

IN THE ARKANSAS SUPREME COURT

BILL PASCHALL,
individually and on behalf of
ARKANSANS FOR PATIENT ACCESS,
a ballot question committee

PETITIONERS

v. No. _____

JOHN THURSTON, in his official capacity
as Secretary of State

RESPONDENT

ORIGINAL ACTION COMPLAINT

For their original action complaint, petitioners state:

1. Petitioners file this original action to challenge the Secretary of State's ("Secretary") thwarting of the will of the people and their right to adopt laws by initiative. That "power lies at the heart of our democratic institutions." *Christian Civic Action Comm. v. McCuen*, 318 Ark. 241, 250, 884 S.W.2d 605, 610 (1994).

2. The Secretary has attacked that heart through his incorrect determination that petitions signed by over 150,000 Arkansans for a proposed initiated amendment to the Arkansas Constitution with the

popular name “Medical Marijuana Amendment of 2024” (“Amendment”) were insufficient.

3. That determination was incorrect. First, the Secretary’s action violated Amendment 7 by unduly restricting the right to use the initiative process. Second, the Secretary’s application of Ark. Code Ann. §7-9-601(b)(3) ignored basic legal principles of agency, prior interpretations of the statute by the Secretary and his predecessors, and current interpretations of similar statutes by the Secretary and Attorney General. This Court should summarily correct the Secretary’s error and let the people decide.

Jurisdiction and Parties

4. This is an original action under Amendment 7 to the Arkansas Constitution, Rule 6-5 of the Rules of the Arkansas Supreme Court, and Ark. Code Ann. § 7-9-112.

5. This Court has original and exclusive jurisdiction and venue to review the sufficiency of statewide initiative petitions.

6. Petitioner Bill Paschall is an Arkansas citizen, resident, and registered voter.

7. Petitioner Arkansans for Patient Access (“APA”) is an Arkansas ballot question committee registered with the Arkansas Ethics Commission. Ex. 1, Statement of Organization. APA is the sponsor of the Amendment.

8. Respondent John Thurston is the Arkansas Secretary of State, a position in which Secretary Thurston is charged with certifying the sufficiency of statewide measures to appear on the election ballot. Ark. Const., Amend. 7; Ark. Code Ann. § 7-9-126.

Factual Allegations

9. On January 12, 2024, APA was formed and registered as a Ballot Question Committee with the Arkansas Ethics Commission. In its statement of organization APA disclosed that it would advocate for qualification and passage of an amendment to appear on the November 2024 ballot.

10. Also on January 12, 2024, APA, acting as a sponsor, submitted its proposed amendment, ballot title and popular name to the Arkansas Attorney General as required by Ark. Code Ann. §7-9-107(a) “Before any initiative petition or referendum petition ordering a vote upon any amendment or act shall be circulated for obtaining signatures

of petitioners, the sponsors shall submit the original draft with the Attorney General.” Ex. 2, Letter to Attorney General.

11. The submissions to the Attorney General were made by the sponsor’s counsel on behalf of the sponsor, not by the sponsor itself. These submissions were nonetheless accepted by the office of the Attorney General, though not by the Attorney General himself. Ex. 3, Emails to and from Ryan Owsley, Deputy Attorney General and William Olsen, Assistant Attorney General.

12. Further, as required by this same statute, “[t]he Attorney General shall return to the sponsor a file-marked copy of the original draft that shall serve as evidence that the original draft was filed in compliance with this section.” Ark. Code Ann. §7-9-107(c).

13. While the text of the statute says the Attorney General is to return the file-marked copy of the original draft to the sponsor, the Attorney General did not return the original draft to the sponsor. Instead, an agent of the Attorney General returned the original draft to APA’s counsel, not to APA itself. Exhibit 3.

14. Thereafter, the office of the Attorney General sent three letters, designated as opinions, to APA’s counsel regarding APA’s

submissions. None of those letters were sent by the Attorney General himself and none were sent directly to the APA as the sponsor—each letter was sent instead to the sponsor’s agent. For example, by letter dated February 29, 2024 (opinion 2024-037), the office of the Attorney General—through paralegal Crystal Callahan—informed counsel for APA that APA’s proposed ballot title and popular name had been certified. Ex. 4, Email from Crystal Callahan. Again, all communications from the office of the Attorney General were directed to APA’s counsel and agent, not the sponsor itself.

