

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’ RESPONSE TO INTERVENORS’
MOTION TO PRESENT LIVE TESTIMONY OF PHILLIP DEWEY VIA
ELECTRONIC MEANS**

Petitioners took Mr. Dewey’s deposition via Zoom on August 23, 2024 (last Friday). Intervenors’ counsel attended but did not question Mr. Dewey. As the Special Master has already heard, Mr. Dewey admitted that he offered incentives to paid canvassers based on signature counts. And as the Special Master will learn, Mr. Dewey oversaw the paid canvassers that collected the lion’s share of signatures at issue in this case. His admission that he offered and paid signature-based incentives means that all paid canvassers under his tent necessarily collected signatures in violation of Ark. Code Ann. § 7-9-601(g).

Confronted with Mr. Dewey’s troublesome testimony, Intervenors request a do-over.¹ They invoke Arkansas Rule of Civil Procedure 88 to ask the Special Master for permission to present Mr. Dewey’s live testimony via electronic means. Before the Special Master can allow that, the Intervenors bear the burden of establishing that “[p]rocedures are in place to protect the constitutional, statutory, and procedural rights of parties” Ark. R. Civ. P. 88(b)(1). Indeed, Rule 88 specifically requires that Intervenors’ motion “set forth how the safeguards in section (b)” of the Rule are to be met. Intervenors fail to carry this burden because it is an impossible one to bear in this instance.

Mr. Dewey is in the Philippines. That he is in a foreign country means that no procedures could be put in place to protect the Petitioners’ procedural rights. While the Special Master can swear in Mr. Dewey, that would be a ceremonial act, at most. The Special Master has no contempt power over Mr. Dewey. Mr. Dewey, while sitting in the Philippines is not subject to any Arkansas perjury laws. Petitioners’ fundamental procedural right—a cross-examination under a meaningful oath—cannot be protected under these circumstances.

What’s more, Petitioners have no way of knowing who will be in the room with Mr. Dewey while he testifies or whether he is viewing documents or engaging

¹ In paragraph one of Intervenors’ motion, Intervenors state that “Petitioners listed Phillip Dewey on their witness list” and that “Petitioners seek leave of the Court to present his live testimony via Zoom or other electronic means.” Mot. ¶ 1. Petitioners assume this is a scrivener’s error.

in other impermissible acts, all beyond the Special Master's or the parties' limited view. It is also unknown how Petitioners (or Intervenors for that matter) will present exhibits to Mr. Dewey.

Petitioners understand that Mr. Dewey is out of the country on unavoidable family business. But that is not grounds to remove procedural safeguards to which Petitioners are entitled.

CONCLUSION

For these reasons, Intervenors should not be allowed to call Mr. Dewey via electronic means.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, John E. Tull III, hereby certify that on August 28, 2024, the foregoing pleading was filed with the Court's electronic filing system, which shall cause notification to be sent to all counsel of record.

/s/ John E. Tull III

John E. Tull III