Cite as 2024 Ark. 121

SUPREME COURT OF ARKANSAS

No. CV-24-455

LAUREN COWLES, INDIVIDUALLY AND ON BEHALF OF ARKANSANS FOR LIMITED GOVERNMENT, A BALLOT QUESTION COMMITTEE
PETITIONERS

V.

JOHN THURSTON, IN HIS OFFICIAL CAPACITY AS SECRETARY OF STATE
RESPONDENT

ARKANSANS FOR PATIENT ACCESS, A BALLOT QUESTION COMMITTEE; BILL PASCHALL, INDIVIDUALLY AND ON BEHALF OF ARKANSANS FOR PATIENT ACCESS; LOCAL VOTERS IN CHARGE, A BALLOT QUESTION COMMITTEE; AND JIM KNIGHT, INDIVIDUALLY AND ON BEHALF OF LOCAL VOTERS IN CHARGE
INTERVENORS

Opinion Delivered: August 22, 2024

AN ORIGINAL ACTION

MOTION TO DISMISS DENIED; PETITION GRANTED IN PART AND DENIED IN PART.

RHONDA K. WOOD, Associate Justice

Petitioners Lauren Cowles and Arkansans for Limited Government (AFLG) filed this original action against John Thurston, in his official capacity as Arkansas Secretary of State

(Secretary).[1] AFLG is a ballot question committee created to secure the passage of the Arkansas Abortion Amendment of 2024. AFLG submitted a petition on the Amendment to the Secretary on July 5, 2024, its rejection led to this original action. AFLG asks this court to (1) determine that the decision rejecting the petition was incorrect; (2) vacate the decision that the submission was insufficient; and (3) order the Secretary to count all submitted signatures.[2]

This court is being asked to order another constitutional officer, the Arkansas Secretary of State, to ignore a mandatory statutory provision that he has enforced.[3] That is not the proper role of the court. As explained below, we find that the petitioners failed to comply with the statutory filing requirements for paid canvassers. That statute was inapplicable to volunteer canvassers. As such, we ordered the Secretary to count the signatures from volunteer canvassers, but we do not order him to count the signatures from paid canvassers. Because the number of the initial count of signatures fails to meet the facial validity threshold required by law, we deny further relief.

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[1]Two additional ballot question committees, Arkansans for Patient Access and Local Voters in Charge, along with additional initiative petition sponsors acting individually and on behalf of the committees, intervened in this action. We do not address the issues raised by the intervenors.

[2]AFLG sought additional relief if the matter continued further.

[3]Dissenting justices give credence to Petitioners' arguments that different amendments were treated differently. This court addresses each case as it comes. Also, Petitioners did not bring a complaint with those causes of action. Intervenors' limited role was to weigh in on "agency," which is unnecessary to decide this case.

I. *Jurisdiction*

AFLG filed this original action under article 5, section 1, and amendment 80, section 2(D)(4) of the Arkansas Constitution; Arkansas Code Annotated section 7-9-112 (Supp. 2023); and Arkansas Supreme Court Rule 6-5 (2023). The Arkansas Constitution first vests the Secretary of State with the authority to determine the sufficiency of ballot initiatives, followed by this court having "original and exclusive jurisdiction" to review the Secretary's decision. Ark. Const. art. 5, § 1. The Secretary moved to dismiss the action, arguing he did not make a sufficiency determination when he rejected AFLG's petition and that this court thus lacks jurisdiction. He contends that he rejected AFLG's petition for "want of initiation" instead of insufficiency and cited *Dixon v. Hall*, 210 Ark. 891, 198 S.W.2d 1002 (1946). We disagree.

There are three types of sufficiency determinations that arise during the ballot-initiative process. One involves the sufficiency of the ballot name and title. *See Knight v. Martin*, 2018 Ark. 280, 556 S.W.3d 501. A second concerns the facial validity of the petition upon submission. *See Ark. Hotels & Entm't, Inc. v. Martin*, 2012 Ark. 335, at 3, 423 S.W.3d 49, 51. The third involves the sufficiency of the petition during the signature verification process. *See Zook v. Martin*, 2018 Ark. 306, 558 S.W.3d 385.

