the presence of any sensory, mental, or physical disability is recognized as and declared to be a civil right.” Ark. Code Ann. § 16-123-107. Further, the Supreme Court of the United States has not created a protected classification based on gender identity or sexual orientation.

19. Ordinance 5781 is titled “AN ORDINANCE TO ENSURE UNIFORM NONDISCRIMINATION PROTECTIONS WITHIN THE CITY OF FAYETTEVILLE FOR GROUPS ALREADY PROTECTED TO VARYING DEGREES THROUGHOUT STATE LAW,” and is otherwise substantially similar in substance and procedure to Ordinance 5703, which was repealed by the voters of the City of Fayetteville, Arkansas. See Ordinance 5781 attached as **Exhibit B**, and incorporated by reference as if stated word-for-word herein.

20. The purpose of Ordinance 5781 is to “extend existing protections to lesbian, gay, bisexual, and transgender citizens and visitors,” which is a group of people whom are not recognized as a protected class under either the United States Constitution or the Constitution of the State of Arkansas.

21. Ordinance 5781 is a law that is of a “general or permanent nature.”

22. Ordinance 5781 was passed with a section that reads, “[t]hat the City Council for the City of Fayetteville, Arkansas hereby determines that if the Fayetteville voters fail to approve the referred ordinance, the ordinance will not go into effect; but if the voters approve the ordinance, the ordinance quoted in Section 1 will be enacted into the Fayetteville Code and become effective sixty (60) days after the approving election.”

23. All laws of a general or permanent nature require that the text “be fully and distinctly read on three different days, unless two-thirds of the members composing the council shall dispense with the rule. See Kirby’s Digest § 5473.

24. That the City of Fayetteville has eight (8) duly elected aldermen: Separate Defendants Adella Gray, Sarah Marsh, Mark Kinion, Matthew Petty, Justin Tennant, Martin W. Schoppmeyer Jr., John La Tour and Alan Long.

25. The two-thirds requirement requires six (6) of the eight (8) above individuals to vote affirmatively to suspend the rules.

26. On June 16, 2015, the Fayetteville City Council conducted a first reading of the Ordinance now known as Ordinance 5781. See Pg. 7 of the June 16th, 2015 Fayetteville City Council Meeting Minutes attached as **Exhibit C**, and incorporated by reference as if stated word-for-word herein.

27. Thereafter, during the same City Council meeting “Alderman Marsh moved to suspend the rules and go to the second reading. Alderman Kinion seconded the motion. Upon Roll Call the motion passed 7-1. Alderman La Tour Voting no.” See Pg. 17 of the Exhibit C.

28. Thereafter, the Ordinance was read for the second time. *Id.*

29. Thereafter, during the same City Council meeting Alderman Kinion moved to suspend the rules and go to the third and final reading. Alderman Marsh seconded the motion. Upon roll call the motion passed 6-3. Alderman Long, Gray, Marsh, Kinion, and Petty voting yes. Alderman La Tour, Tennant and Schoppmeyer voting no. Mayor Jordan voted yes to suspend the rules. See Page 18 of Exhibit C.

30. Thereafter, the ordinance was read for the third and final time.

31. Thereafter, “Mayor Jordan asked shall the ordinance pass. Upon roll call the ordinance passed 6-2. Alderman Long, Gray, Marsh, Kinion, Petty and Tennant voting yes. Alderman La Tour and Schoppmeyer voting no.” See pg. 21 of Exhibit C.

32. An ordinance passed in violation of the two-thirds requirement to suspend the rules is void. See *Newbold v. City of Stuttgart et. al.* 145 Ark. 544, 224 S. W. 994 at 994 (1920).

33. The Mayor is not an elected member of the council, but only an ex-officio member by virtue of his executive position. See *Thompson v. Younts*, 282 Ark. 524, 669 S.W.2d 471 at 530 (1984).

34. The Mayor does not have the legal authority to vote upon the third and final reading of the Ordinance when three (3) members of the council voted “no” and all eight (8) members of the council were present.

35. The actions of the Mayor and the rest of the City Council violated the Plaintiffs’ due process rights to a third reading of the Ordinance.

36. The Fayetteville City Council consisted of all of the same Aldermen but one, John La Tour, that were on the council when the Ordinance 5703 was proposed and passed.

37. Thereafter, the Defendants Elections Commissions put Ordinance 5781 on the ballot at a special election to be held on September 8, 2015.

38. Ordinance 5781 is almost identical in purpose and effect to that of Ordinance 5703.

39. Separate Defendants The City of Fayetteville, Mayor and Alderman, are refusing to listen to the will of the people which have spoken directly to this issue when by popular vote repealed Ordinance 5703.

40. The Constitution of Arkansas reserves the right of the people to overturn those in elected office, and to repeal previously passed laws.

41. The Residents of the City of Fayetteville are now being forced to stand again and repeat that they do not want, which is substantially the same in cause and effect in law as they previously voted down.

