

CV-24-492

IN THE ARKANSAS SUPREME COURT

**JENNIFER MCGILL, individually and
on behalf of the ARKANSAS CANVASSING
COMPLIANCE COMMITTEE; &
CHEROKEE NATION
ENTERTAINMENT, LLC**

PETITIONERS

V.

**JOHN THURSTON, in his capacity as
ARKANSAS SECRETARY OF STATE**

RESPONDENT

**LOCAL VOTERS IN CHARGE, A
BALLOT QUESTION COMMITTEE; and
JIM KNIGHT, individually and on behalf of
LOCAL VOTERS IN CHARGE**

INTERVENORS

INTERVENORS' PRE-TRIAL BRIEF

On July 5, 2024, Local Voters in Charge (“LVC”) turned in over 30,000 petition parts containing more than 160,000 signatures from Arkansas voters. Respondent certified the initiative for the ballot on July 31, 2024, stating that that he had validated no less than 116,200 signatures. The actual number of signatures verified by Respondent’s Office is 116,557. According to Josh Bridges, the Assistant Director of Elections with Respondent’s Office, only 72 signatures were culled for

facial deficiencies as part of Respondent’s initial count. Usually, there are thousands.

For the November 2024 election, 90,704 valid signatures of registered voters are required. Accordingly, to win on their signature challenge, Petitioners must disqualify at least 25,853 signatures.

This pretrial brief contains a synopsis of the relevant law, followed by Petitioners’ specific claims and an overview of the testimony and evidence pertaining to each claim. As discussed herein, Petitioners cannot meet their burden of proof, and their Petition on Count I should be denied.

RELEVANT LAW

A. Paid Canvasser Statutes

Under Ark. Code Ann. § 7-9-601(c), a “paid canvasser” is defined as “a person who is paid or with whom there is an agreement to pay money or anything of value before or after a signature on an initiative or referendum petition is solicited in exchange for soliciting or obtaining a signature on a petition.” The Arkansas Supreme Court has clarified that [“t]he items of value referenced in the section are things that are received *in exchange* for obtaining signatures, as opposed to items given to

facilitate the effort to obtain signatures.” *McDaniel v. Spencer*, 2015 Ark. 94, at 7, 457 S.W.3d 641, 649 (emphasis added). If somebody qualifies as a paid canvasser, the canvasser and the petition’s “sponsor” must meet the requirements of section 7-9-601, a full copy of which is attached hereto as Exhibit A.

Of note here, before a paid canvasser begins soliciting signatures, the “sponsor” is required to:

- 1) provide the canvasser a copy of the Secretary’s Initiative and Referenda handbook;
- 2) explain the applicable Arkansas law on gathering petition signatures;
- 3) provide a complete list of all paid canvassers’ names and current residential addresses to the Secretary (additional canvassers require an update);
- 4) submit to the Secretary the paid canvasser’s affidavit attesting to no disqualifying offenses and stating their name, current residential address, and their domicile address if different than the current residence address; and
- 5) obtain the criminal history and criminal record of the canvasser.

See Ark. Code. Ann. 7-9-601(a)(2). A “sponsor” is defined as “a person who arranges for the circulation of an initiative or referendum petition or who

files an initiative or referendum petition with the official charged with verifying the signatures.” Ark. Code Ann. § 7-9-101(10).

In addition to obtaining the canvasser’s criminal history and criminal record, subsection 601(b)(3) further provides that “[u]pon submission of the sponsor’s list of paid canvassers to the Secretary of State, the sponsor shall certify to the Secretary of State that each paid canvasser in the sponsor’s employ has no disqualifying offenses”—which are specifically enumerated in subsection (d)(3)(B).

There is an express “do-not-count” provision in the statute. If signatures are “incorrectly obtained or submitted” under section 601, they “shall not be counted by the Secretary of State for any purpose.” Ark. Code Ann. § 7-9-601(f).

In addition to section 601, if signatures were obtained by paid canvassers, Ark. Code Ann. § 7-9-11(f) provides that “the person filing the petitions . . . shall also submit . . . (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[’s] . . . handbook to each paid canvasser before the paid canvasser solicited signatures; and (ii) Explained the requirements under

Arkansas law for obtaining signatures . . . to each paid canvasser before the paid canvasser solicited signatures.” A full copy of Arkansas Code Annotated § 7-9-111 is attached hereto as Exhibit B.

B. Statutory Ban on Paying Canvassers Per Signature Obtained and Related Case Law

Arkansas prohibits paying a canvasser per signature obtained. Ark. Code Ann. § 7-9-601(g) provides: “It is unlawful to pay or offer to pay a person, or receive payment or agree to receive payment, on a basis related to the number of signatures obtained on a statewide initiative petition or statewide referendum petition.” Under subsection (g)(3), “a signature obtained in violation of this subsection is void and shall not be counted.”

The statute attempts to make clear that it does not “prohibit compensation for circulating petitions but only compensation for obtaining signatures when the compensation or compensation level is impacted by or related to the number of signatures obtained.” Ark. Code Ann. § 7-9-601(g)(2). This clarification is important because the United States Supreme Court has held that a state cannot prohibit the use of paid canvassers, as doing so is an unconstitutional infringement on “core political speech”—“an area in which the importance of First Amendment protections is ‘at its zenith.’” *Meyer v. Grant*, 486 U.S. 414 (1988). While

the Arkansas Supreme Court has addressed the overall constitutionality of section 601, it has not construed subsection 601(g) specifically. *See McDaniel v. Spencer, supra*. States that have interpreted their statutory bans on paying canvassers per signature have done so narrowly so as to not run afoul of *Meyer*. *See, e.g., AZ Petition Partners, LLC v. Thompson*, 255 Ariz. 254 (2023).

C. General Petition-Deficiency Statute.

In addition to section 601, Petitioners are also attempting to disqualify signatures under Ark. Code Ann. § 7-9-126. The entirety of the statute is attached hereto as Exhibit C.

Of particular relevance here, subsection 126(b)(3) provides that “[a] petition part and all signatures appearing on the petition part shall not be counted . . . if . . . the petition lacks the signature, printed name, and residence address of the canvasser[.]” The Court has said that neither a business address nor a P.O. Box count as a “current residence address,” but it has not gone further. *Benca v. Martin*, 2016 Ark. 359, at 12, 500 S.W.3d 742, 750.

Petitioners’ Amended Original Action Petition contends that various petition parts and signatures should not have been counted due

to alleged other violations of section 126. To date, Petitioners have not provided any more specification on these other allegations.

D. Petitioners Bear the Burden of Proof.

Petitioners bear the burden of proof on all allegations. *See Roberts v. Priest*, 334 Ark. 503, 511, 975 S.W.2d 850, 852 (1998) (“[W]hen a proposed initiative is challenged, Amendment 7 places the burden of proof ‘upon the person or persons attacking the validity of the petition.’”) (quoting Ark. Const., art. 5, § 1).

Note that the burden of proof remains on Petitioners even as to their fraud claims. In their Amended Original Action Petition, Petitioners attempt to invoke the following provision from *Ellis v. Hall*: “[W]here fraud on the canvassers’ part is shown, the prima facie case made by the affidavits of these circulators in favor of the genuineness of these petitions is overcome, putting the burden of proof upon the defendant to establish the genuineness of each signature.” 245 S.W.2d at 225. *Ellis v. Hall*, however, concerned proof that a canvasser forged the last ten names on a petition part. In that situation, the Court held that the burden would shift to the sponsor to prove the validity of the genuine signatures on that same sheet. *Id.* Here, there is no evidence of a forged

signature, nor do Petitioners have evidence of fraud in another context. Thus, they retain the burden of proof, and as discussed herein, they cannot meet it.