Like the petitioner in *Arkansas Hotels*, the petitioner seeks review of the Secretary's sufficiency determination of the facial validity of the initiative petition filed on July 5, 2024. Accordingly, we have jurisdiction as provided in amendment 7, codified in article 5, section 1 of the Arkansas Constitution. The court unanimously denies the Secretary's motion to dismiss.

II. *Analysis*

The dispute primarily revolves around an Arkansas statute that sets requirements for how the petition is filed for the Secretary to determine sufficiency. When we interpret a statute, we give its words their ordinary meaning so that no word is left void, superfluous, or insignificant. *See Ark. Hotels,* 2012 Ark. 335, at 8, 423 S.W.3d at 54. Arkansas Code Annotated section 7-9-111(f) (Supp. 2023) provides:

> (1) A person filing a statewide initiative petition . . . with the Secretary of State shall bundle the petitions by county and shall file an affidavit stating the number of petitions and the total number of signatures being filed.
> (2) If signatures were obtained by paid canvassers, the person filing the petitions under this subsection *shall also submit the following*:
>
> > (A) A statement identifying the paid canvassers by name; and
> > (B) A statement signed by the sponsor indicating that the sponsor:
> > > (i) Provided a copy of the most recent edition of the Secretary of State's initiatives and referenda handbook to each paid canvasser before the paid canvasser solicited signatures; and
> > > (ii)Explained the requirements under Arkansas law for obtaining signatures on an initiative or referendum petition to each paid canvasser before the paid canvasser solicited signatures.

(Emphasis added.)

Collectively, a person filing an initiative petition (1) shall bundle the petitions by county; (2) shall file an affidavit stating the number of petitions and total number of signatures; and, (3) if submitting signatures obtained by paid canvassers, shall submit a statement identifying the paid canvassers by name and a statement signed by the sponsor confirming the sponsor met the other requirements. *Id.* This last requirement is at the core of this dispute. We refer to the statement as the "paid canvasser training certification."

AFLG, the Secretary, and the Intervenors, argue in part about whether an agent of a sponsor can sign the paid canvasser training certification. Given the undisputed facts, we do not need to decide that issue today. AFLG filed two affidavits with this court, one by Cowles

and one by Allison Clark. Both state that AFLG filed partial certifications during the process but admit that the paid canvasser training certification was not submitted with the petition on July 5, 2024. Both also admit the last two additional lists of paid canvassers, filed on June 29 and July 4, included no partial certifications. Even giving it the benefit of the doubt, AFLG admits that at least seventy-four of the paid canvassers failed to ever have such certification filed.[4]

AFLG argues that it failed to file the further certifications after June 27 and failed to file the actual required certification with the petition because an employee at the Secretary's office communicated they were unnecessary. But we have explained that even in election matters, the burden of determining what the law requires falls on the filer—not office staff. *See generally*, *Blackburn v. Lonoke Cnty Bd. of Election Comm'rs*, 2022 Ark. 176, at 8, 652 S.W. 3d 574, 580 (candidate alleged that staff in county clerk's office provided incorrect information about filing requirement). The court has ruled on this as a matter of law. Thus, as the facts are undisputed, we hold that AFLG, by its own admission, failed to submit the required paid canvasser training certification in compliance with Arkansas Code Annotated section 7-9-111(f)(2)(B). For today, who signed the earlier statements is irrelevant.

AFLG argues that even if it failed to timely file the certification, the Secretary should have accepted the late filing of its paid canvasser training certification on July 11, 2024. But as we have explained, "[c]orrection and amendment go to form and error, rather than complete failure." *Ark. Hotels,* 2012 Ark. 335, at 10, 423 S.W.3d at 55. There was a complete failure to file the paid canvasser training certification along with the petition. July

[4]This goes to the dissent striking any signatures by paid canvassers added after June 27.

5 is the filing deadline required by the Arkansas Constitution for this election cycle's initiative petitions, "not less than four months before the election at which they are to be voted upon." Ark. const. art. 5, § 1. There is no provision for late filing of required paperwork and we cannot order the Secretary, in a separate branch of government, to do what the law does not require.

