

**IN THE SUPREME COURT OF ARKANSAS**

**LAUREN COWLES, individually and on behalf of  
ARKANSANS FOR LIMITED GOVERNMENT,  
a ballot question committee,**

**Petitioners**

**v.**

**No. CV-24-455**

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

**Respondent**

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**An Original Action**

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**Combined Motion to Dismiss and Response  
to Petitioners' Motion to Expedite and for Emergency Relief**

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The Secretary of State correctly rejected Arkansans for Limited Government’s submission because AFLG failed to submit with its petition a statement by the sponsor indicating that it had provided a copy of the Secretary’s initiatives and referenda handbook to its paid canvassers and explained to each paid canvasser the legal requirements under Arkansas law for obtaining signatures. AFLG ultimately doesn’t dispute that. But AFLG seeks a pass, arguing that it should be excused from complying with Arkansas law because—while it undisputedly failed to submit a *sponsor* statement with its petition—its *canvassers* submitted statements attesting that the sponsor had provided that information to some of their fellow canvassers. Or, alternatively, it suggests that it was entitled to submit a signed statement a week after the submission deadline had passed. Both arguments fail as a matter of law, and the Court should dismiss this case without further proceedings.

Indeed, as the Secretary concluded, AFLG’s failure required outright rejection of its petition. Yet even if that weren’t the case, none of AFLG’s paid signatures may be counted “for any purpose,” including the initial signature count. And without them, AFLG’s petition—on its own telling—falls short of the facial number required to qualify for a cure period. So either way, AFLG’s petition falls short and further proceedings would be futile. The Court should therefore decline to require further merits briefing, deny the requested relief, and dismiss this case.

## **BACKGROUND**

In 2013, out of “concern[] that paid canvassers . . . have an incentive to submit forged or otherwise invalid signatures,” *McDaniel v. Spencer*, 2015 Ark. 94, at 10, 457 S.W.3d 641, 650, Arkansas adopted anti-fraud rules regulating paid

canvassers. Those rules require sponsors to provide each paid canvasser with a copy of the most recent edition of the Secretary’s handbook on initiatives and referenda and explain the law that applies to obtaining signatures on an initiative or referendum petition to the canvasser. Ark. Code Ann. 7-9-601(a)(2)(A)-(B).

The law requires the parties to a signature drive to prove their compliance with this requirement in two ways. First, each paid canvasser, before obtaining any signatures, must make a signed statement that they have been provided a copy of the handbook and have read and understand the law applicable to obtaining signatures. *Id.* -601(d)(4)-(5). Second, the person filing the petition must submit with the petition “[a] statement signed by the sponsor” attesting that the sponsor provided the handbook and “[e]xplained the [applicable] requirements under Arkansas law” to each paid canvasser who obtained signatures. *Id.* -111(f)(2). This Court has upheld both the underlying requirement that paid canvassers be given this information and the requirements of statements to that effect by the canvassers and sponsor, *McDaniel*, 2015 Ark. 94, at 10, 15-16, 457 S.W.3d at 650, 653, explaining that there is “a rational basis for the differing treatment of paid canvassers,” *id.*, 2015 Ark. 94, at 10, 457 S.W.3d at 650, namely their financial incentives to submit invalid signatures.

On July 5, 2024, AFLG submitted a petition to the Secretary in support of a ballot initiative legalizing abortion. Compl. ¶ 19. But AFLG never submitted a statement signed by AFLG that it had provided the Secretary’s handbook and the requisite information about Arkansas law to its paid canvassers. Instead, on June

27, 2024,<sup>1</sup> it submitted an affidavit by the controller of a canvassing company hired by AFLG, Allison Clark—who was herself a paid canvasser—certifying the required information and documentation was given to a subset of the paid canvassers. *See* Mot. Ex. 2 (affidavit); Compl. Ex. 3 at 15 (listing Clark as a paid canvasser); *id.* at 15-17 (listing additional paid canvassers added after June 27).

Accordingly, the Secretary rejected AFLG’s submission, explaining that it had failed to submit a statement by the sponsor that satisfied Ark. Code Ann. 7-9-111(f)(2). Compl. Ex. 2. Following that rejection, AFLG wrote to the Secretary disagreeing with his decision and attempted to submit a Section 111(f)(2) sponsor statement signed by Lauren Cowles, AFLG’s executive director. Compl. Ex. 3. The Secretary responded reiterating the reasons for the rejection. Compl. ¶ 29.