42. On information and belief, the September 8th, 2015 special election to vote on Ordinance 5781 will cost the taxpayers of the City of Fayetteville between \$35,000.00 and \$40,000.00 and that the City of Fayetteville has approved on August 4th, 2015 the expenditure of up to \$40,000.00 from general funds to pay for the special election. See City of Fayetteville Arkansas City Council Meeting August 4, 2015 attached as **Exhibit D** and incorporated by reference as if stated

43. Residents of Fayetteville, Arkansas not only have to come out to vote on the same subject matter at yet another special election, but they again must pay for it.

COUNT I
PASSAGE OF ORDINANCE 5781 VIOLATED THE DUE PROCESS OF LAW

44. Paragraphs 1 through 43 of this Complaint are incorporated herein by reference as if set forth word-for-word.

45. Pursuant to Ark. Const. art. 11, § 8, no person shall be deprived of life, liberty or property without due process of law. The fundamental requirements of due process require opportunity to be heard at a meaningful time and a meaningful place before a person may be deprived of life, liberty or property. *Franklin v. State*, 267 Ark. 311, 590 S.W.2d 28 (1979).

46. Pursuant to Ark. Code Ann. § 14-55-202, “all bylaws and ordinances of a general or permanent nature shall be fully and distinctly read on three (3) different days unless two-thirds (2/3) of the members composing the municipal council shall dispense with the rule.”

47. “The ordinances of a general or permanent nature which must be adopted according to the formalities of section [14-55-202] ... refer to those regulations and acts of the council which prescribe a permanent rule of government for the municipality.” *City of Batesville v. Ball*, 100 Ark. 496, 140 S.W. 712, 716 (1911). Ordinances which endure until repealed are

deemed to be permanent. *City of El Dorado v. Citizens' Light & Power Co.*, 158 Ark. 550, 250 S.W. 882, 884 (1923).

48. In a mayor-council form of government, the mayor is the ex-officio president of the council. Ark. Code Ann. § 14-43-501. Black's Law Dictionary defines ex officio as "by virtue or because of an office; by virtue of the authority implied by office."

49. Additionally, in *Thompson v. Younts*, the Arkansas Supreme Court held that the mayor was not an elected member of the City Council but is only an ex-officio member by virtue of his executive position, and therefore his vote could not be used in amending or repealing any part of an initiated act. *Thompson v. Younts*, 282 Ark. 524, 530, 669 S.W.2d 471, 474 (1984).

50. Pursuant to Ark. Code Ann. § 14-43-501, in cities of the first class, the mayor *may* vote when the mayor's vote is *needed to pass* an ordinance, bylaw, resolution or motion. This includes situations when the vote is tied, or when there are not enough council members present at the meeting to pass a measure. *Gibson v. City of Trumann*, 311 Ark. 561, 563, 845 S.W.2d 515, 517 (1993) (emphasis added).

51. Under section 5481 of Kirby's Digest, it requires two-thirds of the members composing the council, that is, those who are elected to the council, to dispense with the law requiring all by-laws and ordinances of a general or permanent nature to be fully and distinctly read on three different days. *Newbold v. City of Stuttgart*, 145 Ark. 544, 224 S.W. 993, 994 (1920).

52. In *Newbold*, the Court held that the requirements of Ark. Code Ann. § 14-55-202 are mandatory, and an ordinance passed in violation thereof is void. *Id.*

53. Fayetteville, Washington County, Arkansas is a city of the first class.

54. The City Council of the City of Fayetteville consists of eight (8) aldermen.

55. Ordinance 5781 is an ordinance of a general or permanent nature as it is an act of the Fayetteville City Council, which prescribes a permanent rule of government for the municipality.

56. At its City Council Meeting on June 16, 2015, the Fayetteville City Council proposed the Uniform Civil Rights Protection ordinance, and had a first reading of said ordinance.

57. At the same meeting on June 16, 2015, Alderman Marsh moved to suspend the rules and go to the second reading, which was seconded by Alderman Kinion. Upon roll call the motion passed 7-1, with Alderman La Tour voting no. The proposed Uniform Civil Rights Protection ordinance was read a second time that same evening.

58. Thereafter, at the same meeting on June 16, 2015, Alderman Kinion moved to suspend the rules and go to the third and final reading, which was seconded by Alderman Marsh. Upon roll call, five (5) Aldermen voted "yes" to pass the motion, while three (3) Aldermen voted against the motion.

59. Defendant Jordan, Mayor of the City of Fayetteville, voted "yes" to suspend the rules, and it was recorded as a vote of 6-3 for approval, thus representing 2/3rds vote requirement needed for the motion to pass.

60. After the third reading of the ordinance in the same night, the Uniform Civil Rights Ordinance passed by a 6-2 of the City Council of Fayetteville, and was recorded as Ordinance 5781.

61. Defendant Jordan was not an elected member of the City Council, but is only an ex officio member by virtue of his executive position.

