

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
EXCLUDE VIDEOS**

Local Voters in Charge cannot have its cake and eat it, too. When it submitted the Initiative Petition, LVC provided to the Secretary of State a list of approximately 385 paid canvassers. Those paid canvassers gathered more than 98% of the signatures LVC relied on to qualify the Initiative Petition for the ballot. But now, when the words of those paid canvassers reveal systemic violations of Arkansas law, LVC seeks to disavow the paid canvassers to preclude the Special Master from ever hearing the unvarnished truth of LVC's canvassing campaign. For the following reasons, LVC's motion to exclude videos should be denied.

Paid Canvassers' statements are not hearsay. A statement is not hearsay if . . . [t]he statement is offered against a party and is . . . a statement by a person authorized by him to make a statement concerning the subject” or “a statement by his agent or servant concerning a matter within the scope of his agency or employment.” Ark. R. Evid. 801(d)(2). LVC does not deny (because it cannot) that the bulk of the videos Petitioners included on their exhibit list depict paid canvassers circulating the Initiative Petition.¹ The words of those paid canvassers are attributable to LVC. LVC cannot argue that people circulating its petitions (for money) were not authorized to pitch the Initiative Petition to others. Statements made during those pitches fall comfortably outside the definition of hearsay. Even more, paid canvassers' statements in the videos concerned matters within the scope of their employment. Put succinctly, paid canvassers' statements in the videos are party admissions and not hearsay in the first place.

Statements camera operators made are not hearsay. Petitioners are not offering any statements by camera operators for the truth of the matter asserted. Those statements are not hearsay. Ark. R. Evid. 801(c).

Even if the videos contained hearsay, Rule 803(24) applies here. The Rule 803(24) exception applies to statements “not specifically covered” by other hearsay exceptions but that have “equivalent circumstantial guarantees of trustworthiness.”

¹ Petitioners are withdrawing duplicative videos on their exhibit list.

For this exception to apply, the Special Master must determine that “(i) the statement is offered as evidence of a material fact; (ii) the statement is more probative on the point for which it is offered than any other evidence which the proponent can procure through reasonable efforts; and (iii) the general purposes of these rules and the interests of justice will be best served by admission of the statement into evidence.”

Id. Additionally, the proponent of hearsay evidence must “make known to the adverse party sufficiently in advance to provide the adverse party with a fair opportunity to prepare and meet it, his intention to offer the statement and the particulars of it, including the name and address of the declarant.” *Id.*

The above standards are met here. Petitioners are offering the video to prove the material facts that paid canvassers were offered bonuses based on the number of signatures they collected, misrepresented the Initiative Petition, and were accompanied by other people, known as trainers or promoters, that solicited signatures as well, thus qualifying them as paid canvassers. Of course nobody registered these people as paid canvassers. Given the time constraints in a petition challenge, the videos are more probative on these points than reasonable efforts, like deposing 385 canvassers, could produce. The general purpose of the hearsay rule is to exclude specious testimony. This is not an instance where Petitioners wish to put on an eyewitness repeating what she heard. These are videos, the integrity of which cannot seriously be challenged. The interests of justice are also served by the videos’

admission. Amending the Arkansas Constitution is a weighty matter that must be accomplished with strict compliance with the law. The videos show that did not happen. Finally, Petitioners have produced all videos and have indicated to Intervenor that they intend to introduce them into evidence. Intervenor also has access to the names and addresses of the paid canvassers. After all, Intervenor submitted a list of them, including their addresses, to the Secretary of State. If the Special Master concludes that the videos contain hearsay, then this exception should apply.

The videos are highly relevant. Intervenor reinvents the relevance standard when they claim that relevance depends on the Petitioners' ability to tie each video to a signature. That may be Intervenor's theory of the case, but it is not the law. Petitioners allege (and will prove) that paid canvassers were offered and given incentives based, in part, on the number of signatures paid canvassers collected. This scheme was systemic, requiring disqualification of most paid canvassers. The videos establish this. They are unquestionably relevant. Moreover, the videos provide definitive proof that paid canvassers routinely misrepresented the purpose and effect of the Initiative Petition.

Intervenor's other arguments lose. Intervenor makes much of the fact that some videos bear date stamps showing 2020 and 2022. That is true. But Intervenor does not question that the videos were captured during LVC's canvassing campaign.

They cannot because each video clearly depicts canvassers discussing the Initiative Petition that was not in existence until late March 2024. Intervenors further grasp at straws when they highlight a momentary glitch in one of the hundreds of videos Petitioners produced. All to say, the integrity of the videos is a non-issue.

CONCLUSION

In this bench trial, the Special Master can evaluate the validity and admissibility of the videos after Petitioners are afforded the opportunity to lay a foundation and establish the genuineness of the videos. For these reasons, Intervenors' Motion to Exclude Petitioners' videos must be denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Glenn Larkin, hereby certify that on August 26, 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/ Glenn Larkin

Glenn Larkin