Several days later, AFLG brought this action challenging that decision.

## **ARGUMENT**

The Secretary’s decision to reject AFLG’s submission was correct. AFLG’s suit challenging that decision fails as a matter of law and should thus be dismissed, along with its request for preliminary relief, without further proceedings.

*Standard of Review.* A word on the proper standard of review, since AFLG misstates it. AFLG wrongly claims that the Secretary bears the burden of proof

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<sup>1</sup> AFLG claims to have submitted “approximately 17 signed statements . . . between May 8 and June 27,” Compl. ¶ 36. The actual number is lower because on multiple occasions Clark mistakenly submitted affidavits for Arkansans For A Free Press, a different ballot question committee sponsoring two other ballot measures.

here because in “legal proceedings to prevent giving effect to any petition” the “persons attacking the validity of the petition” bear the burden of proof. Mot. 5 (citing Ark. Const. art. 5, sec. 1). That standard only applies when the Secretary has determined a petition is sufficient and a person files suit to challenge that decision. *See, e.g., Our Cmty., Our Dollars v. Bullock*, 2014 Ark. 457, at 14, 452 S.W.3d 552, 561. But where, like here, a sponsor sues and asks the Court to order the Secretary to act on a rejected petition, the sponsor bears the burden and must meet the demanding standard for a writ of mandamus: “a clear and certain right to the relief requested.” *Ark. Hotels & Ent., Inc. v. Martin*, 2012 Ark. 335, at 11 n.2, 423 S.W.3d 49, 55 n.2. AFLG cannot meet that standard.

*Jurisdiction.* This Court’s original jurisdiction to determine sufficiency arises only following the Secretary’s determination of a measure’s sufficiency. *See* Ark. Const. art. 5, sec. 1 (“The sufficiency of all state-wide petitions shall be decided in the first instance by the Secretary of State, subject to review by the Supreme Court.”); *Reynolds v. Thurston*, 2024 Ark. 97, at 6, 689 S.W.3d 48, 52 (“[T]he Secretary of State must make the initial decision before we can exercise original jurisdiction over the sufficiency of a petition.”). Here, that means the Court lacks jurisdiction over AFLG’s original action.

The Secretary did not determine AFLG’s petition failed for a lack of sufficiency, but that it “failed for want of initiation.” *Dixon v. Hall*, 210 Ark. 891, 893, 198 S.W.2d 1002, 1003 (1946). For a completed petition, a sponsor must, at a minimum, submit (1) the prima facie required number of signatures, *see id.*; (2) an “affidavit stating the number of petitions and the total number of signatures being

filed,” Ark. Code Ann. 7-9-111(f)(1); and if applicable, (3) a statement by the sponsor that it gave paid canvassers the Secretary’s handbook and explained to them the relevant requirements of Arkansas law, *id.* -111(f)(2). Section 111(f)’s requirements are mandatory, and the Secretary’s duty to declare a measure’s signatures’ sufficiency triggers only upon their fulfillment. *See Benca v. Martin*, 2016 Ark. 359, at 7-8, 500 S.W.3d 742, 748 (“[T]he word ‘shall’ when used in a statute means that the legislature intended mandatory compliance with the statute unless such an interpretation would lead to an absurdity.” (quotation omitted)).

AFLG didn’t comply with those requirements. *See infra* at 6-8. Nevertheless, as a courtesy, the Secretary informed AFLG that a sufficiency review would, if undertaken, be futile because AFLG’s failure to comply with Section 111(f)(2) would render their paid-canvasser signatures invalid and their remaining volunteer-canvasser signatures weren’t facially sufficient. *See Compl. Ex. 2*. But critically, the Secretary’s courtesy isn’t a sufficiency determination triggering this Court’s jurisdiction, and absent such a determination this Court lacks original jurisdiction over this matter and the suit should be dismissed without further proceedings.

*Noncompliance with Section 111(f)(2)*. AFLG indisputably failed to comply with Section 111(f)(2), and the Secretary’s decision to reject AFLG’s submission on that basis was correct. As relevant here, a statement under that section must (1) be signed by “the sponsor”; (2) indicate that the sponsor gave the required information and documentation to all paid canvassers who collected signatures; and (3) be submitted with the petition. AFLG failed all three of these requirements.

*First*, AFLG did not file a statement signed by “the sponsor”—AFLG.