62. Defendant Jordan's vote was not needed in order to pass the motion, as all Aldermen were present at the City Council Meeting and it was a 5-3 vote.

63. The motion to dispense the rules would not have been approved by (2/3) of the members composing the municipal council as required by Ark. Code Ann. § 14-55-202, had Defendant Jordan refrained from casting a vote on the motion.

64. Accordingly, since Ark. Code Ann. § 14-55-202 is mandatory, and it was not complied with by the Fayetteville City Council at the City Council Meeting on June 16, 2015, Ordinance 5781 should be held void, as it was passed after the violation of Ark. Code Ann. § 14-55-202.

65. Additionally, since the Fayetteville City Council did not comply with the requirements of Ark. Code Ann. § 14-55-202 at the City Council Meeting on June 16, 2015, they violated the due process rights of the citizens of the City of Fayetteville, Arkansas when they passed Ordinance 5781 after three readings in the same day.

66. The citizens of the City of Fayetteville, Arkansas were not afforded an opportunity to be heard at a meaningful time and a meaningful place before the City Council of Fayetteville voted on Ordinance 5781.

67. Plaintiff prays for a Declaratory Judgment that Ordinance 5781 is void because the Mayor is not a member of the City of Fayetteville city council, and therefore cannot be counted towards the 2/3 vote needed to suspend the rules and is therefore void because it did not comply with Ark. Code Ann. § 14-55-202 and thus violated the due process rights of all Fayetteville residents.

COUNT II
**THE PASSAGE OF ORDINANCE 5781 VIOLATES THE CONSTITUTIONAL
RIGHTS OF THE VOTERS WHO REPEALED ORDINANCE 5703
IN THE SPECIAL ELECTION ON DECEMBER 9, 2014.**

68. Paragraphs 1 through 67 of this Complaint are incorporated herein by reference as if set forth word-for-word.

69. The act of passing Ordinance 5781 violates Amendment 7 to the Constitution of Arkansas where it provides in part: “No measure approved by a vote of the people shall be amended or repealed by any city council, except upon a yea and nay vote on roll call of two-thirds of all the members elected to the city council.” *Gibson v. City of Trumann* 311 Ark. 561, 845 S.W.2d 515 at 563,517 (1993).

70. The intent of Amendment 7 is to reserve the right of self-governance to the people, where it allows the people to by initiative or referendum to retain ultimate jurisdiction and control over its elected officials.

71. In *Gibson*, the City was trying to add and alter the will of the people by changing or modifying the desired outcome of the residents of the City of Trumann when they had by initiative, under Amendment 7 of the Arkansas Constitution, exercised jurisdiction over their elected officials.

72. Likewise, Separate Plaintiff Protect Fayetteville as the sponsor of the repeal petition, again under Constitution, Amendment 7, and on behalf of Taxpayers (who also voted for repeal on December 9th, 2015) all those that voted to repeal Ordinance 5703, exercised their rights reserved to them in the Arkansas Constitution to prohibit Ordinance 5703 from becoming law, seek a declaratory ruling that Ordinance 5781 does not comply with the requirements under Amendment 7 to change, modify, or repeal the exercised control that the people have reserved.

73. The act of proposing a new ordinance (Ordinance 5781) after the Plaintiffs and all those who voted to repeal Ordinance 5703 violates every citizen of Fayetteville’s constitutional right reserved to them in Amendment 7.

74. Understanding that Ordinance 5703 and Ordinance 5781 are so close in nature, cause and affect, that any action by the City of Fayetteville thought its Aldermen is tantamount to a amendment or repeal of what was already repealed, under Amendment 7, and therefore violates the citizens' constitutional rights in that the only way to modify is by a 2/3rds vote of the elected aldermen of the City of Fayetteville, not by referring the act out to the people *again*.

75. The Plaintiffs ask this court for a Declaratory Judgment that Ordinance 5781 is in violation of the amendment or repeal provisions contained in Amendment 7 which is applicable because the people of Fayetteville already took the extraordinary act of repealing the original version of the law (Ordinance 5703), and the law in its new reincarnation was not passed by the Alderman, but merely referred the same law back to the people in violation of the Arkansas Constitution.

76. The Plaintiffs prays for a Declaratory Judgment that Ordinance 5781 is in violation of Amendment 7, as it requires the second (2nd) voters of Fayetteville when they have already voted against the original ordinance (Ordinance 5703) at a special election on December 9th, 2014 and any further requirement for the people of Fayetteville to vote again is a violation of their constitutional rights.

COUNT III
**USE OF TAXPAYER FUNDS FOR A SPECIAL ELECTION FOR
ORDINANCE 5781 CONSTITUTES AN ILLEGAL EXACTION
AND SHOULD BE PROHIBITED.**

77. Paragraphs 1 through 76 of this Complaint are incorporated herein by reference as if set forth word-for-word.

78. This is an Illegal exaction action pursuant to Article 16, Section 13, of the Arkansas Constitution to protect the taxpayers of the City of Fayetteville, Arkansas from misuse

of public funds to fund an election in which the voters have already spoken, and for which the subject matter is in conflict with state law.