15. After the Attorney General’s agent certified the ballot title and popular name, it was filed with the Secretary of State, again by APA’s counsel acting on behalf of APA. This submission complied with Ark. Code Ann. §7-9-105(d)(2) which provides that “[b]efore the circulation of a statewide petition for signatures, the sponsor shall file a printed petition part with the Secretary of State in the exact form that will be used for obtaining signatures.” The submission was made by an agent of the sponsor, not the sponsor itself, and the submission was accepted by an agent of the Secretary of State, not by the Secretary

himself. Ex. 5, File-stamped Copy of Popular Name, Ballot Title, and Initiative.

16. After completing that submission, APA began soliciting signatures. To assist it in gathering signatures, APA hired Nationwide Ballot Access (“NBA”) to recruit, qualify, hire, and train paid canvassers to solicit signatures on behalf of APA. NBA was also hired to coordinate with APA to provide necessary information and certifications to the Secretary of State.

17. In performance of its duties, NBA, acting on behalf of and at the direction of APA, submitted sworn affidavits from its paid canvassers as well as submissions from NBA itself to meet the requirements of Ark. Code Ann. §7-9-601. See Ex. 6, Example of Submission of Sponsor to the Office of the Secretary of State.

18. The submissions from NBA provided that the affiant was providing the affidavit on behalf of and at the direction of APA. The affiant identified himself as a manager of NBA, a company hired by APA to provide canvassing services. The affiant further states that NBA hires, trains, and manages paid canvassers who are employees of NBA.

19. Over the course of its work managing the paid canvasser efforts for APA, NBA submitted at least 112 separate submissions to the office of the Secretary of State.

20. Each of those submissions made clear that NBA was acting as an agent of APA in the course of complying with Ark. Code Ann. §7-9-601. In each case, the office of the Secretary of State accepted the submission by NBA and enrolled the individuals as paid canvassers for APA.

21. The task of accepting the submissions and enrolling the individuals as paid canvassers for APA was not performed by the Secretary himself. Instead, this statutory duty was performed by agents of the Secretary who work in his office.

22. In compliance with Ark. Code Ann. § 7-9-101 et seq., APA submitted valid initiative petitions to the Secretary's agents on July 5, 2024, in support of the Amendment. Ex. 7, Affidavit of Bill Paschall (July 5, 2024). APA's petitions contained over 111,000 signatures of registered voters on 19,005 petition parts.

23. On July 31, 2024, an agent of the Secretary sent an agent of APA a letter that on information and belief was prepared by an agent of

the Secretary providing that “our office has completed its initial review of the petition” and determined that “there are no less than 77,000 valid signatures.” Exhibit 8, Thurston Letter (July 31, 2024). The letter then provided that “you have thirty (30) days from the date of this letter to solicit and obtain additional signatures.” *Id.*

24. In reliance on the July 31, 2024, letter from the Secretary’s agent, APA continued gathering signatures from Arkansas voters in the same manner that had occurred for the signatures it submitted on July 5, 2024.

25. Events to this point had proceeded normally and as previous initiative and referendum efforts had been conducted by sponsors, the Secretary of State, and the Attorney General for years. Unfortunately, things were to become anything but normal.

26. On August 8, 2024, an agent of the Secretary typed a letter which, on information and belief, was dictated by agents of the Attorney General. That letter, directed to the agent of APA, provided that “our office discovered that you failed to comply with Ark. Code Ann. § 7-9-601(b)(3).” Ex. 9, Thurston Letter (Aug. 8, 2024).

27. In that same letter, agents of the Attorney General dictated that “[t]he sponsor did not make the certification required in Ark. Code Ann. §7-9-601(b)(3). Instead, the manager of a canvassing company attempted to make the certification. Due to this error, Ark. Code Ann. §7-9-601(f) forbids the counting of signatures collected by paid canvassers for any purpose.” Ex. 9.

28. To make this situation even more nonsensical, the Secretary’s letter closed with the following: “Upon advice of legal counsel, my office will apply this standard to any additional signatures submitted during the cure period.” As confirmed by the Secretary’s agent, that statement meant that the 77,000 signatures previously certified as valid remain valid—despite the Secretary’s new claim that these signatures were submitted in violation of Ark. Code Ann. §7-9-601—but that any additional signatures submitted (including approximately 18,000 signatures gathered before the August 8 letter) would not count “for any purpose” if the required information for the paid canvasser was submitted by the canvassing company.