DISCUSSION OF PETITIONERS' CLAIMS

A. LVC Did Not Violate Arkansas Law by Paying Canvassers Based on Signatures.

Petitioners claim that three managers working for LVC's canvassing company, PCI Consultants, Inc. ("PCI") "paid bonuses to canvassers based upon the number of signatures obtained by canvassers, including offering \$100.00 for 100 signatures and promising additional money to canvassers when they obtained enough signatures to 'close out a county.'" They also alleged that canvassers were offered gift cards and prizes in exchange for signatures and that canvassers were put in "time out" if they did not meet certain minimum signature requirements. *See Am. Orig. Action Pet. at ¶ 31.* Petitioners ask that "all signatures collected by canvassers to whom additional compensation was offered or given based on the number of signatures . . . cannot be counted." *Id. at ¶ 33.*

Petitioners will not be able to meet their burden of proof for the following reasons:

1. Bonuses and gift cards for purposes such as boosting morale and rewarding productivity are not prohibited by Arkansas law.

The evidence will show that all paid canvassers were paid hourly for obtaining signatures.

On occasion, prizes including gift cards, incentive payments, and/or bonuses were awarded to paid canvassers for a variety of reasons including but not limited to showing up for work seven days a week, working weekends, traveling to particular counties or regions, referrals of prospective canvassers, working in extreme weather, helping out with activities around the office, and to increase morale and motivation.

None of this is prohibited by Arkansas law. Courts in other jurisdictions have held that paying bonuses or providing incentives for boosting morale, having good validity rates, rewarding productivity—or punishing canvassers for lack of productivity—are not violations of their states’ pay-per-signature bans. *See, e.g., Molera v. Hobbs*, 250 Ariz. 13 (2020) (affirming the trial court’s holding that increasing a canvasser’s hourly rate based on past productivity and allowing canvassers to “spin the wheel” for a prize to boost morale were not violations of Arizona’s statutory prohibition on paying canvassers per signature).

2. Only the signatures obtained as a result of an impermissible payment may be invalidated.

Investigation has indicated that on two occasions bonuses were made available to canvassers in Northwest Arkansas that included a component of a specified number of signatures. Intervenors have identified the canvassers that “qualified” for the additional funds offered on those two occasions and are trying to identify which petition parts were effected and the number of valid registered voter signatures counted on those petition parts by the Secretary of State.

Even so, the number of signatures that may be invalidated are limited to those two occasions—not all signatures collected by an affected canvasser throughout the petitioning process. Subsection 601(g)(3) is very specific; “a signature obtained in violation of this subsection is void and shall not be counted.” *See* Ark. Code Ann. § 7-9-601(g)(3). Thus, there must be proof of a causal link between an impermissible payment and a signature obtained. Here, any such proof is limited to two occasions and nothing more.

3. Petitioners’ broad construction of subsection 601(g) renders the statute unconstitutional.

Lastly, a broad construction of subsection 601(g)—that a canvasser could not accept anything of value in relation to obtaining signatures—would be absurd. The canvasser’s job is to collect signatures and thus everything and anything could be considered related to obtaining signatures. Under that sweeping interpretation, the statute in effect becomes a ban on the use of paid canvassers and renders it an unconstitutional infringement on “core political speech.” *See, e.g., Molera v. Hobbs*, 250 Ariz. 13 (2020) (rejecting a broad interpretation of the statutory restriction so as to minimize any First Amendment infringement on core political speech).

B. LVC Did Not Fail to Register and Certify Paid Canvassers.

Petitioners contend that LVC employed out of state “Captains” who escorted and improperly coached paid canvassers, held petition parts, and interacted with would-be-signers directly. They contend that these “Captains” are therefore “paid canvassers,” who were required to comply with 601 and did not do so. Petitioners assert that all signatures “tainted by the Captains” should be disqualified and that all signatures collected

by all paid canvassers should be disregarded because the Captains' roles were so widespread.

Petitioners cannot meet their burden of proof for the following reasons:

- 1. LVC employed promoters, not “Captains,” and they did not obtain or solicit signatures from Arkansas voters.**

As the Court will hear, PCI and the managers did not employ any “captains” or use that term. Instead, they used promoters/trainers to drive paid canvassers to remote locations, find venues, provide morale support to new canvassers, answer questions, keep them on task, and so forth. *See* Exhibit D at 21:9-20; 22:4-6 (Stephanie Marcynyszyn’s Deposition); Exhibit E at 21:8-14; 28:1-14 (Phil Dewey’s Deposition). The testimony and evidence will show that the promoters/trainers were not obtaining or soliciting signatures from voters; thus, they are not “paid canvassers” under Ark. Code Ann. § 7-9-601 and section 601’s requirements are not implicated. *See McDaniel v. Spencer, supra* (clarifying the application of 601 to those who receive items of value “*in exchange* for obtaining signatures”) (emphasis in original); *see also* Exhibit D at 26:17-27:2.

A canvasser has a very specific statutory role—to execute the verification on each petition part, averring that the petitioner signed in front of them, that each signature is genuine, that the petitioner is a registered voter of that county, that an exact copy of the popular name, ballot title, and text was attached to the petition part, and that the petition part contains the canvasser’s current residence address. A canvasser is not just somebody who talks about the Proposed Amendment, even if that person is paid to do it. To construe the paid canvasser statute so broadly as to encompass people who were not obtaining signatures but just talking to voters would easily constitute a substantial burden on “core political speech” and render the statute unconstitutional. *See Meyer v. Grant, supra.*

2. LVC did not fail to certify its paid canvassers.

Petitioners assert that LVC failed to satisfy 601(b)(3), which requires a sponsor to certify to the Secretary that the paid canvassers in its employ do not have any disqualifying offenses. Their argument is premised on the fact that PCI managers “acting on LVC’s behalf” provided the certifications, instead of the “sponsor.” In other words,

Petitioners contend that “sponsor” in 601(b)(3) somehow creates a non-delegable duty. In brief, this argument fails for several reasons.

First, the plain language of section 601(b)(3) does not say what Petitioners want it to say. If the general assembly wanted to create a non-delegable duty, it could have easily done so—just as it has in other statutes. *See, e.g.*, Ark. Code Ann. § 7-4-122(c) (“A county board of election commissioners may not change a duty delegated to a county employee if that duty is expressly governed by state or federal law.”).

Second, “sponsor” is defined as “a person who arranges for the circulation of an initiative or referendum petition or who files an initiative or referendum petition with the official charged with verifying the signature.” Ark. Code Ann. § 7-9-101(10). The managers who provided the sponsor affidavits meet this definition.

Third, as Justice Karen Baker just recently concluded, “the legal effect of the respondent’s position would turn basic agency law on its head.” *Cowles v. Thurston*, 2024 Ark. 121, at 8, 2024 WL 3899643.¹ It is

¹ It should be noted that the majority did not reach this issue. Further, the majority’s reasoning that it “cannot order another constitutional officer to ignore a mandatory statutory provision that he has enforced” does not apply here. The issue is not a statutory mandate but the

hornbook law that entities can only act through their agents. *See, e.g., Madison Bank & Tr. v. First Nat. Bank of Huntsville*, 276 Ark. 405, 412, 635 S.W.2d 268, 272 (1982) (“The Bank of Kingston, as a legal entity, can only act through its agents, and the acts of its corporate officers are regarded as its acts.”) No case law, statute, or authority holds that LVC, as an entity, cannot authorize an agent to carry out the sponsor certification in section 601(b)(3).

