

CV-20-454

In the Arkansas Supreme Court
An Original Action

Arkansas Voters First, a ballot question committee; Bonnie Miller, individually and on behalf of Arkansas Voters First; and Open Primaries Arkansas, a ballot question committee

Petitioners

v

CV-20-454

John Thurston, in his official capacity as Secretary of State; the State Board of Election Commissioners

Respondents

Arkansans for Transparency, a ballot question committee; and Jonelle Fulmer, individually and on behalf of Arkansans for Transparency

Intervenors

Third Amended Consolidated Original Action Complaint

For their Third Amended Consolidated Original Action Complaint, Bonnie Miller, Arkansas Voters First (“AVF”), and Open Primaries Arkansas (collectively, “Petitioners”) state:

1. The Petitioners incorporate by reference their Consolidated Original Petition, Amended Consolidated Original Petition, Second

Amended Consolidated Original Action Complaint and Supplement to the Second Amended Consolidated Original Action Complaint. The purpose of this Third Amended Consolidated Original Action Complaint is to bring into question new allegations regarding the validity of the petition concerning the Arkansas Citizens' Redistricting Commission Amendment. This Third Amended Consolidated Original Action Complaint is necessary as the result of correspondence from the Arkansas Secretary of State dated August 11, 2020, declaring that AVF failed to submit enough valid signatures to qualify for a cure period. The Secretary of State contended that AVF turned in only 64,722 signatures of registered voters when the minimum number to qualify for the 30-day cure period is 66,864. A copy of that letter is attached hereto as **Exhibit 1**.

2. In compliance with Ark. Code. § 7-9-101, *et seq.*, AVF submitted a valid initiative petition to the Arkansas Secretary of State on July 6, 2020, in support a proposed constitutional amendment, the Arkansas Citizens' Redistricting Commission Amendment (Redistricting Amendment). AVF submitted 15,118 petition parts

(pages) containing 98,728 signatures. See July 6, 2020 Signature Count Affidavit attached hereto as **Exhibit 2**.

3. On July 23, 2020 the Arkansas Secretary of State sent a letter to AVF stating that 4,579 signatures had been culled from the original submission leaving 90,493 facially valid petitions. The letter is attached hereto as **Exhibit 3**.

4. According to the Signature Count Affidavit, AVF submitted 98,728 signatures. See, **Exhibit 2**. Per the July 23, 2020, letter it sent to AVF regarding the Arkansas Citizens' Redistricting Commission Amendment, the Secretary of State contends that AVF only submitted 95,072 (90,493 facially valid + 4,579 culled) signatures in support of the petition-- a difference of 3,656 signatures. AVF has learned that the difference in the count is that the Secretary of State alleges that some boxes containing the Redistricting Petition were submitted with the Open Primaries petition. This is not accurate. There is no dispute that these petitions were in the office of the Secretary of State at or before the close of business on July 6, 2020. AVF has obtained copies of the petition parts, has reviewed them and has validated the number of registered voters on these petitions. AVF contends that there are in

excess of 2,400 registered voters who signed the petitions. This number exceeds the number that that Secretary of State contends that AVF needs in order to qualify for the cure period.

5. In addition to the petitions culled because they were allegedly turned in with the Open Primaries petition, the Secretary of State wrongly culled an additional 4,579 signatures.

6. One reason that the Secretary of State gave for culling numerous petitions was that he alleged signature cards from canvassers were not turned in with the petitions on July 6, 2020. AVF did, in fact, turn in the signature cards on July 6, 2020. Additionally, after reviewing the petition parts culled by the Secretary of State, on August 5, 2020, AVF sent correspondence to the Secretary of State again enclosing the allegedly omitted signature cards. This was done after the Secretary of State notified AVF that he had culled petitions, but prior to the Secretary of State making a determination on August 11, 2020, that the petition was insufficient. These petition parts should be counted.