29. The fact that an agent of the sponsor made the certification on behalf of and at the direction of the sponsor was well known to the

Secretary as this had been the practice of sponsors for years and such practice had been accepted by the Secretary and his predecessors.

30. It was not until the letter of August 8 that the Secretary had ever taken the position that an agent of the sponsor could not make the certification required by Ark. Code Ann. §7-9-601(b)(3). In the meantime, APA had gathered approximately 130,000 signatures in reliance on both the statutory language and the practices the Secretary had followed for many election cycles. APA had no prior notice of the Secretary's new position.

31. On August 30, 2024, APA delivered an additional 38,934 signatures to the Secretary's agents. Ex. 10, Affidavit of Bill Paschall (Aug. 30, 2024). This submission was on top of the at least 77,000 signatures the Secretary's agents had previously determined to be valid.

32. On September 30, 2024, the Secretary's agents determined that APA had failed to turn in sufficient signatures to be certified. Instead, the Secretary validated only 10,521 of the 38,934 signatures submitted on August 30. On information and belief, up to 28,413 of these signatures were rejected based upon the Secretary's newly invented application of Ark. Code Ann. §7-9-601(b)(3). Ex. 11, Thurston

Letter (September 30, 2024). This newly “discovered” position is unsupported by either fact or law.

33. No language in the applicable statutes provides that only a sponsor, and not a sponsor’s agent, may make the certification required by Ark. Code Ann. §7-9-601(b)(3).

34. Further, while the Secretary and the Attorney General claim that the duties set out in the initiative statutes are non-delegable, they routinely delegated their own responsibilities under those same statutes to agents and dealt with agents of the sponsor in other situations when it benefited the Secretary and the Attorney General.

35. Unlike the duties assigned to the sponsor under the initiative statutes, the duties of the Attorney General and the Secretary of State are mandatory. “The duties imposed by this act upon . . . election officials, and all other officers expressly named in this act are declared to be mandatory.” Ark. Code Ann. §7-9-102(a)(1).

36. If the new position of the Secretary and the Attorney General is correct, which it is not, their own actions violated multiple statutes that place specific duties on them, not their employees.

Further, if the Secretary and the Attorney General truly believed their

own arguments, they should not have dealt with agents of the sponsors as they routinely did throughout the entire process as it relates to the Amendment.

37. The actions of the Secretary and the Attorney General demonstrate that their argument is incorrect and not grounded in fact or law.

38. It would be fundamentally unfair for the Secretary's newly "discovered" position to be imposed on APA at the eleventh hour of the signature collection process.

39. The Secretary's new position regarding Ark. Code Ann. §7-9-601(b)(3) violates Article 5, Section 1 of the Arkansas Constitution as a prohibited unwarranted restriction as it would be "interfering with the freedom of the people in procuring petitions[.]"

40. Further, the Secretary's new position regarding Ark. Code Ann. §7-9-601(b)(3) would render the statute unconstitutional as it would "restrict, hamper or impair the exercise of the rights herein reserved to the people." Ark. Const. , art 5, §1.

41. The Secretary's new position regarding Ark. Code Ann. §7-9-601(b)(3) also violates the due process clause of the Arkansas

Constitution. *See* Ark. Const., art. 2, §8 (“No person shall be . . . deprived of life, liberty or property, without due process of law.”)

42. The position of the Secretary has already been rejected in litigation to which he is a party. In *McGill v. Thurston*, CV-24-492, this Court appointed the Honorable Randy Wright as a Special Master to make findings of fact and conclusions of law regarding the sufficiency of an initiative petition filed by the sponsor of another initiated amendment, Local Voters In Charge. Ex. 12, Master’s Report.

43. In *McGill*, the challengers to the initiative as well as the Secretary made the identical argument that he makes with respect to APA, that a sponsor cannot delegate to an agent (a canvassing company) the requirements of Ark. Code Ann. §7-9-601(b)(3).

44. This question and others were tried to the Special Master in a four-day hearing on August 27 through August 30, 2024. Testimony was taken and arguments made by all parties, including the Secretary.