Fourth, the evidence and testimony will show that Respondent has always accepted certifications from sponsors’ agents—and in fact here, had a meeting with the agents and representatives of LVC who acted as the contact for the paid canvasser certifications, acknowledging their roles in this process. As Josh Bridges testified, the standard for whom Respondent considered to be a “sponsor” had not changed until this year.

Lastly, if Petitioners’ interpretation is accepted, it should only be applied prospectively. In other words, Petitioners and Respondent should not be able to move the goal posts at the end of the fourth quarter. On more than one occasion, the Arkansas Supreme Court has refused to

meaning of “sponsor.” The Court decides what a statute means. *Miller v. Enders*, 2013 Ark. 23, at 9, 425 S.W.3d 723, 728 (citation omitted).

retroactively apply a new rule of law out of concern for even-handed treatment of litigants. *See State v. Herndon*, 365 Ark. 185, 190, 226 S.W.3d 771, 775 (2006) (overruling prior case law but not applying new law to the appellant who was entitled to rely on old law in effect at the time of his citation for violating a regulation, reasoning that it would be “fundamentally unfair” and citing cases). That concern is front and center in this lawsuit.

The same is true of the constitutional guarantees of due process and the people’s right to petition. “Procedural due process guarantees that a state proceeding which results in deprivation of property is fair, while substantive due process guarantees that such state action is not arbitrary and capricious.” *Parker v. BancorpSouth Bank*, 369 Ark. 300, 307, 253 S.W.3d 918, 923 (2007) (citation omitted). Here, Respondent’s actions exemplify the meaning of the word “arbitrary.” Also, Respondent failed to provide LVC with notice of its change in position until it was too late. Now, if Petitioners’ construction of “sponsor” is held to be correct, the Proposed Amendment will be barred from the ballot and the people of this state will be barred from exercising their fundamental right to the

initiative. This result does not comport with procedural due process or fundamental notions of fairness.

C. LVC's Paid Canvassers Did Not Fraudulently Induce Signatures.

Petitioners claim that LVC's paid canvassers made false statements about the Proposed Amendment such that "all petitions carried by the perpetrating canvassers should be invalidated and all signatures discarded."

Petitioners cannot meet their burden of proof for the following reasons:

1. The videos are inadmissible.

Intervenors anticipate that Petitioners will attempt to introduce over 300 videos by people who were clearly hired to harass and trick LVC's paid canvassers into making so-called "false statements" about the Proposed Amendment. For the reasons stated in Intervenors' separate motion to exclude, the videos are inadmissible. Petitioners do not have any admissible evidence of intentionally made false statements.

2. There is no evidence that a paid canvasser obtained a voter's signature based on an any alleged false statement.

Additionally, even if the videos are admitted (which they should not be), they do not show that an alleged false statement was made purposely or that it caused anyone to sign the petition. If no signature was obtained as a result of the alleged misstatement—there can be no viable claim for fraudulent inducement.

A required element of fraud is justifiable reliance. *Wal-Mart Stores, Inc. v. Coughlin*, 369 Ark. 365, 375, 255 S.W.3d 424, 432 (2007) (reciting elements). Further, for fraudulent inducement, the Arkansas Supreme Court has explained that “there must be a representation of alleged existing fact²; that representation must be false in fact; it must be made with intent to deceive, **and the person to whom it is made must believe it.** *Id.*, 369 Ark. at 375, 255 S.W.3d at 432 (emphasis added). As the next few days will show, there is simply no evidence to prove fraud here.

² Petitioners also lack evidence that LVC canvassers made false representations of material facts to potential signers. In fact, several of the statements Petitioners paint as false are clearly accurate, including but not limited to the following: “the Initiative Petition is about local control”; “the Initiative Petition allows local communities to determine whether they can have a casino”; and “the Initiative Petition is neither for nor against casinos.” *See Am. Orig. Action Pet.* at ¶ 57.

3. There is no statute authorizing the invalidating of signatures based on purported false statements.

Lastly, as a matter of law, there is no statute that authorizes the disqualification of all signatures collected by a canvasser for an alleged false statement. Petitioners cite criminal provisions in their Original Action Petition, but this is not a criminal prosecution. *See* Am. Pet. at ¶¶ 58-59 (citing Ark. Code Ann. § 7-9-103(c)(6) (“A person commits a Class A misdemeanor if that person, acting as a canvasser, ‘knowingly misrepresents the purpose and effect of the petition or measure affected for the purpose of causing a person to sign a petition.’”) Moreover, there is no evidence that any canvasser “knowingly”—a *mens rea* requirement—stated something false “for the purpose of causing a person to sign a petition.” Thus, even under these criminal statutes, which do not apply here, Petitioners cannot meet their burden of proof.

D. Petitioners lack proof that paid canvasser affidavits contain incorrect residence addresses.

Petitioners claim that paid canvassers “provided addresses where they did not reside or do not exist” in violation of Ark. Code Ann. § 7-9-108(b). That statute provides: “[E]ach part of a petition shall have attached thereto the affidavit of the canvasser to the effect that the

canvasser's current residence address appearing on the verification is correct." A failure to provide a current residence address triggers the do-not-count provision of Ark. Code Ann. § 7-9-126(b).

Petitioners cannot meet their burden of proof on this claim for the following reasons:

1. Envelopes marked "return to sender" are inadmissible.

Intervenors anticipate that Petitioners will attempt to introduce numerous envelopes mailed to paid canvassers that are marked with "return to sender." For the reasons stated in Intervenors' separate motion to exclude, these envelopes are inadmissible.

2. Evidence will show that addresses are current residence addresses under the statute.

The evidence and the testimony at the hearings will show steps were taken to verify the current residence addresses of the canvassers in question and that the addresses listed are in fact residences in Arkansas.

E. LVC Properly Educated Canvassers.

Petitioners allege that LVC failed to explain Arkansas law on obtaining signatures before the canvasser began soliciting signatures, thereby violating Ark. Code Ann. § 7-9-111(f)(2). That statute says, "If

signatures were obtained by paid canvassers, the person filing the petitions under this subsection shall also submit . . . 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.”

The evidence and testimony at trial will establish that LVC and its agents provided the required handbook and legal explanation on obtaining signatures in Arkansas and reiterated those instructions throughout the petitioning process through emails, in-person dialogue, and other means. Moreover, even if one were to assume that a paid canvasser misstated the purpose of the Proposed Amendment, that does not mean that there was a failure to provide the required training as Petitioners would have this Court assume.

CONCLUSION

The evidence and testimony at trial will show that LVC and its agents went to great lengths to comply with section 601 and all applicable

laws. The result of those efforts was the cleanest petition ever turned into the Secretary's office according to its own Assistant Director of Elections. Petitioners cannot disqualify the requisite 25,853 signatures, and their petition on Count I should be denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Elizabeth Robben Murray, hereby certify that on this 26th day of August, 2024, I electronically filed this Motion using the Court's electronic filing system, which shall send notification of such filing to the following counsel of record:

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West's Arkansas Code Annotated
Title 7. Elections
Chapter 9. Initiatives, Referenda, and Constitutional Amendments (Refs & Annos)
Subchapter 6. Paid Canvassers

A.C.A. § 7-9-601

§ 7-9-601. Hiring and training of paid canvassers--Definition

Effective: April 27, 2021

Currentness

(a)(1) A person shall not provide money or anything of value to another person for obtaining signatures on a statewide initiative petition or statewide referendum petition unless the person receiving the money or item of value meets the requirements of this section.

