

**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**

**RESPONSE IN OPPOSITION TO  
PETITIONERS' MOTION TO COMPEL**

Respectfully, Intervenors ask the Special Master to deny Petitioners' motion to compel. Although this is an expedited proceeding, the Arkansas Rules of Civil Procedure still apply, and Petitioners have not followed them. Moreover, the petition parts in question are work product; the data in Intervenors' counsel's file was obtained in

preparation for this litigation. There is no reason why Petitioners and their nine lawyers cannot procure their own copies at their own expense. Intervenors made the appropriate plans and paid almost \$14,000 for the materials sought. “Working together” should not equate to Intervenors doing Petitioners’ work for them. The motion to compel should be denied.

### Argument

First, in order to bring a motion to compel, there must be a formal discovery request. *See* Ark. R. Civ. P. 37(a)(2). There is no such request here. On August 9<sup>th</sup>, Petitioners served Intervenors with 13 Interrogatories and 31 Requests for Production of Documents. *See* Exhibit 1. None of the Requests for Production of Documents asked for copies of any petition parts validated by the Secretary of State’s office.

Second, the scanned copies of the validated petition parts are work product. Work product includes raw data, and absent Petitioners’ lawsuit, Intervenors would have no need to obtain the scanned petition parts. *See, e.g., Entergy Arkansas, Inc. v. Francis*, 2018 Ark. App. 250, at 15, 549 S.W.3d 362, 371 (stating that ordinary work product includes “raw data collected in the course of litigation and included in an attorney’s file” and stating that the test for work product is “whether, in

light of the nature of the document and the factual situation in the particular case, the document can fairly be said to have been prepared *or obtained* because of the prospect of litigation”) (emphasis added).

To obtain Intervenors’ work product, Rule 26(b)(3) requires Petitioners to show not only a substantial need for the materials, but also that they are unable to obtain the materials by other means without undue hardship. Again, Petitioners have not complied with the rule, and they have made no such showing—nor can they.

Petitioners have had an equal opportunity to obtain the validated petition parts (and they can still do so). Based on Exhibit A to Petitioners’ Motion, Counsel for Petitioners David Couch had asked the Secretary of State on August 2, 2020 for a scanned copy of the validated petition parts. (A validated petition part lists the number of validated signatures by registered voters on the petition part.) The Secretary’s office replied they would get someone on it. *Id.*

On Monday August 5, 2024, the Secretary of State’s Office advised Mr. Couch by email that counsel for Intervenors had people on site scanning the validated petition parts. *Id.* Mr. Couch told the Secretary of State to hold up scanning the validated petition parts for him because he

would just “ask Betsy” for a copy. *Id.* At no time were Petitioners “blocked” from scanning the same files. *See* Mot. at ¶ 5. The 32,000 petition parts cited by Petitioners are in many files, and they are not all in use for scanning simultaneously.

The fact of the matter is that Mr. Couch did not ask the Secretary’s office to scan the parts after August 5th (even though it was willing to do so), and he did not even ask the undersigned for the validated petition parts until he sent an email on Monday, August 12<sup>th</sup>. The undersigned counsel for Intervenors responded the same day explaining that she would not provide the scanned copies and that they are work product. *See* Exhibit 2.

There is no deadline to file the original action. Yet, Petitioners chose to move forward with filing even though they apparently had not reviewed *any* validated petition parts to assess whether they could knock off the 25,000 signatures they need. Obtaining the validated petition parts is step one in a signature challenge, and attorneys such as Mr. Couch, who has years of experience in signature challenges, know this.

For these reasons, Intervenors respectfully request that Petitioners’ motion to compel be denied.

Respectfully submitted,

Elizabeth Robben Murray, #79244  
Kathy McCarroll, #2014191  
FRIDAY, ELDREDGE & CLARK LLP  
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By: /s/ Elizabeth Robben Murray  
ELIZABETH ROBBEN MURRAY

*Attorneys for Local Voters in Charge, a  
ballot question committee, and Jim  
Knight, individually and on behalf of  
Local Voters in Charge*

### **CERTIFICATE OF SERVICE**

I, Elizabeth Robben Murray, hereby certify that on this 14th 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:

John E. Tull  
E.B. Chiles IV  
R. Ryan Younger  
Meredith M. Causey  
Glenn Larkin  
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and

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*Attorneys for Respondent*

By: /s/ Elizabeth Robben Murray  
ELIZABETH ROBBEN MURRAY

# 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 official 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

### **PETITIONERS' FIRST SET OF INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS TO INTERVENORS**

Petitioners request that Intervenor Local Voters In Charge (“LVC”) and Jim Knight, individually and on behalf of Local Voters In Charge (collectively, “Intervenors”), answer the following interrogatories and requests for production of documents pursuant to and in the time required by Arkansas Supreme Court Rule 6-5, Rules 26, 33, and 34 of the Arkansas Rules of Civil Procedure, and any orders of the Arkansas Supreme Court.