79. Separate Defendants Taxpayers are a citizen of the City of Fayetteville, Arkansas and have contributed tax money to the general treasury. As a taxpaying citizen of the City of Fayetteville, Arkansas, Taxpayers have standing to bring this action pursuant to Ark. Const. Art. 16, § 13, which states, “[a]ny citizen of any county, city or town may institute suit, in behalf of himself and all others interested, to protect the inhabitants thereof against the enforcement of any illegal exactions whatever.” Ark. Const. art. XVI, § 13.

80. Arkansas common law makes an illegal-exaction suit under Ark. Const. Art. 16, § 13 a class action as a matter of law. *Worth v. City of Rogers*, 351 Ark. 183, 89 S.W.3d 875 (2002).

81. An illegal-exaction suit is a constitutionally created class of taxpayers, and suit is brought for the benefit of all taxpayers. *Id.*

82. One type of illegal-exaction case that arises under Ark. Const. Art. 16, § 13 are “public funds” cases, where the plaintiff contends that public funds generated from tax dollars are being misapplied or illegally spent. *Pledger v. Featherlite Precast Corp.*, 308 Ark. 124, 823 S.W.2d 852 (1992).

83. The doctrine of sovereign immunity is not applicable in illegal-exaction cases. *Carson v. Weiss*, 333 Ark. 561, 972 S.W.2d 933 (1998).

84. The City of Fayetteville and Washington County are proper parties in this suit as the doctrine of sovereign immunity is not applicable in this case.

85. The City of Fayetteville has voted to expend funds for the special election to be held on September 8th, 2015 for a vote on Ordinance 5781, which is prohibited under Act 137 codified at Ark. Code Ann. § 14-1-403.

86. Ordinance 5781, as set out in this Complaint and Motion for Declaratory is illegal, because it violates statutes, it violates the due process under the Arkansas Constitution, and violates Amendment 7 of the Arkansas Constitution.

87. On information and belief, Separate Defendant Washington County, by and through its election commissioners, have authorized the expenditure from the Washington County general funds expenditures related to funds for election materials, such as printed ballots, programing, and absentee ballots and postage in preparation for the Special Election to be held on September 8th, 2015.

88. On information and belief, the funds expended by Washington County are to be billed to the City of Fayetteville at the conclusion of the special election, whereupon the City of Fayetteville shall remit payment for the election expenses incurred.

89. On June 16, 2015, when the City of Fayetteville City Council passed Ordinance 5781 with a requirement that it be referred to the people for an up or down vote on September 8th, 2015, they failed to fund the special election.

90. Subsequently, after at all times relevant, Ark. Code Ann. § 14-1-403 was in full force and effect, the City of Fayetteville City Council passed funding for the special election to be held September 8th, 2015.

91. Irreparable damage would be done to the Taxpayers, and all similarly situated, would be incurred by the expenditure of funds by Washington County, Arkansas, by and through the Washington County Election Commission, which would be owed by the City of Fayetteville.

92. The Aldermen of the Fayetteville City Council misapplied taxpayer funds when they enacted Ordinance 5781, which was nearly identical to Ordinance 5703, which the voters of Fayetteville, AR had already voted against. Additionally, the Aldermen of the Fayetteville City Council misapplied taxpayers' funds when they included in Ordinance 5781, a provision that requires the Fayetteville, AR voters to vote on whether to approve the Ordinance.

93. Further, the Intrastate Commerce Improvement Act, which became law almost four (4) months before the Fayetteville City Council proposed Ordinance 5781, directly prohibits cities from enacting this exact type of ordinance.

94. The Commissioners of the Washington County Election Commission misapplied taxpayer funds when they voted to place Ordinance 5781 on the ballot at a special election to be held on September 8, 2015, costing the taxpayers of the City of Fayetteville significantly more than it would have cost had they placed the vote for Ordinance 5781 on the ballot at the general elections.

95. Plaintiffs bring this suit on behalf of the taxpayers of the City of Fayetteville, Arkansas, and residents of Washington County, Arkansas, as all named Defendants have contributed to the misapplication of taxpayer funds.

96. The use of any funds from the general treasury of the City of Fayetteville or Washington County, Arkansas constitutes an illegal exaction under Article 16, Section 13, of the Arkansas Constitution.

97. Plaintiffs pray that this Court enter a permanent injunction prohibiting the City of Fayetteville and Washington County, Arkansas from expending any additional funds related to the adoption or enactment of Ordinance 5781, including but not limited to, enjoining the

Washington County Election Commission from holding the special election on September 8th, 2015, for attorney fees and costs, and all other relief which the Plaintiffs prove due.