(2) Before a signature is solicited by a paid canvasser the sponsor shall:

(A) Provide the paid canvasser with a copy of the most recent edition of the Secretary of State's initiatives and referenda handbook;

(B) Explain the Arkansas law applicable to obtaining signatures on an initiative or referendum petition to the canvasser;

(C)(i) Provide a complete list of all paid canvassers' names and current residential addresses to the Secretary of State.

(ii) If additional paid canvassers agree to solicit signatures on behalf of a sponsor after the complete list is provided, the sponsor shall provide an updated list of all paid canvassers' names and current residential addresses to the Secretary of State;

(D) Submit to the Secretary of State a copy of the signed statement provided by the paid canvasser under subdivision (d) (3) of this section;

(E) Instruct the paid canvasser to provide the sponsor sufficient information of the paid canvasser's identity to allow the sponsor to obtain the criminal history and criminal record of the paid canvasser within thirty (30) days before the date that the paid canvasser begins collecting signatures;

(F) Obtain the criminal history and criminal record of the paid canvasser; and

(G) Contact the appropriate authority in the state or jurisdiction if a paid canvasser's criminal history and criminal record indicate an open or pending criminal charge that constitutes a disqualifying offense to determine the ultimate disposition or current status of the charge.

EXHIBIT A

(3) Upon filing the petition with the Secretary of State, the sponsor shall submit to the Secretary of State a:

(A) Final list of the names and current residential addresses of each paid canvasser; and

(B) Signature card for each paid canvasser.

(b)(1) To verify that there are no disqualifying offenses on record, a sponsor shall obtain, at the sponsor's cost, from the Division of Arkansas State Police, a current state criminal history and criminal record search on every paid canvasser to be registered with the Secretary of State.

(2) The criminal history and criminal record search required by this section shall be obtained within thirty (30) days before the date that the paid canvasser begins collecting signatures.

(3) Upon submission of the sponsor's list of paid canvassers to the Secretary of State, the sponsor shall certify to the Secretary of State that each paid canvasser in the sponsor's employ has no disqualifying offenses in accordance with this section.

(4) A willful violation of this section by a sponsor or paid canvasser constitutes a Class A misdemeanor.

(5) The sponsor shall bear the ultimate burden of proving that a paid canvasser registered by the sponsor does not have a disqualifying offense in an administrative proceeding or judicial proceeding.

(c) As used in this section, "paid canvasser" means a person who is paid or with whom there is an agreement to pay money or anything of value before or after a signature on an initiative or referendum petition is solicited in exchange for soliciting a signature on a petition.

(d) Before obtaining a signature on an initiative or referendum petition as a paid canvasser, the prospective canvasser shall submit in person or by mail to the sponsor:

(1) The full name and any assumed name of the person;

(2) The current residence address of the person and the person's permanent domicile address if the person's permanent domicile address is different from the person's current residence address;

(3)(A) A signed statement taken under oath or solemn affirmation stating that the person has not pleaded guilty or nolo contendere to or been found guilty of a disqualifying offense in any state of the United States, the District of Columbia, Puerto Rico, Guam, or any other United States protectorate.

(B) As used in this section, "disqualifying offense" means:

- (i) A felony;
- (ii) A violation of the election laws;
- (iii) Fraud;
- (iv) Forgery;
- (v) Counterfeiting;
- (vi) Identity theft;
- (vii) A crime of violence, including assault, battery, or intimidation;
- (viii) Harassment;
- (ix) Terroristic threatening;
- (x) A sex offense, including sexual harassment;
- (xi) A violation of the drug and narcotics laws;
- (xii) Breaking and entering;
- (xiii) Trespass;
- (xiv) Destruction or damage of property;
- (xv) Vandalism;
- (xvi) Arson; or
- (xvii) A crime of theft, including robbery, burglary, and simple theft or larceny;

- (4) A signed statement that the person has read and understands the Arkansas law applicable to obtaining signatures on an initiative or referendum petition; and
- (5) A signed statement that the person has been provided a copy of the most recent edition of the Secretary of State's initiatives and referenda handbook by the sponsor.
- (e) A sponsor shall maintain the information required under this section for each paid canvasser for three (3) years after the general election.
- (f) Signatures incorrectly obtained or submitted under this section shall not be counted by the Secretary of State for any purpose.
- (g)(1) It is unlawful for a person to pay or offer to pay a person, or receive payment or agree to receive payment, on a basis related to the number of signatures obtained on a statewide initiative petition or statewide referendum petition.
- (2) This subsection does not prohibit compensation for circulating petitions but only compensation for obtaining signatures when the compensation or compensation level is impacted by or related to the number of signatures obtained.
- (3) A signature obtained in violation of this subsection is void and shall not be counted.
- (4) A violation under this subsection is a Class A misdemeanor.

Credits

Acts of 2013, Act 1413, § 21, eff. April 22, 2013; Acts of 2015, Act 1219, § 4, eff. July 22, 2015; Acts of 2017, Act 1104, § 6, eff. Aug. 1, 2017; Acts of 2019, Act 376, § 13, eff. March 8, 2019; Acts of 2021, Act 951, §§ 3 to 7, eff. April 27, 2021.

A.C.A. § 7-9-601, AR ST § 7-9-601

The constitution and statutes are current through the 2024 Fiscal Session and 2024 Second Extraordinary Session of the 94th Arkansas General Assembly. Some statute sections may be more current; see credits for details. Also included are changes made by the Arkansas Code Revision Commission received through June 30, 2024.

West's Arkansas Code Annotated
Title 7. Elections
Chapter 9. Initiatives, Referenda, and Constitutional Amendments (Refs & Annos)
Subchapter 1. Petition and Election Procedure (Refs & Annos)

A.C.A. § 7-9-111

§ 7-9-111. Determination of sufficiency of petition--Corrections

Effective: March 6, 2023

Currentness

- (a) The Secretary of State shall ascertain and declare the sufficiency or insufficiency of the signatures submitted on each statewide initiative petition and each statewide referendum petition within thirty (30) days after it is filed.
- (b) The Secretary of State may contract with the various county clerks for their assistance in verifying the signatures on petitions. The county clerk shall return the petitions to the Secretary of State within ten (10) days.
- (c) If the statewide initiative petition or statewide referendum petition is found to be sufficient, the Secretary of State shall certify and record the finding and perform such other duties relating thereto as are required by law.
- (d)(1) If the signatures submitted on a statewide initiative petition or statewide referendum petition are found to be insufficient, the Secretary of State shall forthwith notify the sponsors in writing, through their designated agent, and shall set forth his or her reasons for so finding. When the notice is delivered, the sponsors shall have thirty (30) days in which to do any or all of the following:
- (A) Solicit and obtain additional signatures; or
 - (B) Submit proof to show that the rejected signatures or some of them are good and should be counted.
- (2) Any amendments and corrections shall not materially change the purpose and effect of the statewide initiative petition or statewide referendum petition. No change shall be made in the measure.
- (3) The Secretary of State shall ascertain and declare the sufficiency or insufficiency of additional signatures submitted by the sponsors under this subsection within thirty (30) days of the filing of the supplemental petitions.
- (e)(1) To assist the Secretary of State in ascertaining the sufficiency or insufficiency of each statewide initiative petition and each statewide referendum petition, all county clerks shall furnish at cost to the Secretary of State a single alphabetical list of all registered voters in their respective counties. The list shall be provided at least four (4) months before the election, and an updated list shall be provided at cost by September 1 in the year of the election. The list shall include the date of birth of each registered voter.