7. The Secretary of State also culled certain petition parts because either the canvasser verification was before the date the

petition was signed or the canvasser was not registered before the petition was signed. The majority of these petition part culls were due to a date error made by the individual signing the petition part. For example, one petitioner put his birth date in 1965 as the date of signing. The Secretary of State culled this entire petition part, including the signatures of other facially valid signatures because of this error. Those individuals who did not make an error were disenfranchised by this process. Another common example of a reason given by the Secretary of State for culling petition parts is when a person signing the petition listed a date that was after the date of the notary, but, on the face of the petition, one can easily see that the date was an honest error made by the person signing the petition. That entire petition part was culled by the Secretary of State, thereby disenfranchising the other individuals who signed the petition part. Another common example of a reason given by the Secretary of State for culling petition parts were instances in which an individual listed the date of signing after July 6, 2020, such as July 7, 2020. The petition parts were delivered to the Secretary of State on July 6, 2020. In order for an individual to sign a petition on or after July 7, 2020, they would have had to have gone to the Secretary of

State's office, located the petition part in a box of petitions sorted by counties, found a blank spot, signed it and placed it back in the box. Instead, the person undoubtedly signed the petition on or before July 6th and made an honest error. However, the Secretary of State culled that entire petition part, disenfranchising not only the person making the error, but all other individuals who signed the petition part. The Secretary of State's strict application of the applicable statute is unconstitutional, as is the statute. AVF raised this issue in the Supplement to the Second Amended Consolidated Original Action Complaint and incorporates and restates that allegation, herein.

8. AVF validated every signature that it turned in to the Secretary of State prior to turning in the petition parts. AVF's internal procedure for validating a signature as one of a registered voter is more stringent than that of the Secretary of State. AVF requested and obtained from the Secretary of State a list of all of the registered voters that the Secretary of State verified signed the petition parts submitted. The Secretary of State's contention that there were only 64,722 signatures of registered voters is simply wrong. AVF submitted at least an additional 10,000 (Ten Thousand) signatures of registered voters in

support of the Redistricting Petition that should have been counted by the Secretary of State.

9. On August 5, 2020, AVF submitted an additional 45,896 facially valid signatures to the Secretary of State. See Second Signature Affidavit attached hereto as **Exhibit 4**. AVF has submitted to the Secretary of State at least 144,624 signatures.

WHEREFORE, AVF respectfully asks this Court to:

- (1) enter a preliminary injunction, compelling the Arkansas Secretary of State to begin counting and verifying the signatures provided by Arkansas Voters First on August 5, 2020, immediately;
- (2) order the Secretary of State to provide AVF with a “cure period” in light of the fact that AVF submitted in excess of 66,864 signatures on July 6, 2020;
- (3) send the factual matters raised herein to a special master; and
- (4) award Petitioners all other just and proper relief to which they are entitled.

Respectfully Submitted,

/s/ Adam H. Butler

Adam H. Butler

AR Sct. # (2003-007)

Robert F. Thompson

AR Sct # (1997-232)

414 West Court Street
Paragould, AR 72450
870.239.9581
abutler@paragouldlawyer.com

CERTIFICATE OF SERVICE

I, Adam H. Butler, hereby certify that on August 17, 2020, I electronically filed the foregoing with the Clerk of the Court using the eFlex filing system, which shall serve all counsel of record.

/s/ Adam H. Butler



JOHN THURSTON
—
ARKANSAS SECRETARY OF STATE

David A. Couch
Attorney at Law
1501 N. University Ave., Suite 228
Little Rock, AR 72207

via electronic mail to arhog@me.com

August 11, 2020

Re: Declaration of Insufficiency
Petition Sponsor: Arkansas Voters First
Petition: Citizens Commission for an Independent Redistricting Commission

Dear Mr. Couch:

On July 24, 2020, the Arkansas Supreme Court entered a *per curiam* directing me to “continue facial review of the petition regarding redistricting submitted by Arkansas Voters First and to begin verifying signatures on both initiative petitions.” My office immediately complied with the directive.

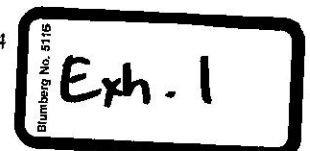
My declaration of insufficiency after facial review was communicated to you by letter dated July 23, 2020. I have now completed verification of the 90,493 facially valid signatures from the initial count.