COUNT IV
ORDINANCE 5781 IS UNLAWFUL AS IT DIRECTLY VIOLATES
ARK. CODE ANN. § 14-1-403; ARK. CODE ANN. § 14-43-610;
AND ARK. CODE ANN. § 16-123-107.

98. Paragraphs 1 through 97 of this Complaint are incorporated herein by reference as if set forth word-for-word.

99. Generally, Cities, such as the City of Fayetteville have broad powers to issue legislative power concerning its own affairs. See Ark. Code Ann. § 14-43-601-602.

100. The City of Fayetteville has admitted such in a memorandum dated July 17, 2014, assistant City Attorney Blake Pennington authored a memorandum where he, on behalf of the city stated:

101. Generally, ‘a municipality is authorized to perform any function and exercise full legislative power in any and all matters of whatsoever nature pertaining to its municipal affairs’ and may even legislate on issues designated as ‘state affairs’ *as long as the regulation is not in conflict with or contrary to state law*. Ark. Code Ann. § 14-43-601 – 14-43-602. (emphasis added). See Memorandum dated July 17, 2014 attached as **Exhibit E**, and incorporated as if stated word-for-word herein.

102. While the City of Fayetteville may claim broad powers, they are however limited by any action taken by the general assembly, specifically, “Nothing in this subchapter shall limit the power reserved to the General Assembly to specifically limit the exercise of any powers, functions, and authority granted in this subchapter.” Ark. Code Ann. § 14-43-610.

103. The Arkansas General Assembly has passed a law directly prohibiting the City of Fayetteville from passing or enacting Ordinance 5781 when the Arkansas General Assembly

passed Act 137 stating in part, “A county, municipality, or other political subdivision of the state shall not adopt or enforce an ordinance, resolution, rule, or policy that creates a protected classification or prohibits discrimination on a basis not contained in state law.” Ark. Code Ann. § 14-1-403 (a).

104. Arkansas has established Civil Rights Act of 1993. Ark. Code Ann. § 16-123-101.

105. The Arkansas Civil Rights Act protects five classes against discrimination: Race, religion, national origin, gender, and disability¹. Ark. Code Ann. § 16-123-107.

106. The code defines gender to mean “on account of pregnancy, childbirth, or related medical conditions” Ark. Code Ann. § 16-123-102.

107. Ordinance 5781 attempts to add terms and classes not contained within the Arkansas Civil Rights Act of 1993. See Exhibit B.

108. Because Ordinance 5781 calls for a vote of the general electorate of the City of Fayetteville, it by its own terms cannot be “adopted” until September 8th, 2015 and would not take effect until sixty (60) days after successful passage. See Exhibit B.

109. Because Ordinance 5781 cannot be “adopted” until September 8th, 2015 or “enacted” until November 7th, 2015, Ark. Code Ann. § 14-1-403 controls, and prohibits Ordinance 5781 from becoming law.

110. Plaintiffs seek Declaratory Judgment that Ordinance 5781 violates Ark. Code Ann. § 14-1-403, as it creates a protected classification or prohibits discrimination on a basis not contained in state law, that it would by the terms of the ordinance not be able to be “adopted” until September 8th, 2015 or “enacted” until November 7th, 2015 and that it would at all times,

¹ The code defines disability as the “presence of any sensory, mental, or physical disability”

and points relevant fail to become law regardless of the outcome of a September 8th, 2015 special election.

COUNT V
THE TITLE OF ORDINANCE 5781 IS MISLEADING
AND THEREFORE THE BALLOT TITLE IS MISLEADING

111. Paragraphs 1 through 110 of this Complaint are incorporated herein by reference as if set forth word-for-word.

112. The short title for Ordinance 5781, as published to the citizens by the City Council, was UNIFORM CIVIL RIGHTS PROTECTION. The ballot title for the special election contains the title of the ordinance – Uniform Civil Rights Protection – which is misleading and confuses voters by using the word “Uniform” in an unsanctioned manner.

113. From the very first word of its short title, voters will be misled by the term “uniform.”

114. Ordinance 5781 is not “uniform” by definition. According to Black’s Law Dictionary, when used as an adjective to describe a statute, “Uniform” means “general and uniform in its operation when it operates equally upon all persons who are brought within the relations and circumstances provided for.” Ordinance 5781, to the contrary, will elevate a tiny, select portion of the citizenry over all others.

115. Ordinance 5781 is not uniform with the law of any other state. Genuine “Uniform” laws are drafted by panels of distinguished attorneys, judges and law professors from The National Conference of Commissioners of Uniform State Laws, established in 1892 and more commonly known as the Uniform Law Commission or (hereinafter “ULC”).

116. The term “uniform” is not an ordinary word; it is a legal term of art that is reserved for laws thoughtfully drafted by the ULC, and therefore in the minds of voters the title “Uniform” confers upon Ordinance 5781 an aura of respectability it does not deserve.