EXHIBIT B

- (2) The State Board of Election Commissioners, upon the request of the county clerk, may grant a waiver from this provision if the board determines that the county clerk is unable to provide the list within the time required.
- (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:
- (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.
- (g) All county initiative and referendum elections shall be held in accordance with the provisions of § 14-14-917.
- (h) Municipal referendum petition measures shall be submitted to the electors at a regular general election unless the petition expressly calls for a special election. If the date set by the petition does not allow sufficient time to comply with election procedures, then the city or town council shall fix the date for any special election on the referendum measure. The date of any special election shall be set in accordance with § 7-11-201 et seq. but in no event more than one hundred twenty (120) calendar days after the date of certification of sufficiency by the municipal clerk.
- (i) [Repealed by Acts of 2023, Act 194, § 3, eff. March 6, 2023.]

Credits

Acts of 1943, Act 195, § 5; Acts of 1989, Act 280, § 5; Acts of 1991, Act 1094, § 1; Acts of 1991, Act 1153, § 1; Acts of 1997, Act 646, § 7; Acts of 1997, Act 1145, § 1; Acts of 2005, Act 2145, § 15, eff. Aug. 12, 2005; Acts of 2007, Act 1049, § 30, eff. July 31, 2007; Acts of 2009, Act 1480, § 46, eff. April 10, 2009; Acts of 2013, Act 1413, §§ 13 to 15, eff. April 22, 2013; Acts of 2015, Act 1219, § 2, eff. July 22, 2015; Acts of 2019, Act 376, § 9, eff. March 8, 2019; Acts of 2023, Act 194, § 3, eff. March 6, 2023.

Formerly A.S.A. 1947, § 2-210.

A.C.A. § 7-9-111, AR ST § 7-9-111

The constitution and statutes are current through the 2024 Fiscal Session and 2024 Second Extraordinary Session of the 94th Arkansas General Assembly. Some statute sections may be more current; see credits for details. Also included are changes made by the Arkansas Code Revision Commission received through June 30, 2024.

End of Document

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West's Arkansas Code Annotated
Title 7. Elections
Chapter 9. Initiatives, Referenda, and Constitutional Amendments (Refs & Annos)
Subchapter 1. Petition and Election Procedure (Refs & Annos)

A.C.A. § 7-9-126

§ 7-9-126. Count of signatures

Effective: March 7, 2023

Currentness

(a) Upon the initial filing of an initiative petition or referendum petition, the official charged with verifying the signatures shall:

(1) Perform an initial count of the signatures; and

(2) Determine whether the petition contains, on its face and before verification of the signatures of registered voters, the designated number of signatures required by the Arkansas Constitution and statutory law in order to certify the measure for the election ballot.

(b) A petition part and all signatures appearing on the petition part shall not be counted for any purpose by the official charged with verifying the signatures, including the initial count of signatures, if one (1) or more of the following is true:

(1) The petition is not an original petition, including without limitation a petition that is photocopied or is a facsimile transmission;

(2) The petition does not conform to the version of the measure approved and certified under § 7-9-107;

(3) The petition lacks the signature, printed name, and residence address of the canvasser or is signed by more than one (1) canvasser;

(4)(A) The canvasser is a paid canvasser whose name and the information required under § 7-9-601 were not submitted or updated by the sponsor to the Secretary of State before the petitioner signed the petition.

(B) A canvasser is a paid canvasser if he or she is paid money or anything of value for soliciting signatures before or after the signatures are obtained;

(5) The canvasser verification:

(A) Is not notarized;

EXHIBIT C

(B) Is notarized by more than one (1) notary;

(C) Lacks a notary signature or a notary seal; or

(D) Lacks a legible notary signature or a legible notary seal;

(6) The canvasser verification is dated earlier than the date on which a petitioner signed the petition;

(7) The petition fails to comply with § 7-9-104 or § 7-9-105, including the lack of the exact popular name or ballot title for a statewide initiative, a discrepancy in the text of the initiated or referred measure, or the lack of an enacting clause in a statewide petition for an initiated act; or

(8) The petition part has a material defect that, on its face, renders the petition part invalid.

(c) The following signatures shall not be counted for any purpose by the official charged with verifying the signatures, including the initial count of signatures:

(1) A signature that is not an original signature;

(2) A signature that is obviously not that of the purported petitioner;

(3) A signature that is illegible;

(4) A signature that is not accompanied by personally identifying information;

(5) A signature for which the corresponding printed name, address, birth date, or date of signing is written by someone other than the signer except under circumstances of disability of the signer;

(6) A signature obtained before the submission and approval of the ballot title under § 7-9-107; and

(7) A signature that has any other material defect that, on its face, renders the signature invalid.

(d) If the initial count of signatures under this section is less than the designated number of signatures required by the Arkansas Constitution and statutory law in order to certify the measure for the ballot and the deadline for filing petitions has passed, the official charged with verifying the signatures shall declare the petition insufficient and shall not accept and file any additional signatures to cure the insufficiency of the petition on its face.

(e) In order to certify a measure for the statewide election ballot, the official charged with verifying the signatures on an initiative petition or referendum petition shall also verify:

(1) For a statutory initiative petition or referendum petition, that:

(A) Petitions are filed from at least fifty (50) counties of the state; and

(B) The petitions bear the signature of at least one-half ($\frac{1}{2}$) of the designated percentage of the electors of each county represented in subdivision (e)(1)(A) of this section; and

(2) For an initiative petition for a constitutional amendment, that:

(A) Petitions are filed from at least fifty (50) counties of the state; and

(B) The petitions bear the signature of at least one-half ($\frac{1}{2}$) of the designated percentage of the electors of each county represented in subdivision (e)(2)(A) of this section.

(f) If the requirements of subsection (e) of this section are less than the designated number of signatures or counties represented by petitions required by the Arkansas Constitution and statutory law in order to certify the measure for the ballot and the deadline for filing petitions has passed, the official charged with verifying the signatures shall declare the petition insufficient and shall not accept and file any additional signatures to cure the insufficiency of the petition on its face.

Credits

Acts of 2013, Act 1413, § 18, eff. April 22, 2013; Acts of 2015, Act 1219, § 3, eff. July 22, 2015; Acts of 2019, Act 376, § 11, eff. March 8, 2019; Acts of 2023, Act 194, §§ 5, 6, eff. March 6, 2023; Acts of 2023, Act 236, § 2, eff. March 7, 2023.

A.C.A. § 7-9-126, AR ST § 7-9-126

The constitution and statutes are current through the 2024 Fiscal Session and 2024 Second Extraordinary Session of the 94th Arkansas General Assembly. Some statute sections may be more current; see credits for details. Also included are changes made by the Arkansas Code Revision Commission received through June 30, 2024.

1 CV-24-492

2 IN THE ARKANSAS SUPREME COURT

3 _____

4 JENNIFER MCGILL, individually and
 5 on behalf of the ARKANSAS CANVASSING
 COMPLIANCE COMMITTEE; &
 6 CHEROKEE NATION ENTERTAINMENT, LLC PETITIONERS

7 VS. CASE NO. 20-454

8 JOHN THURSTON, in his capacity as
 ARKANSAS SECRETARY OF STATE

9 LOCAL VOTERS IN CHARGE, A
 BALLOT QUESTION COMMITTEE; and
 10 JIM KNIGHT, individually and on behalf of
 LOCAL VOTERS IN CHARGE RESPONDENTS

11 _____

12 VIDEOTAPED DEPOSITION OF STEPHANIE MARCYNYSZYN

13 August 21, 2024

15 _____

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1 ANSWERS AND DEPOSITION OF STEPHANIE

2 MARCYNYSZYN, a witness produced at the request of the

3 Petitioners, was taken by Zoom in the above-styled

4 and numbered cause on the 21st day of August, 2024,

5 before Janess Ferguson Smith, Certified Court

6 Reporter and Notary Public in and for Saline County,

7 Arkansas, at the Office of the witness, California,

8 at 10:01 a.m.