#### **DEFINITIONS**

1. “You” or “your” refers to the Intervenor to whom these interrogatories and requests for production are addressed, and your attorneys, officers, agents, and employees; and any person acting on your behalf or on behalf of your attorneys, agents, or employees.



2. “Person” refers to any individual, corporation, partnership, joint venture, firm, association, proprietorship, ballot question committee, agency, board, authority, commission, bureau, or other such entity.

3. “Communicate” or “communication” means every manner or means of disclosure, transfer, or exchange and every disclosure, transfer, or exchange of information, whether orally or by document or whether face-to-face or by telephone, text, mail, personal delivery, electronic mail, or otherwise.

4. “Identify” as to a person means the name, business, and residence address(es), occupation, job title, and dates so employed; and, if not an individual, state the type of entity, the address of its principal place of business, and the names of its officers and directors.

5. “Identify” as to a document mean the type of document (letter, memo, etc.), the identity of the author or originator, the date authored or originated, the identity of each person to whom the original or a copy was addressed or delivered, the identity of each person known or reasonably believed by you to have present possession, custody, or control thereof, and a brief description of the subject matter thereof, all with sufficient particularity to request its production under Rule 34 of the Arkansas Rules of Civil Procedure.

6. “Identify” as to a communication means the date of the communication, the type of communication (telephone conversation, meeting, etc.), the place where the communication took place, the identity of the person who made the communication, the identity of each person who received the communication, the identity of each person present when it was made, and the subject matter discussed.

7. “Identify” as to a meeting means the date of the meeting, the place of the meeting, the identity of each person invited to attend, the identity of each person who attended, and the subject matter discussed.

8. “Or” shall be construed either conjunctively or disjunctively to bring within the scope of these interrogatories and requests for production of documents any information that might otherwise be construed to be outside their scope.

9. “Statement” means any oral or written expression of words, thoughts, or ideas.

10. “Recording” refers to all means by which human communication is transmitted or stored, however produced, or reproduced. This term shall include, without limitation, writings, audiotapes, videotapes, digital media, and all computer-related storage media.

11. “Document” is used in its customary broad sense and means any kind of printed, recorded, written, graphic, or photographic matter (including tape recordings), however printed, produced, reproduced, coded, or stored, of any kind or description, regardless whether sent or received, including originals, drafts, copies, non-identical copies of reproductions, summaries, reports, data compilations, and tabulations, whether stored by mechanical, photographic, or electronic means or otherwise (including without limitation data processing of all types). The term “document” shall also include, but not be limited to, the following: any writing, e-mail, drawing, graph, chart, plat, map, photograph, motion picture file, phonograph record, tape and video recording, or any other records or data compilations from which information can be obtained. The term “document” shall also include, without limitation, each note, memorandum, letter, work paper, minute, book, diary, forecast, blueprint, index, microfilm, account, opinion, appraisal, brochure, pamphlet, circular, telegram, release, article, analysis, transcript, agreement, deposit slip, bank statement, check (front and back), check stub, receipt, stock certificate, bond, bond coupon,

statement, confirmation, tape data sheet, data processing card, or disc and any other written, recorded, transcribed, punched, taped, filmed, or graphic matter, however produced or reproduced, and any other document or writing of whatever description including, but not limited to, any information contained in any computer although not yet printed out. "Document" shall also include any contract or agreement you have entered into.

### **INSTRUCTIONS**

1. Upon producing any document requested, you are instructed to indicate to which of the following numbered requests for production the document is being produced in response.

2. Whenever a document or group of documents is taken out of a file folder, file drawer, file box, or notebook, before the same is produced, please attach thereto a copy of the label on the file folder, file box, or notebook from which the document or group of documents was removed.

3. If any document requested has been lost or destroyed since its creation, identify the document, describe when, where, how, and by whom the document was lost or destroyed, and identify the person(s) who last had custody of the document.

