

IN THE ARKANSAS SUPREME COURT

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

PETITIONER

v.

No. CV-20-454

**JOHN THURSTON, in his capacity as
Arkansas Secretary of State**

RESPONDENT

**RESPONSE TO MOTION TO EXPEDITE AND
FOR PRELIMINARY INJUNCTION**

For his Response to Motion to Expedite and for Preliminary Injunction, Secretary of State John Thurston states:

1. Secretary Thurston admits that Petitioner filed an original petition herein on July 17, 2020, as alleged in paragraph 1. Thurston admits that two separate names and ballot titles were submitted to the Secretary of State's Office, but denies that they were submitted for his approval. The Secretary of State does not approve ballot titles or popular names. The State Board of Election Commissioners is statutorily tasked with approving or disapproving ballot titles and popular names.

2. Thurston denies the characterization that he has “failed to count any of the signatures submitted in support of the valid initiative petitions,” as alleged in paragraph 2. Thurston is currently still in the process of performing a facial review of the submitted petitions pursuant to the normal intake process. Further, the statutory 30-day period for analyzing the petitions does not run until August 5, 2020. Thurston states that he has notified Arkansas Voters First that it has been determined that the signatures on the two petitions that it submitted cannot be counted “for any purpose” pursuant to Ark. Code Ann. § 7-9-601. Further, Thurston has notified Arkansas Voters First that the intake analysis is ongoing and that there may be other reasons (e.g. failure to obtain the requisite number of signatures on the face of the petition after culling) that may disqualify either or both petitions. Thurston denies that he is or has done anything to thwart the initiative process in violation of Arkansas law. To the contrary, Arkansas Voters First submitted petitions that violated Arkansas law and thus thwarted its own efforts in

the initiative process. Thurston denies that an order compelling the counting of the signatures and/or allowing the sponsor a “cure-period” of at least 30 days, or, with the exception of expedited consideration, an order for any other relief Petitioner is seeking in the motion.

3. Thurston states that the two letters sent to Arkansas Voters First (dated July 14 and 17, 2020) speak for themselves. Note, Petitioner has attached the July 17 letter as Exhibit 1 and 2 to her motion. The July 14 letter is however attached to the original petition.
4. Thurston admits that initiative petitions submitted in 2020, must contain 89,151 signatures of registered voters, as stated in paragraph 4. Thurston admits that the deadline to certify any proposed constitutional amendments to the County Boards of Election Commissioners is August 20, 2020. Thurston denies the remaining allegations in paragraph 4.
5. Thurston denies that counting the number of valid signatures is the first step in the process of analyzing

initiative petitions. There are a number of other steps that must be taken in the intake process before the Secretary determines whether signatures on a petition are of voters who were registered at the time they signed the petition. These steps include, but are not limited to, determining whether or not the thousands of petition parts have been notarized properly, whether or not the signatures on each petition part were solicited by a canvasser who was properly registered with the Secretary prior to soliciting signatures, whether or not a signor signed a petition part after the petition part was notarized, whether or not the entire text of the proposed amendment is attached to each petition part, whether or not the canvassers signed each petition part submitted, and whether or not the sponsor has sorted the petition parts by county as required by law). The more petitions submitted, the longer the intake process lasts and three petitions were submitted this cycle. As stated previously, the intake process for the petitions at issue herein is not yet complete. There could be a number of

reasons that disqualify either or both petitions without even verifying and counting the signatures. Thurston denies the remaining allegations in paragraph 5.

6. Thurston denies that Petitioner is entitled to an order for an immediate count of the valid signatures on the two petitions at issue. As stated previously, the intake process is not yet complete and there could be a number of reasons that disqualify either or both to the petitions at issue herein. An order for immediate count would be premature because Petitioners claims are not ripe. Likewise, the request that an order requiring a cure period should be denied for the same reasons. The law does not allow for a cure period if a sponsor submits a petition that does not meet certain initial requirements.