EXHIBIT D

Page 21

1 the text of the amendment?

2 **A. Correct. Well, it had the whole petition.**

3 Q. Okay.

4 **A. The affidavit has everything.**

5 Q. And the laminated piece of paper, that was

6 something this was given to you by PCI?

7 **A. Correct.**

8 Q. Okay.

9 All right. Let's talk about the -- you

10 said they were training in the field. What do you

11 mean by that?

12 **A. Basically these were all new canvassers, so**

13 **they needed to understand what they were getting in**

14 **to.**

15 **So we, myself and the other four companies**

16 **that I had assist me for different days, would go out**

17 **and make sure that they understood how to approach**

18 **someone, basically how to state, read it, what we**

19 **expected, and then basically they would go ahead and**

20 **learn how to present, basically.**

21 Q. So, so the trainers were presented the petition

22 to potential signers to train the canvassers; is

23 that --

24 MS. MURRAY: Object as to form.

25 Q. Go ahead.

Page 23

1 Q. Okay.

2 **A. And then Comic, LLC, Manelich Luna.**

3 Q. Okay.

4 **A. WCMS, I-n-c, Georgeann Rogers, and R and RR and**

5 **RCO, Richard Thomas.**

6 Q. Okay.

7 And did those companies and/or individuals

8 have individuals working for them that worked as

9 promoters as well, or were these people, the ones

10 that we just talked about, the only people that were

11 promoters for your, worked with you?

12 **A. The only ones.**

13 Q. Okay.

14 So, for example -- okay. So those four

15 companies represent four distinct individuals, is

16 that correct, or are there more?

17 **A. No, that was correct.**

18 Q. Okay.

19 And, and did you compensate those

20 companies, individuals and/or did they receive their

21 compensation from PCI?

22 **A. I did.**

23 Q. Okay.

24 And what were the, the basic terms of your

25 contract with PCI? You were -- were you paid a flat

Page 22

1 So did the trainers, were -- did you call

2 them trainers, or captains, or -- I've heard them

3 referred to several different ways.

4 What, what did you call the individuals

5 that went with the new petitioners out?

6 **A. I call them promoter, slash, trainer.**

7 Q. Okay.

8 And how long would a promoter/trainer stay

9 with a particular petitioner?

10 **A. Depending on the circulator, but majority two**

11 **to three days.**

12 Q. And, and do you recall the, the names of any of

13 the promoters who worked with your petitioners?

14 **A. Yes. They were, they were only working with**

15 **mine.**

16 Q. Okay. Were there groups of -- were there

17 promoters working for other companies as well?

18 **A. I don't know.**

19 Q. Oh, okay.

20 So what were the names of the individuals

21 that were working for Cape?

22 **A. Advanced State Circulation, LLC, Brian**

23 **DeBenedictis.**

24 Q. Okay. Can you spell his last name?

25 **A. DeBenedictis, almost as bad as mine.**

Page 24

1 rate? Were you paid a per diem? How did, how did --

2 how were you compensated by PCI?

3 **A. I was paid a consultation fee.**

4 Q. Okay.

5 And did PCI pay the staffing companies

6 directly?

7 **A. No.**

8 Q. Okay.

9 **A. Actually, I paid the staffing companies**

10 **directly.**

11 Q. Okay. So you were, you were given a consulting

12 fee; is that what you said?

13 **A. Correct.**

14 Q. And, and, and that fee covered all of your

15 expenses to the other companies that you hired,

16 contracted with?

17 **A. Correct.**

18 Q. Okay. And was that a flat amount or a variable

19 amount?

20 **A. Variable.**

21 Q. Okay. And what were the variances?

22 **A. Each one was different, depending on their**

23 **commitment of how long they would come to Arkansas**

24 **for to help, and if they were going out to help**

25 **gather locations, or if they were just simply going**

Page 25

1 to train on how to do a petition.

2 Q. Okay.

3 **A. How to, how to present a petition.**

4 Q. So, so --

5 **A. One --**

6 Q. Go ahead.

7 **A. I'm sorry. One other, one other thing here, or**

8 **if they were coming in just for a second event, which**

9 **two of them just came in for special events, so just**

10 **for volume.**

11 Q. Sure.

12 And so the individuals that you

13 subcontracted with for petition gathering and not

14 just training, how were they compensated?

15 MS. MURRAY: Object to the form. No

16 foundation.

17 Q. How did you decide how much money to pay them,

18 I guess is the question?

19 **A. It was an agreement made prior to their**

20 **arrival.**

21 Q. Okay.

22 And what were the different factors of that

23 agreement? Was it a certain number of signatures, a

24 certain number of hours?

25 **A. It was commitment to timeframe. It was**

Page 27

1 were training gathered?

2 **A. No.**

3 Q. Okay.

4 And what do you mean by "gathered

5 locations"?

6 **A. With Arkansas's trespassing laws, I was very**

7 **concerned about sending out new canvassers to find a**

8 **location, so what I initiated two of them and myself**

9 **to do, because of the timeframe that they opted to**

10 **come in, we went and got permission at sites to allow**

11 **someone to gather signatures. I didn't let people**

12 **just go find their own locations.**

13 Q. Right.

14 And which of the companies that you hired

15 or the individuals were the location gatherers?

16 **A. Comic LLC, R and RR and RCO.**

17 Q. Okay.

18 And were the other companies the promoters

19 or trainers?

20 **A. They were all, they were all four promoters and**

21 **trainers.**

22 Q. Okay. So Comic and RR did training and

23 gathering; correct?

24 **A. Not gathering, locating locations.**

25 Q. You said gathering locations, which was --

Page 26

1 **commitment to whether they were going to gather**

2 **locations or just present.**

3 Q. Okay.

4 And if they were going to just gather

5 signatures, how were they -- were they paid on a per

6 signature basis, or were that paid as a gross amount

7 of money, per ballot signature? How did you

8 determine their compensation?

9 MS. MURRAY: Object to the form. No

10 foundation. She has not said that they

11 gathered signatures.

12 MR. COUCH: Well, she said --

13 MS. MURRAY: She said gathered

14 locations.

15 MR. COUCH: Okay.

16 BY MR. COUCH:

17 Q. Did they gather any signatures?

18 **A. No.**

19 Q. Did they, did they have individuals working

20 with them who gathered signatures?

21 **A. They trained canvassers how to gather**

22 **signatures.**

23 Q. Okay.

24 Was any part of their compensation based on

25 a number of signatures that they or the people they

Page 28

1 **A. Yes.**

2 Q. Yeah. Okay.

3 And then the other company just were

4 trainers?

5 **A. Correct. And the other company only came in**

6 **for one event.**

7 Q. Okay.

8 **A. The other two companies.**

9 Q. Okay. What event --

10 **A. The Steel Horse rally in Fort Smith.**

11 Q. Okay.

12 And the other companies, what was their

13 tenure here in Arkansas?