117. Arkansas has adopted about 48 genuine “Uniform” laws. See the list codifications within the Ark. Code Ann. of the “Uniform” laws Arkansas has adopted to date attached as **Exhibit F**, and incorporated by reference as if stated word-for-word herein.

118. Many, if not most, citizens are familiar with “Uniform” laws because they are exposed to those laws in their daily lives, including in the course of commerce, domestic relations proceedings, and/or estate proceedings; a sampling of those laws includes: Uniform Commercial Code, Uniform Child Custody Jurisdiction and Enforcement Act, Uniform Durable Power of Attorney Act, Uniform Interstate Family Support Act, Uniform Limited Partnership Act, Uniform Partnership Act, Uniform Transfers to Minors Act, and Uniform Trust Code Act.

119. There is no such thing as a “Uniform” Civil Rights Law, either in Arkansas, any other state, or as adopted by the ULC.

120. Ordinance 5781 is not a product of the Uniform Law Commission.

121. Since Ordinance 5781 is not a product of the ULC, it is deceptive and misleading for its proponents to misappropriate that honorific, which will tend to mislead voters into thinking this is a law that has already been approved.

122. For the proponents of Ordinance 5781 to willfully misappropriate the term “Uniform” in its title is the same misrepresentation and causes the same confusion that a mom-and-pop burger shop would have if they called their restaurant “McDonalds²” using the same logo and styling. The voter in this case has an expectation, just like at a fast food restaurant, that

² McDonalds is a federally registered trademark of the McDonald’s Corporation and its affiliates.

the quality and offerings in a “uniform” law have had the same thought research and vetting as other “uniform” laws.

123. The average voter can easily confuse Ordinance 5781 with true uniform laws, thereby causing confusion and prejudice to voters, because it implies a legitimacy, which is false.

124. Ordinance 5781 is not uniform with Arkansas state law. Ordinance 5781 is an unlawful exercise of municipal power under A.C.A. § 14-43-601 to -602 because it is “in conflict with and contrary to state law” in the form of the Arkansas Civil Rights Act of 1993.

125. Ordinance 5781 is also not uniform with another Arkansas state law. Ordinance 5781 violates the recently enacted Act 137 of 2015, the “Intrastate Commerce Improvement Act”, § 14-1-401 et seq. (and following), which states that a "municipality ... shall not adopt or enforce an ordinance that creates a protected classification or prohibits discrimination on a basis not contained in state law." A.C.A. § 14-1-403(a).

126. Act 137 requires that “protected class” and “nondiscrimination” issues be decided uniformly throughout the State of Arkansas: “The purpose ... is to improve intrastate commerce by ensuring that businesses, organizations, and employers doing business in the state are subject to *uniform* nondiscrimination laws and obligations, ...” § 14-1-402(a). “The General Assembly finds that *uniformity of law* benefits the businesses, organizations, and employers seeking to do business in the state and attracts new businesses ... to the state.” § 14-1-402(b) (emphasis added).

127. Ordinance 5781 is calculated to make Fayetteville different from the general rule in Arkansas, in violation of a State law that expressly requires uniformity.

128. Ordinance 5781 is not uniform with the Little Rock ordinance because that ordinance was limited in scope and applies only to city employees and vendors, whereas 5781

would apply to most employees, tenants and business customers in Fayetteville, as did Chapter 119 rejected by the voters last December.

129. Ordinance 5781 is not uniform with “The Arkansas Civil Rights Act of 1993”, from which Defendant City Attorney Kit Williams claims it is derived and pretends to draw legitimacy. The Civil Rights Act includes protection for individual faith and conscience in its definition of religion: “‘Religion’ means all aspects of religious belief, observance, and practice.” § 16-123-102(8). This is a statutory fulfillment of the state’s constitutional protections in Section 24 of Article 2. Ordinance 5781 intentionally adds those identifying as Lesbian, Gay, Bi-Sexual or Transgendered (hereinafter “LGBT”) to the list of those protected, but it effectively deletes the protection for religious freedom, and imposes a regime of punishments leading to virtually unlimited fines, loss of business license, and imprisonment.

130. Ordinance 5781 is not uniform internally; to the contrary it is intrinsically biased and distorted. It is not “uniform” because it empowers a small class of persons to write their own special status in the law by defining themselves as a protected class while denying that same right to religious individuals and the other classes protected under state law.

131. Ordinance 5781 is not “uniform” because it would punish one clearly protected class – religion – to favor the selfish interests of another non-recognized protected class containing LGBT individuals.

132. Ordinance 5781 is most uniform with Chapter 119, the ordinance rejected by the citizens of Fayetteville in the special election held last December 9, 2014, because it uses the police power of the state to punish individuals who refuse to participate in ceremonies that violate their religious faith.

133. The Plaintiffs request that this honorable court issue a permanent injunction barring the Election Commissioners of Washington County Arkansas from using the ballot title beginning with the word or containing the word “uniform” as it is misleading and false in its representation, and for any other relief for which the plaintiffs may be entitled.