4. With respect to any document withheld by you or your counsel on the belief that the document or some portion thereof may be privileged, you or your counsel shall produce so much of each such document as does not contain any alleged privileged information and furnish a written statement setting forth as to each such document (or portion thereof):

- a. The name(s) of the author(s) of the document;
- b. The name(s) of the sender(s) of the document;
- c. The name(s) of the person(s) who received the document or to whom copies were sent to or exhibited at any time;

- d. The name(s) of all persons presently having possession of the document or copy thereof;
- e. A brief description of the nature and subject matter of the document; and
- f. The privilege asserted and the statute, rule, decision, or other basis that is claimed to give rise to the privilege.

5. Your answers to interrogatories are to include all information known to you, your employees, attorneys, agents, consultants, advisors, or investigators.

6. If compliance with any request for production includes the submission of information in computer readable form, the data should comply with the following specifications: The data should be in a format readable by a Microsoft program such as Word, Excel, or Access.

7. These interrogatories and requests for production are deemed to be continuing and subject to supplementation to the full extent required by the Arkansas Rules of Civil Procedure.

8. For all interrogatories and requests for production, responses should cover the time period from January 1, 2024, to present, unless otherwise specifically noted.

## **INTERROGATORIES AND REQUESTS FOR PRODUCTION**

**INTERROGATORY NO. 1:** Identify each person assisting in answering these requests.

**INTERROGATORY NO. 2:** Identify each person with knowledge of the facts alleged in the pleadings in this action and, for each person, state the knowledge you believe each person possesses and provide each person's home address, occupation, home telephone number, work telephone number, wireless telephone number, email address, and the name of such person's present employer.

**INTERROGATORY NO. 3:** Identify each person whom you expect to call as a lay witness at trial and state what testimony you expect each such person will give.

**INTERROGATORY NO. 4:** Please state the following for each and every person you intend to call as an expert witness in this case:

- a. Name;
- b. Address;
- c. Telephone Number;
- d. Educational institutions attended; i.e., all colleges, universities, and vocational trade or professional schools or institutions;
- e. Degrees conferred;
- f. Each and every area or field of expertise upon which such person will offer expert testimony;
- g. All opinions such person will offer at the trial of this matter; and
- h. The names and identities of any and all publications to his/her credit.

**REQUEST FOR PRODUCTION NO. 1:** Produce all statements you have obtained from any potential witness in this lawsuit.

**REQUEST FOR PRODUCTION NO. 2:** Produce all documents and items of tangible evidence that you may or will offer in evidence at trial.

**REQUEST FOR PRODUCTION NO. 3:** Produce all demonstrative aids that you will use at trial.

**INTERROGATORY NO. 5:** Identify each person, other than your attorney, with whom you have communicated regarding, or pertaining in any way to, the allegations in the pleadings in this action and, for each such communication, state the substance of the communication.

**REQUEST FOR PRODUCTION NO. 4:** Produce all communications, excluding communications with your attorney, between you and any person with whom you have communicated regarding, or pertaining in any way to, the allegations in the pleadings in this action.

**REQUEST FOR PRODUCTION NO. 5:** Produce all communications among the officers and members of LVC.

**REQUEST FOR PRODUCTION NO. 6:** Produce all communications between you and any LVC canvasser, agent, employee or independent contractor of LVC, including but not limited to any representatives or employees of PCI Consultants, Inc.

**REQUEST FOR PRODUCTION NO. 7:** Produce all communications between you and any employee, agent, owner, manager, or officer of Capitol Advisors Group.

**REQUEST FOR PRODUCTION NO. 8:** Produce all communications between you and any other person or entity that assisted in the initiative petition for LVC, including but not

limited to Consensus Communications, Kyle Ogden, Larry Walker, and the Choctaw Nation of Oklahoma or any entity owned or controlled by the Choctaw Nation of Oklahoma.

**REQUEST FOR PRODUCTION NO. 9:** Produce all communications between you and Phillip Dewey.

**INTERROGATORY NO. 6:** Please identify the name, address, telephone number, employer, job title, and job duties of Phillip Dewey.

**REQUEST FOR PRODUCTION NO. 10:** Produce all documents in your possession or control regarding Phillip Dewey.

**INTERROGATORY NO. 7:** Identify all communications between you and Berta Erickson.

**REQUEST FOR PRODUCTION NO. 11:** Produce all communications between you and Berta Erickson.

**REQUEST FOR PRODUCTION NO. 12:** Produce all documents in your possession or control regarding Berta Erickson.

**INTERROGATORY NO. 8:** Identify all persons whom LVC paid to assist in any manner in canvassing efforts, regardless of whether such person's information was provided to the Secretary of State.