45. On September 9, 2024, the Special Master filed his Master’s Report and Findings of Fact. In his report, the Special Master rejected the argument that the requirements of Ark. Code Ann. §7-9-601(b)(3) may not be delegated to an agent. *See* Ex. 12, ¶¶ 18-40.

46. On September 23, 2024, APA wrote the Secretary informing him that the findings and conclusions set forth in the Special Master's Report in *McGill* precluded him from rejecting signatures submitted by APA based on his claim that APA had violated Ark. Code Ann. §7-9-601(b)(3). Ex. 13, Letter to Thurston.

47. Nonetheless, the Secretary refused to count thousands of signatures of Arkansas voters.

48. Had those signatures been counted, the Amendment would have been certified.

49. The Secretary, or his agents, should be compelled to count and verify the signatures of Arkansas voters that he wrongly disregarded. The Court should enter a preliminary injunction to order the Secretary to count and verify all signatures that have been rejected based on his newly discovered position regarding Ark. Code Ann. §7-9-601(b)(3).

50. The Court should enter a preliminary injunction to require the Secretary of State to count and verify all signatures turned in to the Secretary and to then certify the Amendment to appear on the ballot pending resolution of this action.

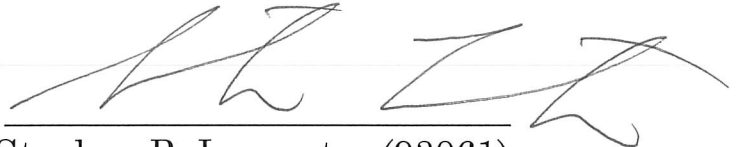
51. Petitioners request that this matter be expedited.

52. Petitioners request that a master be appointed under Arkansas Supreme Court Rule 6-5(c) and Ark. R. Civ. P. 53 to identify and review the submissions made to the Secretary and issue factual findings relevant to the allegations set out herein.

53. The Court should find that APA has submitted sufficient signatures to qualify the Medical Marijuana Amendment of 2024 for the general election ballot and should compel the Secretary to certify the initiative for the ballot.

WHEREFORE, Bill Paschall, individually and on behalf of Arkansans for Patient Access, a ballot question committee, request that the Court vacate the Secretary's denial of certification, order Secretary of State Thurston to certify the Amendment to appear on the November 2024 general election ballot, grant preliminary and permanent injunctive relief, and grant all other relief to which petitioners are entitled.

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RESPONDENT

**MOTION TO EXPEDITE, APPOINT SPECIAL
MASTER, AND FOR PRELIMINARY INJUNCTION**

Petitioners move to expedite this action, appoint a special master and for a preliminary injunction in this original action over the refusal of the Secretary of State to certify a proposed constitutional amendment to the November 5, 2024 general election ballot. The requested relief is necessary because early voting commences October 15, and petitioners will suffer irreparable harm unless the Court expedites this action and orders respondent John Thurston, the Arkansas Secretary of State, to certify petitioners' proposed initiated amendment:

1. Petitioner Arkansans for Patient Access (“APA”) is the sponsor of a proposed initiated amendment to the Arkansas Constitution with the popular name “Medical Marijuana Amendment of 2024” (“Amendment”).

2. Petitioners filed this original action to challenge the Secretary of State’s incorrect rejection of up to 28,413 signatures of Arkansas voters who support placing the Amendment on the ballot. Petitioners’ complaint asks this Court to find the number of signatures sufficient and to order Secretary Thurston to certify the Amendment to appear on the November 2024 general election ballot.

3. In the past, the Court has expedited original actions like this one in which parties were contesting the validity of a proposed initiated measure. *See, e.g., McGill v. Thurston*, No. CV-24-492 (August 19, 2024) (per curiam) (granting expedited consideration in case challenging qualification of a measure based on invalid signatures and challenging the sufficiency of a ballot title). Petitioners request that the Court do the same here by ordering an expedited briefing schedule and expedited consideration so that the case can be decided before too late in the upcoming election cycle.

4. To the extent the Secretary's refusal to certify the Amendment implicates issues of fact, the Court should also appoint a Special Master to make factual determinations and conclusions of law based on those determinations pursuant to Arkansas Supreme Court Rule 6-5(c) and Ark. R. Civ. P. 53.