14 **A. Advanced State Circulation came in late**

15 **Thursday night and left early Sunday morning, so two**

16 **days.**

17 Q. The final weekend or the, or the first?

18 **A. Pardon?**

19 Q. What weekend?

20 **A. The weekend of the Steel Horse rally.**

21 Q. Oh, okay. Gotcha.

22 **A. I believe that was the first weekend of May,**

23 **but please don't hold me to do that.**

24 Q. I know when it was. Okay. All right.

25 All right. And what about the others, were

1 then she'll be ready to prepare the, the
 2 formal version of your deposition. And
 3 we'll make sure you get a copy.
 4 THE WITNESS: Okay. Do I need to get
 5 that notarized?
 6 MS. MURRAY: No. You're under oath
 7 right now, so that's not necessary.
 8 THE WITNESS: Okay.
 9 MS. MURRAY: I don't think so. I
 10 don't remember the form, Janess. I don't
 11 think it's on the form.
 12 MR. COUCH: If it is we'll waive it.
 13 COURT REPORTER: The signature page
 14 does have where you're supposed to have it
 15 notarized, but Mr. Couch just said -- what
 16 did you say, Mr. Couch?
 17 MR. COUCH: We'll waive it. We'll
 18 waive the Notary requirement.
 19 MS. MURRAY: All right.
 20 COURT REPORTER: Perfect.
 21 MR. COUCH: We know how tough they
 22 are.
 23 THE VIDEOGRAPHER: We are off the
 24 record at 10:30 a.m.
 25

1 ERRATA SHEET
 2 If there are any corrections to your
 3 deposition, indicate them on this sheet of paper,
 4 giving the change, page number, line number, and
 5 reason for the change.
 6 The reasons for making changes are:
 7 (1) To clarify the record;
 8 (2) To conform to the facts; or
 9 (3) To correct major transcription errors.
 10 Page number ____ Line Number ____ Reason for change ____
 11 Change _____ to _____
 12 Page number ____ Line Number ____ Reason for change ____
 13 Change _____ to _____
 14 Page number ____ Line Number ____ Reason for change ____
 15 Change _____ to _____
 16 Page number ____ Line Number ____ Reason for change ____
 17 Change _____ to _____
 18 Page number ____ Line Number ____ Reason for change ____
 19 Change _____ to _____
 20 Page number ____ Line Number ____ Reason for change ____
 21 Change _____ to _____
 22 Page number ____ Line Number ____ Reason for change ____
 23 Change _____ to _____
 24 _____
 25 SIGNATURE OF DEPONENT

1 WITNESS' SIGNATURE
 2
 3 I, STEPHANIE MARCYNYSZYN, hereby certify
 4 that I have thoroughly read the transcript of my
 5 deposition taken on the 21st day of August, 2024, and
 6 that said transcript and corrections, if any, that
 7 appear on the attached errata sheet, are a true and
 8 accurate accounting of my testimony given on that
 9 day.
 10 _____
 11 WITNESS
 12 _____
 13 DATE
 14
 15 *****
 16 STATE OF)
 17) ss.
 18 COUNTY OF)
 19 SUBSCRIBED AND SWORN TO before me, a Notary
 20 Public in and for the aforesaid county and state on
 21 this, the ____ day of _____, 2024.
 22
 23 _____
 24 Notary Public
 25 My Commission Expires:

1 COURT REPORTER'S CERTIFICATE
 2 STATE OF ARKANSAS)
 3 COUNTY OF SALINE) ss.
 4 I, JANESS FERGUSON SMITH, CCR, RPR, a
 5 Notary Public in and for Saline County, Arkansas do
 6 hereby certify that the facts stated by me in the
 7 caption of the foregoing matter are true; and that
 8 the foregoing matter was transcribed by me, to the
 9 best of my ability and understanding, from my machine
 10 shorthand notes taken at the time and place set out
 11 in the caption hereto.
 12 In accordance with Rule 30(e) of the Rules
 13 of Civil Procedure, review of the transcript was
 14 requested by the deponent or a party thereto.
 15 I FURTHER CERTIFY that I am neither counsel
 16 for, related to, nor employed by any of the parties
 17 to the action in which this proceeding was taken;
 18 and, further that I am not a relative or employee of
 19 any attorney or counsel employed by the parties
 20 hereto, not financially interested or otherwise, in
 21 the outcome of this action.
 22 GIVEN UNDER MY HAND AND SEAL OF OFFICE on,
 23 this, the 21st day of August, 2024.
 24
 25

 JANESS FERGUSON SMITH, CCR, RPR
 Notary Public for Saline County
 and Court Reporter.
 Certificate Number 453

Page 1

1 CV-24-492
2 IN THE ARKANSAS SUPREME COURT

3 JENNIFER MCGILL, individually and
4 on behalf of the ARKANSAS CANVASSING
5 COMPLIANCE COMMITTEE; &
6 CHEROKEE NATION ENTERTAINMENT, LLC PETITIONERS

7 vs.
8 JOHN THURSTON, in his capacity as
9 ARKANSAS SECRETARY OF STATE RESPONDENT

10 LOCAL VOTERS IN CHARGE, A
11 BALLOT QUESTION COMMITTEE; and
12 JIM KNIGHT, individually and on behalf of
13 LOCAL VOTERS IN CHARGE INTERVENORS

14 VIDEOTAPED DEPOSITION OF PHIL DEWEY
15 August 23, 2024

16 APPEARANCES

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Page 3

1 I N D E X
2 EXAMINATION
3 By Mr. Couch 4
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Page 4

1 ANSWERS AND DEPOSITION OF PHIL DEWEY, a
2 witness produced at the request of the Petitioners,
3 was taken by Zoom in the above-styled and numbered
4 cause on the 23rd day of August, 2024, before Janess
5 Ferguson Smith, Certified Court Reporter and Notary
6 Public in and for Saline County, Arkansas, at the
7 location of the witness in the Philippines, at 9:08
8 a.m.
9 *****
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EXHIBIT E

Page 21

1 there about their pay rate, expense reimbursement,
 2 and those type of manners, issue?
 3 **A. I don't know.**
 4 Q. Okay. That's fair.
 5 And if you don't know an answer to the
 6 question, that's perfectly fine.
 7 **A. Yeah. I don't know.**
 8 Q. And the promoters, were they hired by Florida
 9 Petition Management as well?
 10 **A. Yes.**
 11 Q. And did they enter in to independent contractor
 12 agreements the same or similar as to the ones by the
 13 canvassers?
 14 **A. Yes.**
 15 Q. And were you the individual that made the
 16 decision to hire a promoter?
 17 **A. Yes.**
 18 Q. And did the promoters -- well, how did you, how
 19 did you decide who the hire as a promoter?
 20 **A. Usually guys that were with me for a long**
 21 **time --**
 22 Q. Okay.
 23 **A. -- on other projects.**
 24 Q. Okay.
 25 So is it fair to say that the promoters are

Page 23

1 were they entitled to any other sort of compensation
 2 or expense reimbursement?
 3 **A. Can you be more clear about that? I mean, we**
 4 **gave them gas, if they -- if they didn't get a gas**
 5 **card in the morning, sometimes we'd reimburse them**
 6 **for gas.**
 7 **Or if they drove their own vehicle,**
 8 **maintenance, if they had vehicle maintenance or**
 9 **something, an oil change or something.**
 10 Q. Okay.
 11 And for the ones that live out of state,
 12 did you pay for their travel to Arkansas?
 13 **A. Yes.**
 14 Q. And the promoters, were they entitled to any
 15 sort of incentive payments for performance?
 16 **A. No. No.**
 17 Q. And what were the job responsibilities of the
 18 promoters?
 19 **A. Training, making sure the canvassers were**
 20 **staying on task, helping them find different venues**
 21 **and different locations to go to. They're there to**
 22 **promote morale.**
 23 Q. And was there any sort of training program that
 24 the promoters had to go through before they began
 25 their job duties?