Instead, it submitted several statements signed by its paid canvassers, and AFLG ultimately relies on Allison Clark’s June 27 affidavit. But she is not “the sponsor” of the measure. Ark. Code Ann. 7-9-111(f)(2). “Sponsor” is defined as the “person who arranges for the circulation of an initiative or referendum petition or who files an initiative or referendum petition with the official charged with verifying the signatures.” *Id.* -101(10). In contrast, a “canvasser” is “a person who circulates an initiative . . . petition to obtain the signatures of petitioners thereto.” *Id.* -101(3); *see also id.* -601(c) (defining “paid canvasser” as “a person who is paid or with whom there is an agreement to pay . . . in exchange for soliciting a signature on a petition.”). A “paid canvasser [is] registered by the sponsor” with the Secretary, and the sponsor is responsible for ensuring that their paid canvassers comply with applicable legal requirements. *Id.* -601(b)(5).

Thus, a person cannot be both a paid canvasser and a measure’s sponsor. Indeed, having canvassers—as here—submit statements on behalf of the sponsor would defeat the whole purpose of requiring a separate sponsor’s statement. As applied here then, Clark is a paid canvasser, *see* Compl. Ex. 3 at 15, and she cannot sign as “the sponsor” for purposes of Section 111(f)(2).

Nor does AFLG argue Clark did. Instead, AFLG appears to imply that Clark satisfied Section 111(f)(2) by submitting a statement signed by her “on behalf of AFLG.” Compl. ¶ 15. But Section 111(f)(2)’s plain text makes clear that only “the sponsor” may sign the statement. And illustrating the point, Section 111(f)(2)’s text stands in stark contrast to Section 111(f)(1), which doesn’t contain such limiting language but merely requires an “affidavit stating the number of

petitions and the total number of signatures being filed.” Moreover, the fact that other provisions specifically recognize that agents or representatives of sponsors may take certain actions for the sponsor—such as “pay[ing] a canvasser for petition signatures,” Ark. Code Ann. 7-9-109(f)(1), and “submit[ting] to the Secretary of State a petition part,” *id.* -109(f)(2)—further underscores that when Section 111(f)(2) says a “statement signed by the sponsor,” it means a statement by the sponsor and no one else. *See also id.* -103(c). That “plain language” controls, *see Miller v. Thurston*, 2020 Ark. 267, at 8-9, 605 S.W.3d 255, 259, and applying it here, Clark’s affidavit did not comply with the statute.

*Second*, even if a paid canvasser could be the sponsor, Clark’s June 27 affidavit also undisputedly didn’t make the required certification as to all the paid canvassers AFLG employed. Clark’s affidavit certified that “each Paid Canvasser listed on the attached Exhibit A” was given the required instructions and documentation. Compl. Ex. 3 at 4-5. That exhibit contained only the paid canvassers who’d been hired by June 27. *Id.* at 11-17 (complete list of paid canvassers). Section 111(f)(2) does not contemplate partial lists but instead requires “[a] statement” containing the required certification as to “each paid canvasser.” The various statements submitted by Clark were incomplete, and that is an independent reason why they did not comply with the statute.

*Third*, Cowles’s July 11 statement likewise doesn’t comply with the statute. Although it is signed by “the sponsor”—showing AFLG knows how to comply with Section 111(f)(2)—it was untimely. The constitutional deadline for AFLG to submit its materials was July 5, and Cowles’s statement was submitted well after



that deadline. *See, e.g., Phillips v. Rothrock*, 194 Ark. 945, 955, 110 S.W.2d 26, 31 (1937). AFLG can’t skirt that constitutional deadline.

Moreover, in addition to missing the constitutional deadline, Cowles’s statement failed to comply with Section 111(f)’s requirement that the signature-number affidavit and the paid-canvasser sponsor statement be filed contemporaneously with the filing of the petition. *See* Ark. Code Ann. 7-9-111(f)(1) (providing that the filer “shall bundle the petitions by county and shall file an affidavit stating the . . . number of signatures”); *id.* -111(f)(2) (requiring that “the person filing the petitions under [subsection (f)] shall also submit” the required statements). The statute doesn’t allow the required documents under Section 111(f) to be submitted other than when the petition is filed—and certainly not a week after filing. *See McDaniel*, 2015 Ark. 94, at 15-16, 457 S.W.3d at 653, as revised (explaining that Section 111(f) “require[s] that petitions containing signatures from paid canvassers must be submitted *with* a statement identifying the paid canvassers by name” and the sponsor statement (emphasis added)). And the Secretary’s handbook (which AFLG should be familiar with) likewise clearly explains this statement must be submitted “at the time of delivery” of the petition.<sup>2</sup>

