

CV-20-454

In the Arkansas Supreme Court
An Original Action

Arkansas Voters First, a ballot question committee; Bonnie Miller, individually and on behalf of Arkansas Voters First; and Open Primaries Arkansas, a ballot question committee

Petitioners

v

CV-20-454

John Thurston, in his official capacity as Secretary of State; the State Board of Election Commissioners

Respondents

Arkansans for Transparency, a ballot question committee; and Jonelle Fulmer, individually and on behalf of Arkansas for Transparency

Intervenors

**Supplement to the Second Amended
Original Action Complaint**

For their supplement, under Ark. R. Civ. Pro. 15(d), to their Second Amended Original Action Complaint, Bonnie Miller, Arkansas Voters First (“AVF”), and Open Primaries Arkansas (collectively, “Petitioners”) state:

1. Since Petitioners filed their Second Amended Original Action Complaint, Petitioners and Intervenors obtained a complete set of the

petition parts the Secretary of State culled in connection with AVF's petition for open primaries/rank-choice voting.

2. Petitioners and Intervenors obtained this complete set of petition parts only yesterday, July 28, 2020 a few hours before the first day of the special-master proceedings.

3. On review of the complete set of petition parts, it has become clear that the Secretary culled hundreds of petition parts in reliance on Ark. Code Ann. §§ 7-9-126(b)(4)(A) and 7-9-126(b)(6).

4. Section 7-9-126(b)(4)(A) requires the Secretary to cull an entire petition part when a petitioner signed the petition part before the sponsor submitted to the Secretary of State certain required information about the canvasser (listed in Ark. Code Ann. § 7-9-601).

5. Section 7-9-126(b)(6) requires the Secretary of State to cull an entire petition part when a single petitioner signs the petition after the date of the canvasser's verification.

6. Upon being able to review the complete petition parts, it was clear that many petitioners simply placed what appeared to their birthdate in the "date of signing column" and the actual date of signing

in the “birth of date” column. Under such circumstances, the Secretary culled the entire petition part.

7. Upon being able to review the complete petition parts, it was clear that at least one petitioner listed a date of signing that was impossible: e.g. after the date the petition part had already been submitted to the Secretary of State for counting. Under such circumstances, the Secretary culled the entire petition part.

8. When culling the petition parts under Ark. Code Ann. §§ 7-9-126(b)(4)(A) and 7-9-126(b)(6), the Secretary had no evidence of improper motive on the part of the canvasser.

9. When this same issue arose in *McDaniel v. Spencer*, 2015 Ark. 94, 457 S.W.3d 641 regarding a single signer being from the wrong county, the Secretary followed a similar statute and culled the entire petition part.

10. The Arkansas Supreme Court in *Spencer* declared that requirement unconstitutional under Amendment 7 of the Arkansas Constitution. *Id.* 18, 457 S.W.3d 641, 654 (“[The challenged statute] provides that every signature on a petition part is invalidated if the part contains signatures of more than one county. This court has held that, in

situations involving the validity of individual signatures, where there is no evidence of improper motives on the part of the canvasser(s), only those individual signatures are called into question, not the entire petition part.”).

11. The Secretary’s applications of section 7-9-126(b)(4)(A) and 7-9-126(b)(6) are unconstitutional, violate Arkansas law, and disenfranchise other petitioners on the culled petition part.

12. At the first day of the proceedings before the special master, the parties stipulated on the record that AVF’s petition regarding open primaries/rank-choice voting is short 528 total signatures from meeting the 89,151 total signatures required to meet the initial facial count for gross signatures.

13. The petition parts culled under section 7-9-126(b)(4)(A) and 7-9-126(b)(6) collectively contain facially valid signatures in excess of 528.

14. Petitioners have substantially complied with Arkansas law in circulating its petition, obtaining signatures, and filing the petition with the Secretary of State.

15. Petitioners adopt by reference and incorporate herein the entirety of their Second Amended Original Action Complaint. Ark. R. Civ. Pro. 10(c).

16. Petitioners have notified the Arkansas Attorney General, counsel for Respondent, and counsel for Intervenors of this challenge.

17. Petitioners provided notice of this challenge to counsel for the other parties within hours of receiving the complete set of documents.

18. Petitioners' notice to the other parties was reasonable and timely under the circumstances.

19. Neither Intervenors nor the Respondent Secretary are prejudiced in any way by this supplement because both will have ample time to develop their arguments and evidence in connection with the constitutional challenge. Indeed, they will have *more* time to do so than Petitioner. Further, the combined resources of Respondent, Intervenor, and the Attorney General (should she choose to intervene) are more than enough to prepare a defense to this supplemental claim.

WHEREFORE, as a supplement and addition to Petitioners' requests for relief, Petitioners respectfully ask this Court to declare unconstitutional the Secretary's application of Ark. Code Ann. §§ 7-9-

126(b)(4)(A) and 7-9-126(b)(6) to AVF's open primaries/rank-choice voting petition.

Respectfully Submitted,

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Certificate of Service

I certify that on 29 July 2020, a copy of the foregoing was filed with this Court's eFlex filing system, which serves all counsel of record.

By: /s/ Ryan Owsley
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