7. Thurston denies that Petitioner has demonstrated that she will suffer irreparable harm if the Secretary of State does not begin validating and counting signatures immediately. If the measures do not meet the statutory requirements, the sponsor of the petitions caused the harm, not the Secretary.

Thurston has demonstrated that the intake process is not yet complete and thus Petitioner may not have a right to have the signatures validated and counted. Simply put, Petitioner is not entitled to an injunction when her claim is not ripe.

8. Thurston denies that Petitioner has demonstrated a likelihood of success on the merits. Petitioner has made no attempt to demonstrate why the Secretary should alter the statutory framework for analyzing initiative petitions. Nor has Petitioner cited any valid argument that the signatures on either of the two petitions should be counted when the requirement in Ark Code Ann. § 7-9-601(b)(3) that the paid canvassers who solicited signatures be certified as having *passed* a criminal background check prior to soliciting signatures was violated by the sponsor. Further, Petitioner has not cited any valid argument to rebut the plain language of Ark. Code Ann. § 7-9-601(f) that states that the Secretary *shall not* count any signatures obtained in violation of § 7-9-601(b)(3) *for any purpose*. The statute does not state “for any

purpose other than to determine if a sponsor is entitled to a cure period.” Additionally, Petitioner has not cited any valid argument to rebut Special Master Mark Hewett’s findings and recommendation in *Arkansans for Healthy Eyes v. Thurston*, Arkansas Supreme Court Case No. CV-20-136, that Safe Surgery Arkansas’ referendum petition should not appear on the November 2020 ballot because SSA – like the sponsor of the two petitions at issue herein – certified that the majority of its paid canvassers “acquired” criminal background checks instead of certifying that they had “passed” the checks before they solicited signatures. Finally, Petitioner cannot demonstrate a likelihood of success on the merits in light of this Court’s opinion in *Safe Surgery Arkansas v. Thurston*, 2019 Ark. 403, 591 S.W.3d 293. In that case, the Secretary did not count the signatures on SSA’s referendum petition because SSA had not met certain requirements for its paid canvassers pursuant to Act 376 of 2019. This Court held, 1) that the emergency clause in Act 376 of 2019 was insufficient, thus it was not in effect until 90

days after the General Assembly adjourned; and 2) because SSA filed its petition with the Secretary on the 89th day after the General Assembly adjourned, the canvasser requirements were not yet in effect and the signatures on its petition should be counted. Although this Court did not specifically hold, it can be logically argued that had Act 376 been in effect when SSA filed its petition, the Secretary would not have been ordered to count the signatures.

9. Thurston states that Ark. R. Civ. P. 65(b) speaks for itself. Thurston denies that this Court should issue a restraining order without notice in this matter.
10. Thurston denies that this Court should issue an immediate, temporary restraining order directing the counting of the petition signatures begin immediately. The intake process has not yet been completed and the statutory 30-day period has not yet expired. There may be other reasons to deny certification of either or both of these petitions. At the time of this filing, intake is nearly complete and, pending final review and double-checking of figures, it appears that even if the

sponsor had properly certified that its paid canvassers had passed a criminal background check, at least one of the two petitions at issue herein does not have the requisite 89,151 signatures on its face after the culling of improperly collected signatures in the intake process.

11. Thurston states that Ark. R. Civ. P. 65(b)(3) speaks for itself.

12. Petitioner's motion is titled "Motion to Expedite and for Preliminary Injunction," but she only asks for a TRO and a prompt hearing for preliminary injunction. As state previously, Thurston denies that a TRO or preliminary injunction should issue. Thurston admits, however, that an expedited decision in this matter is desirable due to pending election deadlines.

WHEREFORE, Secretary of State John Thurston prays that the notion be denied and dismissed; for expedited consideration; and for all other just and proper relief.

Respectfully submitted,

JOHN THURSTON
Arkansas Secretary of State

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CERTIFICATE OF SERVICE

I, Gary L. Sullivan, hereby certify that on July 21, 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/ Gary L. Sullivan