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

REPLY IN SUPPORT OF
PETITIONERS' MOTION TO SUPPLEMENT THE RECORD TO INCLUDE INTERVENORS' EXHIBIT 9

Intervenors complain of an issue they created, inadvertently or not. Intervenors' counsel specifically referenced Exhibit 9, which happens to directly contradict their position that signature-based bonuses were offered to paid canvassers on two discrete occasions. Petitioners did not object to Exhibit 9's introduction into evidence. And the Special Master introduced it. Tr. 670–71. Intervenors' counsel never clarified the record or requested that Exhibit 9 be withdrawn.

Intervenors' arguments for denial of Petitioners' motion are not serious. Intervenors suggest that it matters that Exhibit 9 did not directly involve Ms. Gillum.

But Ms. Gillum was involved in collecting emails from "the managers," which includes Ms. Erickson. Tr. 683:7–9; *see also* Ex. A to Pet'rs Motion (listing Ms. Erickson as the author of Exhibit 9). Even if Ms. Gillum were not involved with Exhibit 9, Intervenors' argument regarding her relation to Exhibit 9 would matter only if Petitioners had objected on foundation or relevance grounds, which they did not.

Intervenors say that Petitioners' request to supplement the record comes too late. Petitioners filed the motion to supplement on the same day they learned it was not in the official record. Indeed, because it was so clear that Exhibit 9 was in evidence, Petitioners cited it in their Proposed Findings of Fact and Conclusions of Law.

Intervenors get it backwards when they argue that inclusion of the very exhibit they introduced into evidence would "be highly prejudicial and fundamentally unfair" to Intervenors. Resp. at 2. Intervenors maintain that Exhibit 9's inclusion now would deny Intervenors an opportunity to rebut notices about signature bonuses offered to the "Entire Team at Florida Petition Management." Ex. B to Pet'rs Motion. But exclusion of the exhibit Intervenors introduced is where the prejudice would lie.

Petitioners relied on Intervenors' introduction of their own exhibit and had no reason to question that the word "introduce" meant "introduce." Tr. 670:14–15.

With a clear record that Exhibit 9 was in evidence, Petitioners made strategic decisions in terms of who (if anyone) they would offer in rebuttal, how (or if) they would cross Ms. Gillum, and whether to release Mr. Stiritz from his trial subpoena. What's more, Intervenors consistently maintained that they intended to call Ms. Erickson. Petitioners intended to use Exhibit 9 with her. For whatever reason, Intervenors decided not to call Ms. Erickson, and Petitioners had no reason to try to subpoena her because Exhibit 9 was already introduced.

All to say, Intervenors brought this issue upon themselves and must accept that. Denying introduction of Exhibit 9 would be prejudicial to Petitioners and contrary to basic evidence law.

CONCLUSION

For these reasons, and the reasons stated in Petitioners' opening papers, the Special Master should grant Petitioners' motion to supplement the record to include Intervenors' Exhibit 9.

Respectfully submitted,

QUATTLEBAUM, GROOMS & TULL PLLC
111 Center St., Ste. 1900
Little Rock, AR 72201
Telephone: (501) 379-1700
Facsimile: (501) 379-1701
jtull@qgtlaw.com
cchiles@qgtlaw.com
ryounger@qgtlaw.com
mcausey@qgtlaw.com
glarkin@qgtlaw.com

By:/s/ John E. Tull III
John E. Tull III (84150)
E. B. Chiles IV (96179)
R. Ryan Younger (2008209)
Meredith M. Causey (2012265)
Glenn Larkin (2020149)

DAVID A. COUCH PLLC
David A. Couch
5420 Kavanaugh, #7530
Little Rock, Arkansas 72217
Telephone: (501) 661-1300
david@davidcouchlaw.com

MCDANIEL WOLFF, PLLC
Scott P. Richardson (2001208)
Bart W. Calhoun (2011221)
Brittany D. Webb (2023139)
1307 West Fourth Street
Little Rock, Arkansas 72201
Telephone: (501) 954-8000
Facsimile: (501 419-1601
scott@mcdanielwolff.com
bart@mcdanielwolff.com
bwebb@mcdanielwolff.com

Attorneys for Petitioners

CERTIFICATE OF SERVICE

I, John E. Tull III, hereby certify that on September 4, 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