**INTERROGATORY NO. 9:** Identify all persons whom LVC paid (regardless of job duty) but did not list or provide to the Secretary of State as a "paid canvasser." For each person, in addition to all other information to be provided per the instructions and definitions above, please describe his or her job duties.

**REQUEST FOR PRODUCTION NO. 13:** Produce all documents and financial statements (including but not limited to profit and loss statements and bank statements) that pertain to, reference, or identify payments made by you to any person or entity.

**REQUEST FOR PRODUCTION NO. 14:** Produce all bank statements for bank accounts in your name, whether joint or not.

**INTERROGATORY NO. 10:** Please state whether you gave or paid any canvasser anything of value, including gift cards, cash, etc., as a bonus or compensation for obtaining a certain number of signatures.

**INTERROGATORY NO. 11:** Please state whether you have knowledge that another person or entity gave or paid any canvasser anything of value, including gift cards, cash, etc., as a bonus or compensation for obtaining a certain number of signatures. If yes, please identify that person and/or entity.

**REQUEST FOR PRODUCTION NO. 15:** Produce receipts and all other financial documents pertaining to the purchasing of gift cards.

**REQUEST FOR PRODUCTION NO. 16:** Produce all background checks obtained and background check requests for all agents, employees, and independent contractors of LVC.

**REQUEST FOR PRODUCTION NO. 17:** Produce all driver's licenses for every person paid by LVC or LVC's agents to either canvass signatures, manage canvassers, or assist in canvassing efforts.

**REQUEST FOR PRODUCTION NO. 18:** Produce all copies of all forms of identification provided by any paid canvasser and "Captain" as that term is defined in the Original Action Petition.



**REQUEST FOR PRODUCTION NO. 19:** Produce all agreements signed by paid canvassers and “Captains” as that term is defined in the Original Action Petition.

**REQUEST FOR PRODUCTION NO. 20:** Produce all training documents, presentations, policy manuals, and any other documents you or your agents, including PCI Consultants, Inc., provided to paid canvassers.

**REQUEST FOR PRODUCTION NO. 21:** Produce all communications between you and any canvasser who solicited signatures for you but whom you did not pay.

**INTERROGATORY NO. 12:** Please state whether you have knowledge that volunteer canvassers placed petition parts on tables in the public and did not monitor the petition parts the entire time the parts were available for signatures. If yes, identify the volunteer canvasser and location where the volunteer canvasser left petition parts unattended.

**REQUEST FOR PRODUCTION NO. 22:** Produce any and all records reflecting payment of expenses for paid canvassers or any person who accompanied and coached paid canvassers at canvassing locations across the state (“Captain”), including any payments made to the paid canvasser or Captain or on the paid canvasser or Captain’s behalf for any travel or any lodging between July 31, 2023, and July 5, 2024.

**REQUEST FOR PRODUCTION NO. 23:** Produce any and all records evidencing that an Arkansas State Police background check was conducted on each paid canvasser by Local Voters in Charge or its agent or affiliates within thirty days before the paid canvasser began soliciting signatures in support of the initiative petition with the following popular name: “An amendment requiring local voter approval in a countywide special election for certain new casino licenses and repealing authority to issue a casino license in Pope County, Arkansas.”

**REQUEST FOR PRODUCTION NO. 24:** Produce any and all records evidencing that an Arkansas State Police background check was conducted on any other individual employed by or contracted with to be a trainer, captain or manager of paid canvassers or who accompanied or otherwise coached paid canvassers but who were not listed on any paid-canvasser submissions to the Arkansas Secretary of State.

**REQUEST FOR PRODUCTION NO. 25:** Produce any and all correspondence with the Arkansas State Police or any third party regarding any background check or requests for background checks by any person or entity on behalf of Local Voters in Charge.

**REQUEST FOR PRODUCTION NO. 26:** Produce any and all documents evidencing paid canvassers' work schedules, including assigned work locations.

**REQUEST FOR PRODUCTION NO. 27:** Produce any and all documents evidencing work schedules of individuals who accompanied canvassers to canvassing locations and provided training or coaching to paid canvassers.

**REQUEST FOR PRODUCTION NO. 28:** Produce any and all documents evidencing "Captains" work schedules including the identity of any paid canvassers they were assigned to or accompanied including the date and location where the "Captain" accompanied a paid canvasser.

