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CV-24-652
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IN THE ARKANSAS SUPREME COURT

BILL PASCHALL,
individually and on behalf of
ARKANSANS FOR PATIENT ACCESS,
a ballot question committee PETITIONERS

v. No. _____

JOHN THURSTON, in his official capacity
as Secretary of State RESPONDENT

MOTION TO EXPEDITE, APPOINT SPECIAL MASTER, AND FOR PRELIMINARY INJUNCTION

Petitioners move to expedite this action, appoint a special master and for a preliminary injunction in this original action over the refusal of the Secretary of State to certify a proposed constitutional amendment to the November 5, 2024 general election ballot. The requested relief is necessary because early voting commences October 15, and petitioners will suffer irreparable harm unless the Court expedites this action and orders respondent John Thurston, the Arkansas Secretary of State, to certify petitioners' proposed initiated amendment:

1. Petitioner Arkansans for Patient Access ("APA") is the sponsor of a proposed initiated amendment to the Arkansas Constitution with the popular name "Medical Marijuana Amendment of 2024" ("Amendment").

2. Petitioners filed this original action to challenge the Secretary of State's incorrect rejection of up to 28,413 signatures of Arkansas voters who support placing the Amendment on the ballot. Petitioners' complaint asks this Court to find the number of signatures sufficient and to order Secretary Thurston to certify the Amendment to appear on the November 2024 general election ballot.

3. In the past, the Court has expedited original actions like this one in which parties were contesting the validity of a proposed initiated measure. *See, e.g.*, *McGill v. Thurston*, No. CV-24-492 (August 19, 2024) (per curiam) (granting expedited consideration in case challenging qualification of a measure based on invalid signatures and challenging the sufficiency of a ballot title). Petitioners request that the Court do the same here by ordering an expedited briefing schedule and expedited consideration so that the case can be decided before too late in the upcoming election cycle.

4. To the extent the Secretary's refusal to certify the Amendment implicates issues of fact, the Court should also appoint a Special Master to make factual determinations and conclusions of law based on those determinations pursuant to Arkansas Supreme Court Rule 6-5(c) and Ark. R. Civ. P. 53.

5. Pending a final resolution of this matter, Petitioners ask the Court to enter a preliminary injunction requiring the Secretary to validate and count all signatures submitted on August 30, 2024, by Arkansas voters in support of placing the Amendment on the general election ballot. On information and belief, the Secretary has refused to validate and count as many as 28,413 signatures of Arkansas voters based on a newly invented position that these signatures were submitted in violation of Ark. Code Ann. §7-9-601(b)(3). The Court should order the Secretary to validate and count all signatures rejected or culled by the Secretary based on his position that the signatures were submitted in violation of Ark. Code Ann. §7-9-601(b)(3).

6. The Secretary wrongly culled such signatures and the corresponding petition parts from validating and counting and has, on information and belief, designated such petition parts on the Secretary's

Culled Cover Sheet as rejected under the designation of "Paid Canvasser: Not Registered Before Collecting Signatures." However, each of the paid canvassers whose petition parts were culled were registered with the Secretary before collecting signatures under the same process that the Secretary had accepted for years, including prior to August 8, 2024.

7. One of the primary purposes of a preliminary injunction "is to maintain the status quo until the merits of a controversy are decided." *Am. Invs. Life Ins. Co. v. TCB Transp., Inc.*, 312 Ark. 343, 345, 849 S.W.2d 509, 510 (1993) (citation omitted). Obtaining that protection requires two elements. First, petitioners must show that irreparable harm will result without a preliminary injunction. *Hutchinson v. Armstrong*, 2022 Ark. 59, 5, 640 S.W.3d 395, 398. Second, petitioners must show a likelihood of success on the merits. *Id.*

8. Irreparable harm will result if the Court does not grant petitioners preliminary injunctive relief. Until the Secretary actually validates and counts all the signatures submitted, the Amendment cannot be certified to the general election ballot and the rights of thousands of Arkansas voters will be denied. Loss of the opportunity to

put the Amendment on this year's general election ballot is irreparable because no compensation after the fact will cure that loss. *Thurston v. Safe Surgery Arkansas*, 2021 Ark. 55, 19, 619 S.W.3d 1, 13 (citation omitted).

9. Additionally, early voting commences October 15 and based on the Secretary's communications to the sponsor and to the voting public, there are not sufficient signatures to certify the Amendment to the ballot. This position is misleading to Arkansas voters.

10. Petitioners also have a strong likelihood of success on the merits of their action. Likelihood, of course, is not certainty—"the test for determining the likelihood of success is whether there is a reasonable probability of success in the litigation." *Id.* at 13, 619 S.W.3d at 10 (citation omitted).

11. Petitioners have a reasonable probability of success because the Court's Special Master in *McGill v. Thurston*, CV-24-492 has already issued a Report rejecting the very argument raised by the Secretary to avoid counting the signatures submitted in support of placing the Amendment on the ballot.

12. Petitioners also note that a preliminary injunction harms no one. If petitioners do not prevail in this action, the Court can simply order that any votes cast on the Amendment not be counted or certified. *See Walmsley v. Martin*, 2012 Ark. 370, 2, 423 S.W.3d 587, 588 (vacating certification and ordering that "any votes cast on such proposal not be counted or certified"). Preliminary injunctive relief thus protects the right of the voters of Arkansas to cast their votes on the Amendment if this Court ultimately rules that the Secretary improperly refused to certify the Amendment to the general election ballot.

13. For those reasons, the Court has issued preliminary injunctions in the past to ensure that the passage of time does not prevent sponsors seeking this Court's review of certification decisions from obtaining relief. *See Miller*, *supra*, at 2 (granting preliminary injunction requiring continued facial review of petition and verification of signatures pending the Court's resolution of original action).

WHEREFORE, petitioners request that the Court expedite the matter, appoint a special master, and issue a preliminary injunction directing Secretary Thurston to validate and count all signatures

submitted on August 30, 2024, and to provisionally certify the Amendment for the ballot, and grant petitioners all other proper relief.

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CERTIFICATE OF SERVICE

I certify that on October 1, 2024, I electronically filed the foregoing with the Clerk of the Court using the Arkansas Judiciary Electronic Filing System, which shall send notification of the filing to all counsel of record. I also served a copy of the motion on respondent by email on the same date.



Stephen R. Lancaster