COUNT VI
ORDINANCE 5781 VIOLATES 42 U.S.C. § 1983

134. Paragraphs 1 through 133 of this Complaint are incorporated herein by reference as if set forth word-for-word.

135. Section 1983 of Title 42, United States Code, provides in pertinent part: “Every person who under color of any statute, ordinance, regulation, custom, or usage, of any State ... subjects or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, Suit in equity, or other proper proceeding for redress....” (emphasis added).

136. Ordinance 5781 is intended to deprive citizens and other persons in Fayetteville of their rights, privileges and immunities by denying them the protected class of “religion” under Ark. Code Ann. § 16-123-102(8) of the Arkansas Civil Rights Act of 1993, and in particular by deleting that statutory protection vis-à-vis LGBT complainants.

137. Ordinance 5781 is intended to deprive citizens and other persons in Fayetteville of their rights, privileges and immunities to: Freedoms of religion and speech under the First Amendment to the Constitution of the United States; freedoms of speech, religion and conscience under Sections 6, 24 and 25 of Article 2 of the Arkansas Constitution; and due process and equal protection under the Fourteenth Amendments to the U.S. Constitution and Sections 3 and 8 of Article 2 of the Arkansas Constitution.

138. Ordinance 5781 also violates Equal Protection by allowing LGBT identifying individuals to write their own status in the law while denying that same right to religious individuals and the other protected classes.

139. The proponents of Ordinance 5781 acting under color of law are Lioneld Jordan, Matthew Petty, Mark Kinion, Alan Long, Adella Gray, Sarah Marsh, and Justin Tennant and through their actions the City of Fayetteville, and those proponents have acted to willfully deprive citizens and other persons in the City of Fayetteville of their civil rights as aforesaid, and said proponents are therefore liable, each of them individually, and jointly and severally, including the City under *Monell v. Department of Social Services*, 436 US 658 (1978), to the plaintiffs in compensatory and punitive damages, attorney fees and costs, and are further subject to injunctive and declaratory relief to be determined by the Court.

140. The Plaintiffs pray that this court finds that the Mayor, the Alderman voting for 5781, the City of Fayetteville have deprived their right under the Federal and Arkansas Constitution in violation of Ark. Code Ann. § 16-123-102(8), and 42 U.S.C. § 1983, and prays that this court enjoin any implementation of Ordinance 5781, for its attorneys fees and costs. WHEREFORE, the Plaintiff prays that:

A. This Court grant the Plaintiff's Emergency Temporary Restraining Orders ("TRO") filed concurrently with this pleading, and the terms and relief requested in the Plaintiffs TRO are incorporated by reference herein.

B. The Court issue a permanent injunction restraining the Washington County Election Commission from holding a Special Election on September 8th, 2015, or any other date; and from spending any further funds from the general treasury of either Washington County, Arkansas, or the City of Fayetteville.

C. For a Declaratory Judgment that Ordinance 5781 is void because the Mayor is not a member of the City of Fayetteville City Council, and therefore cannot be counted towards the 2/3 vote needed to suspend the rules and is therefore void because it did not comply with Ark. Code Ann. § 14-55-202 and thus violated the due process rights of all Fayetteville residents.

D. For a Declaratory Judgment that Ordinance 5781 is in violation of Amendment 7, as it requires the second (2nd) vote of the residence of Fayetteville when they have already voted against the original ordinance (Ordinance 5703) at a special election on December 9th, 2014 and any further requirement for the voters of Fayetteville to vote again is a violation of their constitutional rights.

E. For a Declaratory Judgment that Ordinance 5781 violates Ark. Code Ann. 14-1-403 as it creates a protected classification or prohibits discrimination on a basis not contained in state law, that it would by the terms of the ordinance not be able to be “adopted” until September 8th, 2015 or “enacted” until November 7th, 2015 and that it would at all times, and points relevant fail to become law regardless of the outcome of a September 8th, 2015 special election.

F. The court issue a permanent injunction barring the Election Commissioners of Washington County, Arkansas from using the ballot title containing the title of Ordinance 5781 because its use of the word “uniform” is misleading and false in its representation.

G. The Plaintiffs request that this honorable court issue a permanent injunction barring the Election Commissioners of Washington County Arkansas from using the ballot title beginning with the word or containing the word “uniform” as it is misleading and false in its representation, and for any other relief for which the plaintiffs may be entitled.

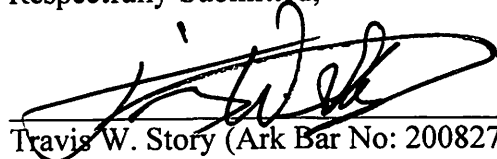
H. The Plaintiffs pray that this court finds that the Mayor, the Alderman voting for 5781, the City of Fayetteville have deprived their right under the Federal and Arkansas

Constitution in violation of Ark. Code Ann. § 16-123-102(8), and 42 U.S.C. § 1983, and prays that this court enjoin any implementation of Ordinance 5781.