Pursuant to Article 5, § 1 of the Constitution of Arkansas, at least 66,864 (75% of 89,151) signatures from registered Arkansas voters are required to correct or amend an insufficient petition. I have verified that a total of 64,722 registered Arkansas voters signed the petition, thus the petition does not qualify for a cure period.

Sincerely,

A handwritten signature in cursive script that reads "John Thurston".

John Thurston
Secretary of State





JOHN THURSTON

ARKANSAS SECRETARY OF STATE

FILED

JUL 06 2020

Arkansas
Secretary of State

Receipt for Initiative or Referendum Petition

Name of Petition:

CITIZENS' COMMISSION FOR AN INDEPENDENT REGISTRATION COMMISSION

Petition Sponsor:

Arkansas voters First

Person Designated to Receive Information from the Secretary of State:

Name: Bonnie Miller

Phone Number: 742-792-5289

Address: 21 E. Center St. Apt. 203, mailing: 1400 E. Wellesley Pl., Fayetteville, AR 72703

Email Address: bonniehmillers@gmail.com

Date Petition Text was Published: 5/12/2020

Name of Newspaper: The Daily Democrat

List of the 15 counties designated/chosen by the Petition Sponsor:

Washington, Saline, Pulaski, Mississippi, Lonoke,
Jefferson, Hot Springs, Garland, Franklin, Craighead,
Cleveland, Cleburne, Chicot, Bradley, Benton,
etc

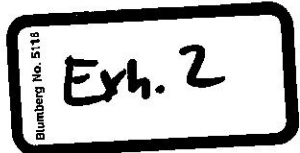
This petition submitted to the Arkansas Secretary of State on the 10th day of July,
2020 at 11:53am (time).

Bonnie Miller

Petition Representative

Secretary of State Representative

State Capitol • Suite 256 • 500 Woodlane Street • Little Rock, Arkansas 72201-1094
501-682-1010 • Fax 501-682-3510
e-mail: arsos@sos.arkansas.gov • www.sos.arkansas.gov



Signature Count Affidavit

Name of Petition: CITIZENS' INITIATIVE FOR AN INDEPENDENT REPRESENTING COMMISSION

Petition Sponsor: ARKANSAS VOTERS FIRST

I certify that a total of 15,118 Petition Parts containing 98,720 signatures are being filed.

Sponsor Signature: Yvonnei Mule Date: 7/14/2020

State of Arkansas

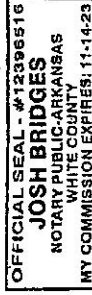
County of Pulaski

Subscribed and sworn before me this 6th day of July 2020

[Legible Notary Seal]

Signature of Notary Public

My Commission expires: 11-14-23



FILED

JUL 06 2020

Arkansas
Secretary of State

Paid Canvasser Certifications - § 7-9-111(f)(2)

Name of Petition: CHIZZO'S INITIATIVE FOR AN INDEPENDENT DISTRICTING COMMISSION

I am submitting a final total paid canvasser list and a signature card for each paid canvasser on this total paid canvasser list in compliance with § 7-9-111(f) and § 7-9-601(a).

I have provided a copy of the most recent edition of the Secretary of State's initiatives and referenda handbook to each paid canvasser before the paid canvasser solicited signatures on this petition.

I have explained the requirements under Arkansas law for obtaining signatures on an initiative or referendum petition to each paid canvasser before the paid canvasser solicited signatures on this petition.

Date: 7/6/2020

Sponsor Name (Print): Sammie Miller, Arkansas Voters First

Sponsor Signature: Sammie Miller

FILED

JUL 06 2020

Arkansas
Secretary of State



JOHN THURSTON
ARKANSAS SECRETARY OF STATE

David A. Couch
Attorney at Law
1501 N. University Ave., Suite 228
Little Rock, AR 72207

via electronic mail to arhog@me.com

July 23, 2020

Re: Revised Declaration of Insufficiency
Petition Sponsor: Arkansas Voters First
Petition: Citizens Commission for an Independent Redistricting Commission

Dear Mr. Couch:

After completion of the intake analysis procedure for the above referenced petition, a total of 4,579 signatures were culled, leaving a total of 90,493 signatures on the face of the petition.