A. Signatures Collected by Volunteer Canvassers

This presents the court with two more questions to answer. First, could the Secretary reject the entire petition—including signatures obtained by volunteer canvassers—because AFLG failed to file a complete paid canvasser training certification? We find the answer is no. On a facial validity count, the Secretary cannot point to any statutory or constitutional provision requiring that no signatures be counted for this failure. After all, section 111(f)(2) is required only "[i]f signatures were obtained by paid canvassers[.]" While the General Assembly had specific concerns about the potential for fraud and abuse with paid canvassers, we are hard pressed to correlate those concerns with not counting signatures collected by volunteers. The Secretary does not provide a compelling argument that failing to comply with respect to paid canvassers requires rejection of signatures gathered by volunteer canvassers. We do not find constitutional or statutory support for that argument. AFLG asks this court to order the Secretary to count the signatures gathered by volunteer canvassers and include them in the initial facial count. On July 23 we ordered the Secretary to perform an initial count of volunteer-canvassed signatures. We now order that those signatures be included in the initial facial count.

B. Signatures Collected by Paid Canvassers

The next question is can the Secretary refuse to count the signatures obtained by paid canvassers due to AFLG's failure to file a complete paid canvasser training certification? The answer is yes. The statute specifies that the person filing the petition "shall also submit . . . [a] statement signed by the sponsor" certifying that the sponsor provided the referenda handbook and explained legal canvassing requirements "to each paid canvasser before the paid canvasser solicited signatures[.]" *See* Ark. Code Ann. §7-9-111(f)(2) (Supp. 2023). "A statement" is not multiple statements. The plain meaning of "a" is settled. This court has recently explained "a" as meaning singular rather than plural. *See Cherokee Nation Bus., LLC v. Gulfside Casino P'ship*, 2023 Ark. 153, at 5, 676 S.W.3d 368, 372 (explaining "a" means one not two). It is one single statement at one specific point in time. Also, the statement must cover "each paid canvasser," not some of the paid canvassers. It is undisputed, even by the dissenting justices, that there was not a paid canvasser certification filed for "each paid canvasser." There is no question that this is not what the petitioners provided, which is why this is an issue of law and not of fact. The dissenting justices want to argue that well, despite this we should give partial credit for the partial attempt to comply. But this is not how a mandatory law works. This court does not ever hold that shall means "just as long as you try". Again, it is not the court's role to order another constitutional officer to ignore a mandatory statute.

The General Assembly set up a procedure where, at different points in time, different things must occur with regards to the initiative process. The initiative-referendum right is the first right reserved to the people, and it is a most serious one that involves changing our state's constitution. As explained earlier, collectively, at filing, the filer (1) shall bundle the

petitions by county; (2) shall file an affidavit stating the number of petitions and total number of signatures; and, (3) if submitting signatures obtained by paid canvassers, shall submit a statement identifying the paid canvassers by name and a statement signed by the sponsor confirming that the sponsor met the other requirements listed in the statute. The Secretary argues this makes the initial count and verification process more efficient because, along with requiring that the petitions be separated by county, the Secretary has all the necessary information together and organized when he begins the process.

Although there was some conflict initially, all now agree that AFLG completed the other steps mentioned. But for the very last step, AFLG instead, at its peril, began filing partial paid canvasser training certifications each time it submitted partial lists of paid canvassers (except for the last two submissions, when it did not). And when AFLG filed the petition on July 5, 2024, and submitted the combined paid canvasser list as required, it did not include the one required paid canvasser training certification. The General Assembly created a statutory process that one certification be submitted with the petition with the final list of paid canvassers. This court cannot rewrite the statute.

In *Miller v. Thurston*, 2020 Ark. 267, at 3, 605 S.W.3d 255, 257, this court explained the Secretary's two-step intake process for filed petitions, which "involves (1) completion of an internal checklist of petition requirements and 'culling' invalid signatures (what the parties sometimes refer to as 'facial review') and (2) verification of signatures if a petition contains the requisite number of facially valid signatures." We have upheld the Secretary's decision to cull signatures during this facial-review process when the filer of the petition fails to comply with various requirements, including failing to file mandatory certifications. *See id.* at 9.

