

CV-20-454

IN THE ARKANSAS SUPREME COURT

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

PETITIONERS

V. CASE NO. CV 20-454

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

RESPONDENT

**ARKANSANS FOR TRANSPARENCY,
A BALLOT QUESTION COMMITTEE, and
JONELLE FULMER, individually and on behalf of
ARKANSANS FOR TRANSPARENCY**

INTERVENORS

**INTERVENORS' ANSWER TO PETITIONERS' THIRD AMENDED
CONSOLIDATED ORIGINAL ACTION COMPLAINT**

Come now Intervenors Arkansans for Transparency, a ballot question committee, and Jonelle Fulmer, individually and on behalf of Arkansans for Transparency, by and through their undersigned counsel, and for their Answer to Petitioners' Third Amended Consolidated Original Action Complaint ("Complaint"), state as follows:

1. Intervenors incorporate by reference their Answers/Responses to all previous complaints and supplements filed by Petitioners to date. Intervenors admit

that the Secretary of State issued a letter to Arkansas Voters First (AVF) on August 11, 2020 and state that the letter speaks for itself. All remaining allegations in paragraph 1 are denied.

2. Intervenors deny the allegations in paragraph 2.

3. Intervenors admit that the Secretary of State sent a letter to AVF on July 23, 2020 and state that the letter speaks for itself. All remaining allegations in paragraph 3 are denied.

4. Intervenors admit that the Secretary of State sent a letter to AVF on July 23, 2020 and state that the letter speaks for itself. All remaining allegations in paragraph 4 are denied.

5. Intervenors deny the allegations in paragraph 5.

6. Intervenors admit that the Secretary of State culled petition parts because they lacked required signature cards. All remaining allegations in paragraph 6 are denied.

7. Intervenors admit that the Secretary of State culled petition parts under applicable statutes. Intervenors admit that Petitioners previously filed a “Supplement to the Second Amended Consolidated Original Action Complaint” but deny that it was proper, deny that it raised a constitutional claim regarding “strict application of the applicable statute,” deny that it properly raised any constitutional claim, and deny

that the Court has jurisdiction to determine the constitutionality of a statute within this action. All remaining allegations in paragraph 7 are denied.

8. Intervenors deny the allegations in paragraph 8.

9. Intervenors admit that Petitioners have attached a “Second Signature Affidavit” but deny any allegations contained therein. Intervenors deny all remaining allegations in paragraph 9.

10. Intervenors deny all allegations in the “WHEREFORE” paragraph and deny that Petitioners are entitled to any relief.

11. All allegations not admitted herein are denied.

12. Pleading affirmatively, the Complaint should be denied for failure to state facts upon which relief can be granted.

13. Pleading affirmatively, Petitioners have waived claims related to the the initial count and the Secretary’s culling of petition parts and signatures during the intake process, including any claim that the Secretary improperly refused to count parts submitted with the wrong petition.

14. Pleading affirmatively, Petitioners are not entitled to a cure because AVF did not comply with Arkansas Code Annotated § 7-9-601(b) and thus none of the signatures collected by AVF’s paid canvassers count. Ark. Code Ann. §§ 7-9-126(b)(4)(A), 7-9-601(f).

15. Pleading affirmatively, Petitioners are not entitled to a cure because the Petitions fail for want of initiation and failure of proof. *See Arkansas Hotels & Entm't, Inc. v. Martin*, 2012 Ark. 335, 423 S.W.3d 49.

16. Pleading affirmatively, the Court lacks jurisdiction to determine the constitutionality of a statute. *See Ark. Const.*, amendment 80, § 6; *Forrester v. Daniels*, 2010 Ark. 397, 373 S.W.3d 871.

17. Pleading affirmatively, Petitioners have not met the requirements for the issuance of either a preliminary or permanent injunction and are not entitled to injunctive relief.

18. Pleading affirmatively, Petitioners failed to show a “clear and certain right to the relief requested,” and their Complaint should be dismissed accordingly. *Arkansas Hotels & Entm't, Inc.*, 2012 Ark. at 11 n. 2, 423 S.W.3d at 55 (citing *Manila School Dist. No. 15 v. Wagner*, 357 Ark. 20, 159 S.W.3d 285 (2004)).

19. Intervenors plead Arkansas Code Annotated §§ 7-9-601 and 7-9-126 as defenses.

20. Intervenors reserve the right to amend and plead further as investigation and discovery continue.

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

Transparency, pray that the Third Amended Consolidated Original Action Complaint, and all prior Complaints, be denied and dismissed.

Respectfully submitted,

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behalf of Arkansans for Transparency*

CERTIFICATE OF SERVICE

I, Kevin A. Crass, hereby certify that on this 19th day of August, 2020, I filed the foregoing with the Court's eflex filing system, which will serve the following counsel of record:

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