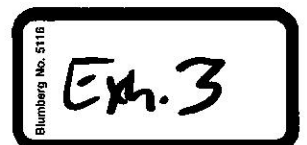
As more fully explained in my preliminary letter of July 14, 2020, Arkansas Voters First did not comply with Ark. Code Ann. § 7-9-601(b)(3) thus none of the signatures solicited by the paid canvassers may be counted *for any purpose* pursuant to Ark. Code Ann. § 7-9-601(f).

Pursuant to Ark. Code Ann. § 7-9-126(d), the petition must be declared insufficient and this office "shall not accept and file any additional signatures to cure the insufficiency of the petition on its face."

Sincerely,

A handwritten signature in cursive script that reads "John Thurston".

John Thurston
Secretary of State





JOHN THURSTON

ARKANSAS SECRETARY OF STATE

2nd Submission

FILED

AUG 05 2020

Arkansas Secretary of State

Receipt for Initiative or Referendum Petition

Name of Petition:

The Arkansas Citizens' Redistricting Commission Amendment

Petition Sponsor:

Arkansas Voters First

Person Designated to Receive Information from the Secretary of State:

Name: Bonnie Miller

Phone Number: 760-792-5289

Address: 21 E. Center St. Apt. 203, Fayetteville, AR 72701

Email Address: bonniehmillers@gmail.com

Date Petition Text was Published: 5/17/2020

Name of Newspaper: Arkansas Democrat Gazette

List of the 15 counties designated/chosen by the Petition Sponsor: (see attached)

Jettison, Pulaski, Washington, Faulkner, Monroe, Bradley, Greene, Saline, Lonoke, Craighead, Crittenden, Lee, Cleveland, Mississippi, Dallas, Cleburne, Garland, Crawford, Sebastian, Madison, Union, St. Francis, Hot Springs, Chicot, Van Buren, Baxter, Conway, Phillips, Union, White, Perry, Drew, Poinsett, Polk, Grant

This petition submitted to the Arkansas Secretary of State on the 5th day of August

2020, at 2:27 (time).

[Signature of Bonnie Miller]

Petition Representative

[Signature of John Thurston]

Secretary of State Representative

Blumberg No. 0116
Exh-4

2nd Submission

Paid Canvasser Certifications - § 7-9-111(f)(2)

Name of Petition: THE ARKANSAS CITIZENS' REDISTRICTING COMMISSION AMENDMENT

I am submitting a final total paid canvasser list and a signature card for each paid canvasser on this total paid canvasser list in compliance with § 7-9-111(f) and § 7-9-601(a).

I have provided a copy of the most recent edition of the Secretary of State's initiatives and referenda handbook to each paid canvasser before the paid canvasser solicited signatures on this petition.

I have explained the requirements under Arkansas law for obtaining signatures on an initiative or referendum petition to each paid canvasser before the paid canvasser solicited signatures on this petition.

Date: 8/5/2020

Sponsor Name (Print): ARKANSAS VOTERS FIRST

Sponsor Signature: Monnie Muller

FILED

AUG 05 2020

Arkansas
Secretary of State

2nd Submission

Signature Count Affidavit

Name of Petition: The Arkansas Citizens' Redistricting Commission Amendment

Petition Sponsor: Arkansas Voters First

I certify that a total of 8,033 Petition Parts containing 45,896 signatures are being filed.

Sponsor Signature: [Signature] Date: 8/5/2020

State of Arkansas

County of Pulaski

Subscribed and sworn before me this 5th day of August 2020.

Signature of Notary Public [Signature]

My Commission expires: 11-14-23

[Legible Notary Seal]



FILED

AUG 05 2020

Arkansas
Secretary of State

The Arkansas Citizens' Redistricting Commission Amendment

Jefferson, Pulaski, Washington, Faulkner, Benton, Bradley, Greene, Saline, Lonoke, Craighead, Crittenden, Lee, Cleveland, Mississippi, Dallas, Cleburne, Garland, Crawford, Sebastian, Madison, Union, St. Francis, Hot Spring, Chicot, Van Buren, Baxter, Conway, Phillips, Lincoln, White, Perry, Drew, Poinsett, Polk, Grant

8033 pages

45,896 signatures

FILED

AUG 05 2020

Arkansas
Secretary of State