

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; and
The State Board of Election Commissioners**

RESPONDENT

**RESPONSE TO MOTION TO EXPEDITE,
FOR A PRELIMINARY INJUNCTION,
AND TO REFER ADDITIONAL MATTERS TO THE SPECIAL
MASTER**

For his Response to Motion to Expedite, for a Preliminary Injunction, and to Refer Additional Matters to the Special Master, Secretary of State John Thurston states:

1. The Secretary admits that Arkansas Voters First timely submitted two initiative petitions, one regarding a redistricting commission and one regarding open primaries, on July 6, 2020. The Secretary denies that either petition was valid. Affirmatively, the sponsor of the petitions failed to comply with Arkansas law in that it did not certify that its paid canvassers

had passed a criminal background check prior to soliciting signatures on the petitions. The failure to comply with the law notwithstanding, both petitions failed because they do not contain the number of valid signatures of registered voters required by the Arkansas Constitution.

2. The Secretary admits that he notified AVF that its petitions failed because it had not complied with the criminal background certification requirement. The Secretary subsequently notified AVF that he would continue the intake analysis of the petitions to determine if additional reasons existed that would disqualify the petitions, which turned out to be the case.
3. The Secretary admits that AVF filed this original action on July 17, 2020. The Secretary denies that AVF had no other remedies.
4. The Secretary admits that AVF filed its first amendment to the original action on July 21, 2020.
5. The Secretary admits that he notified AVF that the intake analysis of the open primaries petition revealed additional

reasons that disqualified the petition for certification on July 21, 2020.

6. The Secretary admits that he determined that the open primaries petition had only 88,623 signatures on its face after the culling of signatures required by Ark. Code Ann. § 7-9-126.
7. The Secretary admits that the State Board of Election Commissioners voted not to certify the sufficiency of the popular name and ballot title of the open primaries petition.
8. The Secretary admits that on July 23, 2020, he notified AVF that the redistricting petition contained 90,493 facially valid signatures and that 4,579 signatures were culled. The Secretary admits that AVF comingled petition parts for its redistricting petition with its petition parts for its open primaries petition. The Secretary denies any assertion that the petitions were simultaneously filed. Affirmatively, one petition was submitted on the morning of July 6, 2020. The other petition was submitted late afternoon, approximately 4:59 p.m. as the office was about to close. The Secretary should not be required to “scour other petitions to fill missing holes.” Special

Master's Report, ¶ 50(c), August 10, 2020. The Secretary is without knowledge to admit or deny that AVF has validated the number of registered voters on the redistricting petition parts that were comingled with the open primaries petition parts, therefore denies same. The Secretary denies that the reasons for culling the other 4,579 was flawed. The Secretary denies any remaining allegations in paragraph 8.

9. The Secretary admits that on July 24, 2020, this Court appointed the Honorable John Fogleman as special master to hear factual issues arising under the Amended Consolidated Original Petition, granted Petitioners' Motion to Expedite, and for a Preliminary Injunction, and also granted a provisional cure period.
10. The Secretary admits that on July 27, 2020, AVF filed a Second Amended Consolidated Original Action Complaint and that the matters raised in the first amended complaint were designated as Count 1 in the second amended complaint.

11. The Secretary admits that AFV added the additional grounds for culling signatures on the open primaries petition as Count 2 in the second amended complaint.
12. The Secretary admits that on July 28, 2020, this Court referred Count 2 to the Master for inclusion in the existing proceedings and expanded his authority to consider the factual issues in Count 2. The Secretary admits that this Court also granted Petitioners' Motion to Expedite.
13. The Secretary admits that this Court bifurcated Count 3 (ballot title/popular name challenge) and set a briefing schedule.
14. The Secretary admits that on July 29, 2020, Petitioners filed a supplement to the second amended complaint.
15. The Secretary admits that on August 5, 2020, AVF submitted additional signatures to the Secretary of State's Office during the provisional cure period. The Secretary is without knowledge to admit or deny that the additional signatures are facially valid, therefore must deny same. Affirmatively, to be facially valid, each petition part submitted

must withstand the intake analysis pursuant to Ark. Code Ann. § 7-9-126, and that it is highly unlikely that the approximately 45,896 signatures are all facially valid.

16. The Secretary admits that on August 11, 2020, he notified AVF that the redistricting petition lacked the constitutionally required number of signatures to qualify for a cure period, as stated in paragraph 16.
17. The Secretary denies that the determination that there were 64,722 valid signatures of registered voters on the redistricting petition is wrong. The Secretary denies that AFV submitted at least an additional 10,000 signatures that should have been counted.
18. The Secretary admits that he intends to follow the law, which prohibits him from counting the signatures submitted on August 5, 2011, as well as the signatures previously culled.
19. The Secretary admits that the process of counting and verifying the number of valid signatures is but one step in the process. Affirmatively, the Secretary states that the law prohibits him from counting and verifying signatures submitted

that do not comply with the law. The Secretary has performed his duties and determined that the petition lacked the sufficient number of signatures to qualify for a cure period or to be certified to the ballot. If the petition is doomed, it is because the sponsor did not collect enough signatures. The Secretary denies that he has refused to perform his duties.

20. The Secretary denies that he should be ordered to immediately count the valid signatures submitted on August 5, 2020. Affirmatively, the Secretary has counted the valid signatures properly submitted with the redistricting petition on July 6, 2020.

21. The Secretary denies that Petitioners have demonstrated that they will suffer irreparable harm. Any harm Petitioners suffer is of their own doing. The Secretary denies that any signatures were erroneously culled. The Secretary denies that he has refused to perform his duties. The Secretary denies that the measure will be unlawfully defeated if he is not ordered to immediately count the improperly submitted signatures.

22. The Secretary denies that Petitioners have demonstrated a likelihood of success on the merits. The Secretary has followed the law and denies that his actions are disingenuous, thinly-veiled stalling tactics that are not supported by Arkansas law. Affirmatively, the Secretary has demonstrated at every step in the process that there is a certainty that Petitioners cannot succeed on the merits.
23. The Secretary denies that the Court should allow Petitioners yet another proverbially bite at the apple by issuing another restraining order.
24. The Secretary denies that the Court should issue an immediate, preliminary injunction directing him to immediately begin counting improperly submitted signatures or signatures submitted pursuant to the provisional cure. The Petitioners did not qualify for a cure period and the tax-payers' money should not be wasted on this futile endeavor.
25. The Secretary admits that consideration of the motion should be expedited.

26. The Secretary denies each and every material allegation in the motion that is not specifically admitted herein.

27. The Secretary denies that Petitioners are entitled to any of the relief requested.

WHEREFORE, Secretary of State John Thurston prays that the motion be denied; and for all other proper relief.

Respectfully submitted,

JOHN THURSTON
Arkansas Secretary of State

By: /s/ Gary L. Sullivan
Gary L. Sullivan
Ark Bar No. 92051
Managing Attorney
Arkansas Secretary of State's Office
500 Woodlane St., Suite 256
Little Rock, Arkansas 72201
Phone: (501) 682-8515
gary.sullivan@sos.arkansas.gov

Attorney for Respondent

CERTIFICATE OF SERVICE

I, Gary L. Sullivan, hereby certify that on August 19, 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