Turning to the present facts, we hold that the failure is fatal. First, the language "shall also submit" of section 7-9-1111(f)(2) is mandatory. As we held in *Benca v. Martin,* 2016 Ark. 359, at 12-13, 500 S.W.3d 742, 750, "'shall' is mandatory and the clerical error exception and substantial compliance cannot be used as a substitute for compliance with the statute." And again in *Zook,* we reiterated that "substantial compliance cannot be used as a substitute for fulfillment with the statute." 2018 Ark. 306, at 5, 558 S.W.3d at 390. To allow the submission of signatures obtained by paid canvassers without filing the mandatory statement would be to ignore the specific statutory requirement and we have stated repeatedly that we will not do that. *Id.*

AFLG argues that our construction should be elastic and liberally construed, but this court has stated that to the extent the Secretary demands compliance with an election statute, then the statute is mandatory. *See Ellis v. Hall*, 219 Ark. 869, 245 S.W.2d 223 (1952).[5] To support its argument for a liberal interpretation, AFLG cites cases involving challenges to ballot titles and statutes that are not on point.[6] It is correct that we have held that in determining the sufficiency of a ballot title, it should be given a liberal construction, *see Knight*, 2018 Ark. 280, at 7, 556 S.W.3d at 507, but these cases do not apply in this statutory

[5]Explaining that while the court would not go back and order strict compliance once the Secretary allowed a cure, the court would have enforced the Secretary's enforcement of a mandatory statutory provision.

[6]By example, it references the following: (1) *Richardson v. Martin*, 2014 Ark. 429, 444 S.W.3d 855 (liberal construction of alcohol sales ballot title); *Porter v. McCuen*, 310 Ark. 674, 839 S.W.2d 521 (1992) (liberal construction of tobacco issue ballot title); *Thompson v. Younts*, 282 Ark. 524, 669 S.W.2d 471 (1984) (concerning the interpretation of an ambiguous statute on whether a mayor is a voting member of a city council); and more.

context. *See Dixon*, 210 Ark. 891, at 892, 198 S.W.2d at 1003 (rejecting "an elastic construction" of a mandatory filing requirement at the facial-review stage).

Second, our role in interpreting statutes is to give words their ordinary meaning and when ambiguous look to the intent of the legislature. As we stated, the ordinary meaning of "shall" is obvious. *Benca*, 2016 Ark. 359, at 7–8, 500 S.W.3d at 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." *Id*. The penalty for failing to file properly is also clear in the context of the General Assembly's overall statutory process for paid canvassers. It places substantial duties on the sponsor and the paid canvassers throughout the process and, as stated earlier, at the time of filing the petition. All this with the clear legislative intent to protect the petition gathering process from fraud. The paid canvasser training certification is how the sponsor documents and submits to the Secretary the sponsor's compliance with paid canvasser training requirements.[7] Like the background-check certifications at issue in *Miller*, the paid canvasser training certification is the "only assurance the public receives" from the sponsor that the paid canvassers received the required training. *See* 2020 Ark. 267, at 7-8, 605 S.W.3d at 259. And the General Assembly has determined that the sponsor's certification is mandatory.

As we said in *Miller*, Arkansas Code Annotated § 7-9-601(f) penalizes failing to comply with mandatory hiring and training requirements for paid canvassers by excluding

[7] *Compare* Ark. Code Ann. §7-9-111(2)(B) (requiring the sponsor certify that sponsor has provided handbooks and explained the law to paid canvassers) *with* Ark. Code Ann. § 7-9-601(a)(2) (Supp. 2023) (requiring that the sponsor provide handbooks and explain applicable Arkansas law to paid canvassers).

signatures obtained by those canvassers. *Id.,* at 9, 605 S.W.3d at 260.[8] We also explained that in both *Benca* and *Zook*, "this court applied the plain language of the statutes and disqualified signatures collected by canvassers when statutory requirements had not been met." *Miller*, 2020 Ark. 267, at 8-9, 605 S.W.3d at 259-60.[9] Because AFLG failed to submit the paid canvasser training certification with the petition, we hold that not counted for "[a]ny purpose" must necessarily include the Secretary's initial count of signatures to determine the facial validity of a proposed ballot initiative. The Secretary was correct. The precedent and result reached in *Miller* applies: the signatures collected by paid canvassers could not be included in the Secretary's initial count and the "petitioners [were] not entitled to a cure period or any other relief." *Id.* Again, this mirrors our prior precedent.