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1 experienced paid canvassers?
 2 MS. MURRAY: Object to the form.
 3 **A. Yeah.**
 4 Q. And were the promoters paid an hourly rate or a
 5 per diem?
 6 **A. Salary.**
 7 Q. And was the salary a fixed amount per day, per
 8 week, or per month?
 9 **A. Per week.**
 10 Q. And were the promoters, were they, was there
 11 hotel included in their salary or excluded out of
 12 their salary?
 13 **A. I need more information about that. Are you**
 14 **asking me -- you can ask me in a different way, or --**
 15 Q. Sure. I gotcha.
 16 To your knowledge were any of the promoters
 17 residents of the State of Arkansas?
 18 **A. Yes.**
 19 Q. And were the, some of the promoters
 20 non-residents of the State of Arkansas?
 21 **A. Yes.**
 22 Q. Okay. For the ones that were non-residents of
 23 Arkansas did you pay for their hotel?
 24 **A. Yes.**
 25 Q. And other than their salary and their hotel

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1 **A. Clarify that again. I need more, more**
 2 **information about that.**
 3 Q. Sure.
 4 Did you go through the same or similar
 5 training program that you did with the paid
 6 canvassers with, as the promoters?
 7 Did you teach them about the measure, let
 8 them read the law?
 9 **A. Yeah. Yep. Yes.**
 10 Q. Okay. And when you mention venues, are you
 11 talking about individual locations where canvassers
 12 would go?
 13 **A. Correct.**
 14 Q. You would decide the county, and then the
 15 promoters would decide the venue once they got to a
 16 county; is that sort of a fair summary?
 17 **A. That's fair.**
 18 Q. And approximately how many canvassers would go
 19 with a promoter?
 20 **A. Three to five.**
 21 Q. And would that promoter stay with that, for my
 22 word, team of canvassers the entire day?
 23 **A. Yes.**
 24 Q. And would the entire team stay together, or
 25 would they go to different locations in the county?

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1 **A. Different locations.**
 2 Q. And what was your expectation for how the
 3 promoters would train the canvassers?
 4 **A. My expectation is that they would make sure the**
 5 **canvassers were staying on topic with, with the**
 6 **ballot title and summary, and, and making sure their**
 7 **petitions were filled out correctly.**
 8 Q. Now the promoters, would they train the
 9 canvassers on how to interact with potential signers?
 10 **A. Sure. Yes.**
 11 Q. And, and how would they do that? By example, I
 12 guess is the best way?
 13 **A. They, they were instructed -- they're**
 14 **instructed not to touch the board or handle the**
 15 **board, so they did help them with verbiage or --**
 16 Q. Okay.
 17 **A. -- getting somebody's attention, you know.**
 18 Q. Sure. Okay.
 19 So this -- is it fair to call the, the
 20 activity that the promoters were involved in, you
 21 know, what's called a witness program?
 22 MS. MURRAY: Object to the form.
 23 Q. Do you know what in the petition industry is
 24 referred to as a witness program?
 25 **A. I've seen it.**

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1 Q. Okay.
 2 And is that program where a local canvasser
 3 holds the board, and the promoter helps direct people
 4 to that individual. And the actual local person
 5 witnesses the petitioner sign the canvassing, or sign
 6 the petition?
 7 **A. You'd have to clarify that, again, with me,**
 8 **because there's different protocols for different**
 9 **states, and I don't know if we're talking about the**
 10 **same thing, so.**
 11 Q. Sure.
 12 Well, what is your understanding of a, of a
 13 witness program?
 14 **A. Pertaining to -- I, I guess I'm -- what**
 15 **reference? Because that's -- they were promoting**
 16 **here. They weren't witnessing here, so it's**
 17 **different.**
 18 Q. Well, I understand --
 19 **A. Yeah, each state is different. Yeah, each**
 20 **state's different. I've worked in about 25 states --**
 21 Q. Sure.
 22 **A. -- and each state has its own little issues --**
 23 Q. I agree.
 24 **A. -- and protocol. So I don't -- you know, it's**
 25 **very vague.**

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1 Q. So is -- in your opinion --
 2 **A. Yeah.**
 3 Q. -- in Arkansas, as long as the promoter does
 4 not touch or hold the board, that means the
 5 petition --
 6 MS. MURRAY: Object to the form of the
 7 question.
 8 MR. COUCH: I am getting to a
 9 question. It is part of it.
 10 BY MR. COUCH:
 11 Q. Is it your opinion that as long as the promoter
 12 doesn't touch the board, and that the individual
 13 resident of Arkansas holds the board and witnesses a
 14 signature, that that is appropriate in Arkansas?
 15 **A. I still need more clarification with that. I**
 16 **don't --**
 17 Q. Sure.
 18 **A. Yeah.**
 19 Q. In Arkansas do you believe it is appropriate
 20 for a promoter --
 21 **A. Uh-huh.**
 22 Q. -- to solicit the signature that a paid
 23 canvasser, local witnesses and holds the board?
 24 MS. MURRAY: Object to the form.
 25 **A. Yes.**

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1 Q. And as a promoter, one of their primary
 2 responsibilities is to help -- I can't remember the
 3 exact word you said -- but to get attention of people
 4 and to direct people to the canvasser actually
 5 holding the board?
 6 **A. I, I think it's -- initially that was, that**
 7 **ended very shortly after. Once somebody was trained,**
 8 **it was their job to help them find venues. There was**
 9 **less of that going on as we went, so.**
 10 **It wasn't their main job to do that. It**
 11 **was their main job to help them get started and help**
 12 **them continue to find venues and keep working.**
 13 Q. Okay.
 14 And so once a person was, was trained --
 15 **A. Uh-huh.**
 16 Q. -- then he no longer needed a promoter; is that
 17 what you're saying?
 18 **A. Well, a promoter in that sense, because they**
 19 **were, you know, they were also helping them find**
 20 **venues and do other things. So they were, you know,**
 21 **they were doing other stuff too.**
 22 Q. Okay.
 23 And so the promoter helping individuals
 24 solicit signatures only occurred at the beginning; is
 25 that what you're saying?

1 the other individual on your call, was it a man named
 2 John Burris?
 3 **A. I can't recall.**
 4 **Q. Do you know if it was an attorney or --**
 5 **A. An attorney.**
 6 **Q. Okay.**
 7 MR. COUCH: All right. That's all I
 8 have, Betsy.
 9 MS. MURRAY: We have no questions.
 10 Thank you.
 11 MR. COUCH: Thanks, Phil?
 12 THE WITNESS: Thank you.
 13 MS. BROYLES: No questions for the
 14 AG's office. Thank you.
 15 THE VIDEOGRAPHER: We are off the
 16 record at 10:34 a.m.

1 COURT REPORTER'S CERTIFICATE
 2 STATE OF ARKANSAS)
 3)ss.
 3 COUNTY OF SALINE)
 4 I, JANESS FERGUSON SMITH, CCR, RPR, a
 5 Notary Public in and for Saline County, Arkansas do
 6 hereby certify that the facts stated by me in the
 7 caption of the foregoing matter are true; and that
 8 the foregoing matter was transcribed by me, to the
 9 best of my ability and understanding, from my machine
 10 shorthand notes taken at the time and place set out
 11 in the caption hereto.
 12 In accordance with Rule 30(e) of the
 13 Rules of Civil Procedure, review of the transcript
 14 was waived by the deponent or a party thereto.
 15 I FURTHER CERTIFY that I am neither
 16 counsel for, related to, nor employed by any of the
 17 parties to the action in which this proceeding was
 18 taken; and, further that I am not a relative or
 19 employee of any attorney or counsel employed by the
 20 parties hereto, not financially interested or
 21 otherwise, in the outcome of this action.
 22 GIVEN UNDER MY HAND AND SEAL OF OFFICE on
 23 this, the 23rd day of August, 2024.


 JANESS FERGUSON SMITH, CCR, RPR
 Notary Public for Saline County
 and Court Reporter.
 Certificate Number 453