SUPREME COURT OF ARKANSAS

No. CV-24-455

	Opinion Delivered: August 22, 2024
LAUREN COWLES, INDIVIDUALLY AND ON BEHALF OF ARKANSANS FOR LIMITED GOVERNMENT, AN ARKANSAS BALLOT QUESTION COMMITTEE PETITIONERS V. JOHN THURSTON, IN HIS OFFICIAL CAPACITY AS ARKANSAS SECRETARY OF STATE RESPONDENT ARKANSANS FOR PATIENT ACCESS, A BALLOT QUESTION COMMITTEE; BILL PASCHALL, INDIVIDUALLY AND ON BEHALF OF ARKANSANS FOR PATIENT ACCESS; LOCAL VOTERS IN CHARGE, A BALLOT QUESTION COMMITTEE; AND JIM KNIGHT, INDIVIDUALLY AND ON BEHALF OF LOCAL VOTERS IN CHARGE INTERVENORS	AN ORIGINAL ACTION DISSENTING OPINION.

KAREN R. BAKER, Associate Justice

"Regnat Populus—The People Rule—is the motto of Arkansas. It should ever remain inviolate." *Republican Party of Ark. v. State ex rel. Hall*, 240 Ark. 545, 549, 400 S.W.2d 660, 662 (1966). Our constitution embodies this foundational principle, as its text makes all too clear that "[t]he first power reserved by the people is the initiative." Ark.

Const. art. 5, § 1, amended by Ark. Const. amend. 7. Today's decision strips every Arkansan of this power. It is much more than an anomaly.

The respondent primarily relies on three arguments in support of the premise that the petitioners failed to comply with Arkansas Code Annotated section 7-9-111(f)(2)(B) (Supp. 2023). According to the respondent, "a statement under that section must (1) be signed by 'the sponsor'; (2) indicate that the sponsor gave the required information and documentation to all paid canvassers who collected signatures; and (3) be submitted with the petition."

Regarding the paid canvasser training certification, the majority concludes that the petitioners failed to provide the respondent with "one single statement at one specific point in time" that covers "'each paid canvasser,' not some of the paid canvassers." I disagree. In my view, the majority has reconfigured the relevant statute in order to cater the initiative process to the preference of the respondent while this process is the first power reserved for the people. In fact, despite the majority's acknowledgment that "[t]his court cannot rewrite the statute[,]" the majority has done just that multiple times to achieve a particular result. Therefore, it bears repeating that the plain language of section 7-9-111 provides as follows:

> (f)(1) A person filing statewide initiative petitions or statewide referendum petitions with the Secretary of State shall bundle the petitions by county and shall file an affidavit stating the number of petitions and the total number of signatures being filed.
>
> (2) If signatures were obtained by paid canvassers, the person filing the petitions under this subsection shall also submit the following:
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> (A) A statement identifying the paid canvassers by name; and
>
> (B) A statement signed by the sponsor indicating that the sponsor:

> (i) Provided a copy of the most recent edition of the Secretary of State's initiatives and referenda handbook to each paid canvasser before the paid canvasser solicited signatures; and
>
> (ii) Explained the requirements under Arkansas law for obtaining signatures on an initiative or referendum petition to each paid canvasser before the paid canvasser solicited signatures.

As an initial matter, subsection (f) demonstrates that there is no contemporaneous filing requirement associated with the submission of the certification. It is undisputed that Allison Clark, the controller of Verified Arkansas, LLC,[1] submitted multiple paid canvasser training certifications to the respondent's office on behalf of the petitioners with each subsequent list being cumulative of the previous list. The last certification was submitted to the respondent on June 27, 2024, and included all paid canvassers that had been hired by that date. The petitioners' decision to file this certification on a rolling basis clearly satisfied the requirements set forth in subdivision (f)(2)(B) because the certifications were submitted well before the July 5 petition deadline. The fact that the petitioners did not file a certification contemporaneously with the petition is of no moment. To be clear, nothing in the statute requires that the certification and the petition be filed simultaneously. On the contrary, this requirement was made up out of whole cloth by the respondent and inexplicably ratified by the majority of this court. However, the rules of statutory construction do not permit us to read into a statute words that are not there. *Ark. Dep't of Fin. & Admin. v. Trotter Ford, Inc.*, 2024 Ark. 31, at 9, 685 S.W.3d 889, 896. It is absurd to hold that a certification cannot be submitted early, and by concluding otherwise, the

[1]After the attorney general certified the ballot title and popular name, AFLG hired Verified Arkansas, LLC, to provide canvassing services related to the ballot initiative.

majority has added yet another obstacle that prevents Arkansans from exercising their constitutional rights.