5. Pending a final resolution of this matter, Petitioners ask the Court to enter a preliminary injunction requiring the Secretary to validate and count all signatures submitted on August 30, 2024, by Arkansas voters in support of placing the Amendment on the general election ballot. On information and belief, the Secretary has refused to validate and count as many as 28,413 signatures of Arkansas voters based on a newly invented position that these signatures were submitted in violation of Ark. Code Ann. §7-9-601(b)(3). The Court should order the Secretary to validate and count all signatures rejected or culled by the Secretary based on his position that the signatures were submitted in violation of Ark. Code Ann. §7-9-601(b)(3).

6. The Secretary wrongly culled such signatures and the corresponding petition parts from validating and counting and has, on information and belief, designated such petition parts on the Secretary's

Culled Cover Sheet as rejected under the designation of “Paid Canvasser: Not Registered Before Collecting Signatures.” However, each of the paid canvassers whose petition parts were culled were registered with the Secretary before collecting signatures under the same process that the Secretary had accepted for years, including prior to August 8, 2024.

7. One of the primary purposes of a preliminary injunction “is to maintain the status quo until the merits of a controversy are decided.” *Am. Invs. Life Ins. Co. v. TCB Transp., Inc.*, 312 Ark. 343, 345, 849 S.W.2d 509, 510 (1993) (citation omitted). Obtaining that protection requires two elements. First, petitioners must show that irreparable harm will result without a preliminary injunction. *Hutchinson v. Armstrong*, 2022 Ark. 59, 5, 640 S.W.3d 395, 398. Second, petitioners must show a likelihood of success on the merits. *Id.*

8. Irreparable harm will result if the Court does not grant petitioners preliminary injunctive relief. Until the Secretary actually validates and counts all the signatures submitted, the Amendment cannot be certified to the general election ballot and the rights of thousands of Arkansas voters will be denied. Loss of the opportunity to

put the Amendment on this year's general election ballot is irreparable because no compensation after the fact will cure that loss. *Thurston v. Safe Surgery Arkansas*, 2021 Ark. 55, 19, 619 S.W.3d 1, 13 (citation omitted).

9. Additionally, early voting commences October 15 and based on the Secretary's communications to the sponsor and to the voting public, there are not sufficient signatures to certify the Amendment to the ballot. This position is misleading to Arkansas voters.

10. Petitioners also have a strong likelihood of success on the merits of their action. Likelihood, of course, is not certainty—"the test for determining the likelihood of success is whether there is a reasonable probability of success in the litigation." *Id.* at 13, 619 S.W.3d at 10 (citation omitted).

11. Petitioners have a reasonable probability of success because the Court's Special Master in *McGill v. Thurston*, CV-24-492 has already issued a Report rejecting the very argument raised by the Secretary to avoid counting the signatures submitted in support of placing the Amendment on the ballot.


12. Petitioners also note that a preliminary injunction harms no one. If petitioners do not prevail in this action, the Court can simply order that any votes cast on the Amendment not be counted or certified. *See Walmsley v. Martin*, 2012 Ark. 370, 2, 423 S.W.3d 587, 588 (vacating certification and ordering that “any votes cast on such proposal not be counted or certified”). Preliminary injunctive relief thus protects the right of the voters of Arkansas to cast their votes on the Amendment if this Court ultimately rules that the Secretary improperly refused to certify the Amendment to the general election ballot.

13. For those reasons, the Court has issued preliminary injunctions in the past to ensure that the passage of time does not prevent sponsors seeking this Court’s review of certification decisions from obtaining relief. *See Miller, supra*, at 2 (granting preliminary injunction requiring continued facial review of petition and verification of signatures pending the Court’s resolution of original action).

WHEREFORE, petitioners request that the Court expedite the matter, appoint a special master, and issue a preliminary injunction directing Secretary Thurston to validate and count all signatures


submitted on August 30, 2024, and to provisionally certify the
Amendment for the ballot, and grant petitioners all other proper relief.

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CERTIFICATE OF SERVICE

I certify that on October 1, 2024, I electronically filed the foregoing with the Clerk of the Court using the Arkansas Judiciary Electronic Filing System, which shall send notification of the filing to all counsel of record. I also served a copy of the motion on respondent by email on the same date.



Stephen R. Lancaster