*Effect of Noncompliance.* AFLG’s failure to comply with Section 111(f)(2) required the Secretary to reject its submission entirely. AFLG resists this straightforward consequence of its negligence, arguing that it can correct this error during

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<sup>2</sup> Arkansas Secretary of State, *2024 Initiatives and Referenda Handbook* 17-18, available at <https://perma.cc/D36D-ZDTR>.

a cure period. Not so. To qualify for a cure period, a sponsor must submit a facially sufficient number of signatures at the initial-count stage. *See Dixon*, 210 Ark. at 893, 198 S.W.2d at 1003; Ark. Code Ann. 7-9-126(d). AFLG didn't do so.

Even if AFLG's failure to comply with Section 111(f)(2)(B) didn't require outright rejection, it would render its petition insufficient at the initial-count stage. Because Section 111(f)(2) uses the word "shall," compliance is mandatory for sponsors using paid canvassers, and failure to comply renders invalid any petition part collected by paid canvassers. *See Zook v. Martin*, 2018 Ark. 306, at 8, 558 S.W.3d 385, 392 ("To interpret the word 'shall' as permissive would lead to an absurd result, which this court will not do."). AFLG's argument that Section 111(f) isn't mandatory because it doesn't have its own separate "do not count" language, Mot. 7, is thus misplaced. *See Zook*, 2018 Ark. 306, at 8, 558 S.W.3d at 392 (rejecting that exact argument because "that would leave no remedy for the . . . failure to comply" with a mandatory provision).<sup>3</sup>

Section 126(b) lists several defects in a petition part which mean that the "petition part and all signatures appearing on the petition part shall not be counted for any purpose . . . , including the initial count of signatures." Ark. Code Ann. 7-9-126(b). "This court has required strict compliance with subsection (b)'s do-not-count provision." *Arkansans for Healthy Eyes v. Thurston*, 2020 Ark. 270, at 8, 606 S.W.3d 582, 587. This treatment of mandatory statutory provisions contrasts

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<sup>3</sup> This Court rejected contrary statements by a prior secretary in *Benca*, 2016 Ark. 359, 500 S.W.3d 742, as confirmed in *Zook* and *Healthy Eyes*, *supra*.

with many constitutional provisions where the Court has required only substantial compliance. *See* Mot. 4. AFLG simply misstates the law on this point.

And critically, one of Section 126(b)'s categories is where a "petition part has a material defect that, on its face, renders the petition part invalid." Ark. Code Ann. 7-9-126(b)(8). A defect is "material" where the omission is "significant" or "essential." *Material*, Black's Law Dictionary (11th ed. 2019). Because compliance with Section 111(f)(2) is mandatory, a failure to submit results in a "material defect" in all paid-canvasser petition parts. Ark. Code Ann. 7-9-126(b)(8). Each petition part AFLG submitted that was signed by a paid canvasser thus has a "material defect that . . . renders the petition part invalid." *Id.* The petition part's defect is evident "on its face," *id.*, because the canvasser affidavit on every petition part discloses on its face whether the canvasser was paid, *see id.* -109(a). Thus, all of AFLG's paid-canvasser signatures are invalid.

The Secretary determined (and Petitioners don't dispute) that 14,143 of the 101,525 signatures Petitioners attested to gathering were from paid canvassers. Compl. Ex. 2. That left 87,382 volunteer signatures—3,322 short of the required 90,704. Because AFLG cannot clear the initial-stage signature requirement, it isn't entitled to a cure period. Ark. Code Ann. 7-9-126(d). To the extent AFLG relies on Section 111(d)'s corrections language, that provision is inapposite because it applies only after a sponsor clears the initial-count hurdle (which AFLG cannot).

### **REQUEST FOR RELIEF**

The Court should dismiss the petition and deny preliminary relief.

Respectfully submitted,

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**CERTIFICATE OF COMPLIANCE**

I certify that this motion complies with Administrative Order No. 19 and that it conforms to the page-count limitations contained in Rule 2-1(h) of this Court's rules. The brief does not contain hyperlinks to external papers or websites.

/s/ Nicholas J. Bronni  
Nicholas J. Bronni

**CERTIFICATE OF SERVICE**

I certify that on July 19, 2024, I electronically filed this document with the Clerk of Court using the eFlex electronic-filing system, which will serve all counsel of record.

/s/ Nicholas J. Bronni  
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