

IN THE ARKANSAS SUPREME COURT

**BONNIE MILLER, individually and on behalf of
ARKANSAS VOTERS FIRST and
OPEN PRIMARIES ARKANSAS,
BALLOT QUESTION COMMITTEES**

PETITIONERS

NO: CV—20-454

VS

**JOHN THURSTON IN HIS CAPACITY
AS ARKANSAS SECRETARY OF STATE**

RESPONDENT

PETITIONERS' RESPONSE TO MOTION TO INTERVENE

1. Petitioners respectfully request this Court deny the motion to intervene filed by Arkansans for Transparency and Jonelle Fullmer (collectively, “AFT”) because they have not shown they are entitled to intervene under Ark. R. Civ. P. 24(a) or (b) and the motion is untimely.

2. To intervene by right under Ark. R. Civ. P. 24(a)(2), AFT must show (1) that it has a recognized interest in the subject matter of the primary litigation; (2) that the interest might be impaired by the disposition of the suit; and (3) that the interest is not adequately represented by existing parties. *Certain Underwriters at Lloyd's, London v. Bass*, 2015 Ark. 178, 14, 461 S.W.3d 317, 326 (2015). All three requirements must be satisfied.

3. AFT lacks an interest in the subject matter of the litigation at this stage. While Petitioners concede that ballot question committees organized to

support or oppose certain ballot measures ordinarily may intervene when the full measure is before this Court, that is not the case in this limited writ request.

4. The Secretary of State has refused to count *any* signatures based on his erroneous reading and arbitrary application of one word in A.C.A. § 7-9-601.

5. The purpose of this limited proceeding at this stage is to seek an order from this Court that the Secretary must count the signatures.

6. AFT has not shown an interest in that limited circumstance.

7. But even if it had any interest, AFT does not even attempt to explain how its interest—at this limited stage—diverges from the interests of the State.

8. Instead, AFT merely provides the bald assertion that AFT “does not share the same interests as the Secretary of State (See Paragraph 8 of the *Motion to Intervene*)” without providing any basis, whatsoever, for that assertion at this early stage.

9. Therefore, far from *showing* they meet all three of the intervention elements noted above, AFT simply offers conclusory assertions that they do. Such assertions are insufficient.

10. Further, AFT’s intervention at this stage would certainly result in undue delay, which would prejudice Petitioners. As this Court knows well, time is of the essence in cases of this kind. And, overpopulating this case at this early and

limited stage, with additional parties whose interests are indistinguishable from the Secretary of State's, could only delay proceedings.

11. Further, motions to intervene must be timely—and AFT's *Motion to Intervene* is untimely. *See* Ark. R. Civ. P. 24(a); *see also Kelly v. Estate of Edwards*, 2009 Ark. 78, 2009 WL 412894. This Court ordered all responses to Petitioners' emergency writ petition to be submitted by Wednesday, July 22, 2020. AFT's decision to wait until late the next day, Thursday July 23, 2020, to seek intervention renders its motion untimely and subject to denial.

12. Finally, when a party seeking intervention will be left with the right to pursue an independent remedy against the parties in the primary proceeding, regardless of the outcome of the pending case, then the party has no interest that needs protecting by intervention of right. *Milberg, Weiss, Bershad, Hynes, & Lerach, LLP v. State*, 342 Ark. 303, 315, 28 S.W.3d 842, 850 (2000).

13. In paragraph 9 of its *Motion to Intervene*, AFT admits that it has alternative remedies available: “the Court's decision will likely decide issues of law and fact related to the initiative petitions that the Movants ***will later raise or litigate in potential challenges***.....” (Emphasis added.).

14. This candid admission, by itself, vitiates any claim that AFT purports to have that authorizes it to intervene under either ARCP Rule 24(a) or 24(b)--because the admission shows that AFT has independent remedies.