- I. For attorney fees and costs.
- J. For all other relief for which the Plaintiffs may prove proper or appropriate.
- K. For any other relief for which the Plaintiffs may be entitled.

Respectfully Submitted,

By:



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Fayetteville, AR 72703
(479) 443-3700
(479) 443-3701 (fax)


Attorneys for Plaintiffs


[Verifications to follow:]


VERIFICATION OF SEPARATE PLAINTIFF
PROTECT FAYETTEVILLE f/k/a REPEAL 119

State of Arkansas)
) ss.
County of Washington)

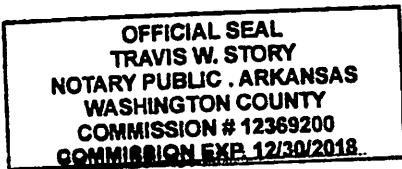
Protect Fayetteville, f/k/a Repeal 119, by and through its officers, on oath states that the facts and allegations set forth in the foregoing Verified Complaint and Motion for Declaratory Judgment are true and accurate to the best of my knowledge.

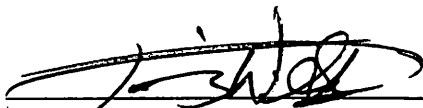
By: 
Duncan Campbell, President
Protect Fayetteville, f/k/a Repeal 119

By: 
Wendy Campbell, Vice President/Secretary
Protect Fayetteville, f/k/a Repeal 119

By: 
Jeremy Flanagan, Treasurer
Protect Fayetteville, f/k/a Repeal 119

Subscribed and sworn to before me, the undersigned Notary Public, this 31st day of August, 2015.



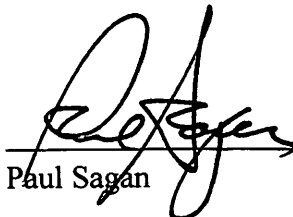

Notary Public

My Commission Expires: _____

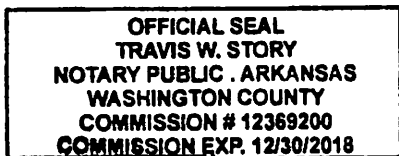
VERIFICATION OF SEPARATE PLAINTIFF
PAUL SAGAN

State of Arkansas)
) ss.
County of Washington)

Paul Sagan on oath states that the facts and allegations set forth in the foregoing Verified Complaint and Motion for Declaratory Judgment are true and accurate to the best of my knowledge.

By:  _____
Paul Sagan

Subscribed and sworn to before me, the undersigned Notary Public, this 31st day of August, 2015.



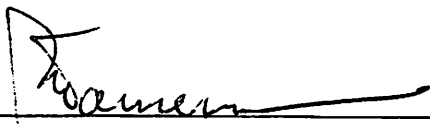
 _____
Notary Public

My Commission Expires: _____

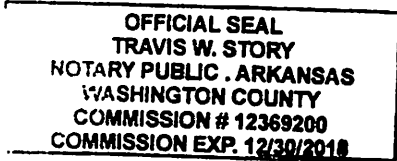
VERIFICATION OF SEPARATE PLAINTIFF
PETER TONNESSEN


State of Arkansas)
) ss.
County of Washington)

Peter Tonnesen on oath states that the facts and allegations set forth in the foregoing Verified Complaint and Motion for Declaratory Judgment are true and accurate to the best of my knowledge.

By: 
Peter Tonnesen

Subscribed and sworn to before me, the undersigned Notary Public, this 31st day of August, 2015.



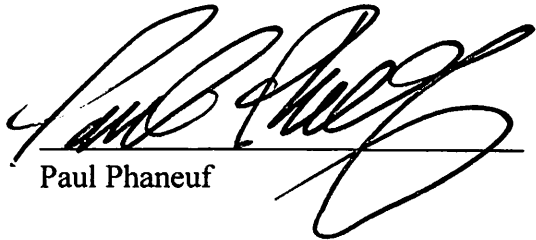

Notary Public

My Commission Expires: _____

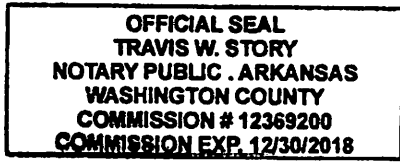
VERIFICATION OF SEPARATE PLAINTIFF
PAUL PHANEUF


State of Arkansas)
) ss.
County of Washington)

Paul Phaneuf on oath states that the facts and allegations set forth in the foregoing Verified Complaint and Motion for Declaratory Judgment are true and accurate to the best of my knowledge.


By: 
Paul Phaneuf

Subscribed and sworn to before me, the undersigned Notary Public, this 31st day of August, 2015.




Notary Public

My Commission Expires: _____

By: 
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