

SUPREME COURT OF ARKANSAS

No. CV-20-454

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.

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

Opinion Delivered: August 27, 2020

AN ORIGINAL ACTION IN THE
SUPREME COURT OF ARKANSAS

PETITION DISMISSED AS MOOT
IN PART.

RHONDA K. WOOD, Associate Justice

The Secretary of State notified petitioners that their two proposed constitutional amendments lacked enough signatures for placement on the ballot this November. Initially, the Secretary rejected the amendments because petitioners failed to verify that their paid canvassers had passed criminal-background checks. Instead, petitioners submitted an affidavit

stating that “criminal background check[s] have been timely acquired.” The Secretary concluded that this affidavit fell short of statutory requirements.

Petitioners filed this original action against the Secretary as a result. After the petition had been filed, the State Board of Election Commissioners reviewed the popular name and ballot title for the present “open primary” amendment. The Board rejected both as misleading and refused to certify the amendment for placement on the ballot. Petitioners then filed a separate count against the Board. Petitioners alleged that the Board’s decision was erroneous and, in any event, the legal regime whereby the Board certifies ballot titles was unconstitutional. We agreed to bifurcate the proceedings between counts 1 and 2 (criminal-background affidavit and signature issues) and this count 3 (popular name and ballot-title issues). *See Miller v. Thurston*, CV-20-454 (Ark. July 28, 2020).

Today, we concluded in a companion case that the criminal-background affidavit was fatally flawed for both proposed amendments. *Miller v. Thurston*, 2020 Ark. _____. Neither amendment has enough signatures for ballot placement. So even if we agreed that the Board’s decision was incorrect or that the statutory review regime was unconstitutional, the proposed open-primary amendment would fail. The issues in Count 3 are therefore moot because our judgment would have no practical legal effect on an existing controversy. *See Shipp v. Franklin*, 370 Ark. 262, 267, 258 S.W.3d 744, 748 (2007). We will not address moot issues or issue advisory, academic opinions. *Zook v. Martin*, 2018 Ark. 304, at 2. We dismiss count 3 of the petition as moot.

Petition dismissed as moot in part.

Mandate to issue immediately.

HART, J., dissents.