A final note, this court did not appoint a special master initially because, unlike other original actions filed, this original action petition and its motion to expedite did not request one. Now it is apparent there was no need. The facts necessary to decide this case were undisputed and we decide it entirely as a matter of law.

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[8]("[W]e cannot ignore the mandatory statutory language requiring certification that the paid canvassers passed criminal background checks, nor can we disregard section 7-9-601(f)'s prohibition on the Secretary of State counting incorrectly obtained signatures 'for any purpose.'").

[9]In *Benca*, we did not dispute the special master's finding that § 7-9-111(f)(2) was not attached to a specific "do not count" provision. However, *Benca* was decided in 2016, before the legislature amended the statute and changed the do not count provision attached to § 7-9-601. In 2019, the General Assembly modified the statute, deleting and amending the "do not count" provision to broaden its applicability. The statute now provides that "[s]ignatures incorrectly obtained *or submitted* under this section *shall not be counted by the Secretary of State for any purpose*." Ark. Code Ann. § 7-9-601(f) (removed from its former location at § 7-9-601(b)(5) (Repl. 2018) and modified) (emphasis added). This leaves us with no doubt as to the intent of the General Assembly to exclude for any purpose the signatures obtained or submitted by paid canvassers that do not meet statutory requirements.

In summary, the Secretary's motion to dismiss for lack of jurisdiction is denied. This court ordered the Secretary to perform an initial count of volunteer-canvasser signatures. On July 25, the Secretary reported that the number is 87,675. There were another 912 signatures included in petition parts that did not specify whether the canvasser was paid or a volunteer. We order that the 87,675 signatures be counted for purposes of the initial facial count because there is no constitutional or statutory authority to support not counting them.[10] We find that the Secretary correctly refused to count the signatures collected by paid canvassers because the sponsor failed to file the paid canvasser training certification. AFLG needed 90,704 signatures to complete the first stage of the initial facial count to proceed to the verification stage. As it failed to obtain this number of signatures, AFLG is not entitled to any further relief.[11]

Motion to dismiss denied; petition granted in part and denied in part.

Mandate to issue immediately.

KEMP, C.J., and BAKER and HUDSON, JJ., dissent.

JOHN DAN KEMP, Chief Justice, dissenting. This case presents an anomaly in Arkansas jurisprudence. Stopping midstream during the initial count-of-signatures process, the Secretary of State rejected petitioners' proposed abortion-amendment petition. The majority opinion now upholds the Secretary's rejection of the petition by finding that "the

[10]Whether the 912 questionable signatures are counted is moot as it will not allow AFLG to cross the initial numerical threshold.

[11]Additional estoppel and First Amendment arguments, among others, raised for the first time in briefs were not filed as causes of actions. As such, this court does not address them as is our procedure.

Secretary correctly refused to count the signatures collected by paid canvassers" pursuant to Arkansas Code Annotated section 7-9-111(f)(2) (Supp. 2023) and relies on "undisputed" facts. I disagree and must dissent.

Pursuant to Arkansas Code Annotated section 7-9-126 (Supp. 2023), the Secretary must undergo a two-step intake process that involves (1) completion of an internal checklist of petition requirements and culling invalid signatures (what parties sometimes refer to as a "facial review") and (2) verification of signatures if a petition contains the requisite number of facially valid signatures. *See Miller v. Thurston*, 2020 Ark. 267, at 3, 605 S.W.3d 255, 257. Here, the Secretary has not fulfilled this statutory obligation. Therefore, I would order the Secretary to complete a statutorily mandated initial count of signatures, including those signatures obtained by the paid canvassers; continue with the intake process; grant a provisional cure period; and submit his findings of a full section 7-9-126 review to this court. *See id.* at 4–5, 605 S.W.3d at 257. In light of the August 22 certification deadline, I would also order a conditional certification of the proposed amendment.[1]

If, after this review, the Secretary reaches the required signature count of 90,704, this court should appoint a special master to initiate a review in this original action by making findings on all the issues of fact, including, but not limited to (1) any discrepancies between the parties with respect to the petitioners' filings; (2) the petitioners' communications to the Secretary during the initial-count process—including statements and emails regarding paid

