

SUPREME COURT OF ARKANSAS

No. CV-20-454

BONNIE MILLER, INDIVIDUALLY
AND ON BEHALF OF ARKANSAS
VOTERS FIRST AND OPEN
PRIMARIES ARKANSAS, BALLOT
QUESTION COMMITTEES
PETITIONERS

Opinion Delivered: August 27, 2020

AN ORIGINAL ACTION

V.

JOHN THURSTON, IN HIS
CAPACITY AS ARKANSAS
SECRETARY OF STATE, AND 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

DISSENTING OPINION.

JOSEPHINE LINKER HART, Justice

For the reasons stated in my dissent with regard to counts I and II of the above-referenced case, count III is not moot. Accordingly, this court should address the constitutionality question. Put simply, the decision by the State Board of Election Commissioners (SBEC) to disqualify the ballot initiative exceeds its constitutional authority. Today's decision allows a non-elected board of political appointees to annul the first power retained by the citizens of this state in our constitution. Ark. Const. Art. 5, § 1.

As the petitioners note, the plain language of Amendment 7 provides that the ballot title approval process is ministerial in nature subject to a decision by the Arkansas Supreme Court if it is challenged in an original action. Our constitution states:

Title. At the time of filing petitions the exact title to be used on the ballot shall by the petitioners be submitted with the petition, and on state-wide measures, shall be submitted to the State Board of Election Commissioners, who shall certify such title to the Secretary of State, to be placed upon the ballot; on county and municipal measures such title shall be submitted to the county election board and shall by said board be placed upon the ballot in such county or municipal election.

Ark. Const. art. 5, § 1. Amendment 7 does not give SBEC the authority to review a ballot title for sufficiency. The “sufficiency” of the petition, including the ballot title and popular name, is “a matter of law to be decided by this court. *Bailey v. McCuen*, 318 Ark. 277, 284, 884 S.W.2d 938, 942 (1994). We have original and exclusive jurisdiction” over the sufficiency of statewide petitions. *Id.* Under the separation-of-powers doctrine in our constitution, the legislature does not have authority to cede our authority to decide such issues to a quasi-executive agency acting in a quasi-judicial capacity.

I dissent.