The majority's position is that there can be only "one single statement" that covers "each paid canvasser," and they state that "[t]he dissenting justices want to argue that . . . we should give partial credit for the partial attempt to comply." This is a disingenuous mischaracterization of my position. At no point do I give the paid canvassers "partial credit for the partial attempt to comply" with the statute at issue. Rather, my analysis affords "full credit" to the 191 paid canvassers included on the June 27 cumulative list and certification because this was a complete list covering each paid canvasser that had been hired by that date. Stated differently, the June 27 submission was not a "partial attempt" to comply by the petitioners; rather, it was full compliance as to the 191 paid canvassers. Contrary to the majority's tortured statutory analysis, while there were paid canvassers hired after June 27, nothing in the statute justifies the exclusion of the signatures collected by the paid canvassers included with the June 27 certification.

In defense of his rejection of the petition at issue, the respondent also argues that the petitioners did not submit a statement "signed by the sponsor" as required by section 7-9-111(f)(2)(B). Specifically, the respondent argues that the June 27 certification signed and submitted by Clark is insufficient because she is not the sponsor of the petition. The petitioners respond that it is basic agency law that an agent with authority to act on an organization's behalf may do so. *See Evans v. White*, 284 Ark. 376, 682 S.W.2d 733 (1985). I agree. The petitioners confirm that Clark was given and accepted authority to sign and submit the certifications to the respondent on behalf of AFLG and was subject to AFLG's

control. The respondent makes no convincing argument to support his position to the contrary, and as the intervenors note, the legal effect of the respondent's position would turn basic agency law on its head.

The majority deliberately bypassed the issue concerning who has the authority to sign the certification even in light of the allegations of disparate treatment that have been made regarding the respondent's treatment of three initiative petitions—the current petition and two others in circulation during this election cycle. Even a cursory review of how the present ballot initiative has progressed since its inception demonstrates that both the respondent and the majority have treated it differently for the sole purpose of preventing the people from voting on this issue. The intervenors argue that the respondent's absurdity is highlighted by his differing and conflicting positions on each proposed amendment. As to the petitioners, the respondent refused to count any signatures gathered by paid canvassers. The intervenors allege that, as to Local Voters in Charge, the respondent certified its petition for the ballot on July 31, 2024, because the respondent determined that the signatures gathered by the paid canvassers that had been certified by its agents were sufficient. The intervenors allege further that, as to Arkansans for Patient Access, the respondent has recently concluded that additional signatures gathered by paid canvassers—also certified by its agents—during the cure period will not be counted because the respondent allegedly just "discovered" its noncompliance with Arkansas Code Annotated section 7-9-601(b)(3)—another statute related to paid canvassers that requires the sponsor of an initiative petition to submit a certification to the respondent. However, the respondent assured the group that the thousands of signatures gathered by paid canvassers that he had previously deemed valid

will remain so, despite any alleged statutory violation—a courtesy that the respondent chose not to extend to the petitioners in the present case. I would be remiss if I neglected to highlight these allegations, as the differing treatment of these petitions is alarming. As set forth above, the initiative is the first power reserved for the people by the Arkansas Constitution. Why are the respondent and the majority determined to keep this particular vote from the people? The majority has succeeded in its efforts to change the law in order to deprive the voters of the opportunity to vote on this issue, which is not the proper role of this court.

Based on the foregoing, the petitioners fully complied with the plain language of section 7-9-111(f)(2)(B). Therefore, I dissent and would order the respondent to conduct an initial count of all signatures, including those gathered by paid canvassers, and a verification analysis in accordance with Arkansas Code Annotated section 7-9-126. I would also appoint a special master to make findings of fact, grant a thirty-day provisional cure period, and order conditional certification of the proposed amendment.

HUDSON, J., joins.