

No. CV-20-454

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IN THE SUPREME COURT OF ARKANSAS

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BONNIE MILLER, individually and on behalf of ARKANSAS VOTERS FIRST and OPEN  
PRIMARIES ARKANSAS, ballot question committees,  
Petitioners,

v.

JOHN THURSTON, in his official capacity as Arkansas Secretary of State and in his  
official capacity as Chairman of the Arkansas State Board of Election Commis-  
sioners; and the ARKANSAS 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.

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An Original Action

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**State Board of Election Commissioners' Motion to Dismiss  
the Third Amended Consolidated Original Action Complaint;  
and Consolidated Motion for Expedited Consideration**

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The State Board of Election Commissioners (SBEC) files this Motion asking  
for two forms of relief from the Court.

First, pursuant to Arkansas Rules of Civil Procedure 7(b) and 12(b)(6),  
SBEC asks this Court to dismiss Petitioners' Third Amended Consolidated Ori-  
ginal Action Complaint, along with all other Complaints incorporated by reference  
into it. (*See* Third Amended Complaint ¶ 1.) SBEC is simultaneously filing a brief  
in support of this Motion. As further detailed in that brief, Petitioners' continu-

ously evolving complaints do not “state facts in order to entitle the pleader to relief,” *Harmon v. Payne*, 2020 Ark. 17, at 3, 592 S.W.3d 619, 622, for at least three reasons: (1) Under any applicable standard, they have failed to comply with Arkansas’s background-check-certification statute; (2) they have shown no error in SBEC’s misleadingness determination; and (3) SBEC’s misleadingness review complies with Amendment 7. Therefore, this Court should dismiss Petitioners’ complaints.

Second, SBEC requests expedited consideration of this Motion. This Court is already aware of the need for expedition in this matter—as evidenced by this Court’s prior orders expediting this lawsuit. Because Petitioners filed their Third Amended Complaint just three days before the deadline for certifying initiatives for the ballot, additional expedition is warranted here.

SBEC requests that this Court order any opposition to this motion be filed by 5:00 PM, Wednesday, August 19, 2020. Petitioners will suffer no prejudice from expedition because the arguments relevant to this motion have already been extensively briefed. And resolution is needed before the August 20 certification deadline because the issues in this motion are dispositive of Petitioners’ claims.

### **REQUEST FOR RELIEF**

For these reasons, this Court should (1) expedite consideration of this motion, ordering any responses due by 5:00 PM, Wednesday, August 19, 2020; and

(2) dismiss Petitioners' Third Amended Complaint and all other complaints incorporated into it.

Respectfully submitted,

LESLIE RUTLEDGE  
Arkansas Attorney General

*/s/ Vincent M. Wagner*

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## CERTIFICATE OF SERVICE

I certify that on August 18, 2020, I electronically filed this document with the Clerk of Court using the eFlex electronic-filing system, which will serve all counsel of record.

*/s/ Vincent M. Wagner*

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Vincent M. Wagner