**REQUEST FOR PRODUCTION NO. 29:** Produce all other documents in the possession or control of LVC.

**REQUEST FOR PRODUCTION NO. 30:** Identify each and every document and communication you have deleted since January 1, 2024.

**REQUEST FOR PRODUCTION NO. 31:** Produce all other documents related to the above interrogatories or that assisted you in answering the above interrogatories.

**INTERROGATORY NO. 13:** State whether you discharged or otherwise disciplined any paid canvassers for violations of Arkansas law regarding paid canvassers. If so, please state the canvasser's name and the violations such canvasser committed.

QUATTLEBAUM, GROOMS & TULL PLLC

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**CERTIFICATE OF SERVICE**

I, hereby certify that, on August 9, 2024, a copy of the foregoing was served upon the following via electronic mail:

FRIDAY, ELDREDGE & CLARK LLP  
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Telephone: (501) 370-1592  
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murray@fridayfirm.com  
mccarroll@fridayfirm.com

*Attorneys for Local Voters in Charge, a  
ballot question committee, and Jim Knight,  
individually and on behalf of Local Voters in  
Charge*

John E. Tull III  
John E. Tull III

**From:** [David Couch](#)  
**To:** [Elizabeth Robben Murray](#)  
**Cc:** [John Tull](#)  
**Subject:** Re: Scanned Petitions  
**Date:** Monday, August 12, 2024 5:38:43 PM

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**CAUTION: External Email**

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We will provide that as soon as we can. Many of the issues with this effort were so widespread and systemic that I believe justifies every signature collected by the paid canvassers to be deemed invalid. The reason I asked for the petitions from you is we do have the petitions sorted as you suggest and we just needed the final petitions since they have the number of valid signatures listed while the ones we have were pre validation and do not.

David

On Mon, Aug 12, 2024 at 3:09 PM Elizabeth Robben Murray <[Murray@fridayfirm.com](mailto:Murray@fridayfirm.com)> wrote:

I have not decided which I might need to offer. I was hoping your complaint would at least include some specificity as to individual canvassers. That is why I sent the discovery requests. When I was challenging your initiatives, we separated out the petitions we challenged by issue, canvasser and/ or notary involved and provided exhibits with the validated petition parts affected by the issue and the number of valid signatures contained in each exhibit. The master and the court often referred to those number in their rulings. The total from all the categories had to total enough to bring the petition below the needed number for certification.

We challenged signatures in the 2018 Term limits case in the same fashion. Chad Pekron at John's firm defended the signatures. Zook and Arkansas Term Limits v. Martin.CV-18-722.

[ELIZABETH ROBBEN MURRAY](#) | ATTORNEY



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**EXHIBIT 2**

attorney-client relationship.

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**From:** David Couch <[david@davidcouchlaw.com](mailto:david@davidcouchlaw.com)>  
**Sent:** Monday, August 12, 2024 2:22 PM  
**To:** Elizabeth Robben Murray <[Murray@fridayfirm.com](mailto:Murray@fridayfirm.com)>; John Tull <[jtull@qgtb.com](mailto:jtull@qgtb.com)>  
**Subject:** Re: Scanned Petitions

**CAUTION: External Email**

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Ok. I asked Josh and you were in the process of copying. Guess you don't plan to introduce them as evidence.

David

On Mon, Aug 12, 2024 at 1:23 PM Elizabeth Robben Murray <[Murray@fridayfirm.com](mailto:Murray@fridayfirm.com)> wrote:

David,

That is our work product. You can hire Pivot or someone else to go scan the validated petitions. I am surprised you have not already done so based on our experience in past original actions.

[ELIZABETH ROBBEN MURRAY](#) | ATTORNEY



[Murray@fridayfirm.com](mailto:Murray@fridayfirm.com) | Direct: (501) 370-1534 | Fax (501) 244-5356

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does not establish an attorney-client relationship.

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**From:** David Couch <[david@davidcouchlaw.com](mailto:david@davidcouchlaw.com)>  
**Sent:** Monday, August 12, 2024 11:29 AM  
**To:** Elizabeth Robben Murray <[Murray@fridayfirm.com](mailto:Murray@fridayfirm.com)>  
**Subject:** Scanned Petitions

**CAUTION: External Email**

---

Josh told me the other day that you were having pivot scan all the petitions. Are they complete and if they are will you send them to me?

I have scans of all the petitions before they were validated and all of the information that was submitted by your client at turn in.

I also have all the affidavits that were submitted so I'll not need those in response to discovery.

If you want the scans of the petitions or any other documents I have just let me know.

David