[1]I am unpersuaded by the majority's reliance on *Benca v. Martin*, 2016 Ark. 359, at 12–13, 500 S.W.3d 742, 750, and *Zook v. Martin*, 2018 Ark. 306, at 5, 558 S.W.3d 385, 390, at this stage in the proceedings. In both cases, the Secretary's intake process and the special master's report with findings *preceded* this court's opinion. Procedurally, this case is not there yet.

canvassers; (3) the Secretary's communications to the petitioners during the initial-count process—including statements and emails regarding paid canvassers; (4) any statements made by the Secretary's office to the petitioners regarding the initial signature-count requirements; (5) Allison Clark's status with AFLG and her authority to sign the sponsor statement; (6) petitioners' attempt to correct any alleged noncompliance with section 7-9-111(f)(2); (7) the Secretary's actions relating to petitioners' attempt to correct the alleged noncompliance; and (8) the Secretary's actions regarding the initial signature counts for AFLG as opposed to other ballot initiatives. These findings are crucial to this court's analysis in making its conclusions of law.

Because this case is not purely "a matter of law" that entails interpreting the language of section 7-9-111(f)(2), but rather is a mixed question of law and fact, this court should appoint a special master pursuant to Arkansas Supreme Court Rule 6-5(c). Specifically, Rule 6-5(c) provides that "[e]vidence upon issues of fact will be taken by a master to be appointed by the Court." Thus, before reaching the legal issues raised in the parties' briefs, this court should appoint a special master and direct him or her to conduct such proceedings and hearings subject to, and in accordance with, Rule 6-5(b) and Arkansas Rule of Civil Procedure 53, as are necessary to determine the questions of fact contained in the original-action petition. *See Arkansans for Healthy Eyes v. Thurston*, 2020 Ark. 129 (per curiam); *Zook v. Martin*, 2018 Ark. 254 (per curiam); *Zook v. Martin*, 2018 Ark. 253 (per curiam). Accordingly, I dissent.

KAREN R. BAKER, Justice, dissenting. "Regnat Populus—The People Rule—is the motto of Arkansas. It should ever remain inviolate." *Republican Party of Ark. v. State ex rel. Hall*, 240 Ark. 545, 549, 400 S.W.2d 660, 662 (1966). Our constitution embodies this

foundational principle, as its text makes all too clear that "[t]he first power reserved by the people is the initiative." Ark. Const. art. 5, § 1, amended by Ark. Const. amend. 7. Today's decision strips every Arkansan of this power. It is much more than an anomaly.

The respondent primarily relies on three arguments in support of the premise that the petitioners failed to comply with Arkansas Code Annotated section 7-9-111(f)(2)(B) (Supp. 2023). According to the respondent, "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."

Regarding the paid canvasser training certification, the majority concludes that the petitioners failed to provide the respondent with "one single statement at one specific point in time" that covers "'each paid canvasser,' not some of the paid canvassers." I disagree. In my view, the majority has reconfigured the relevant statute in order to cater the initiative process to the preference of the respondent while this process is the first power reserved for the people. In fact, despite the majority's acknowledgment that "[t]his court cannot rewrite the statute[,]" the majority has done just that multiple times to achieve a particular result. Therefore, it bears repeating that the plain language of section 7-9-111 provides as follows:

> (f)(1) A person filing statewide initiative petitions or statewide referendum petitions with the Secretary of State shall bundle the petitions by county and shall file an affidavit stating the number of petitions and the total number of signatures being filed.
>
> (2) If signatures were obtained by paid canvassers, the person filing the petitions under this subsection shall also submit the following:
>
> (A) A statement identifying the paid canvassers by name; and
> (B) A statement signed by the sponsor indicating that the sponsor:

> (i) Provided a copy of the most recent edition of the Secretary of State's initiatives and referenda handbook to each paid canvasser before the paid canvasser solicited signatures; and
>
> (ii) Explained the requirements under Arkansas law for obtaining signatures on an initiative or referendum petition to each paid canvasser before the paid canvasser solicited signatures.

As an initial matter, subsection (f) demonstrates that there is no contemporaneous filing requirement associated with the submission of the certification. It is undisputed that Allison Clark, the controller of Verified Arkansas, LLC,[1] submitted multiple paid canvasser training certifications to the respondent's office on behalf of the petitioners with each subsequent list being cumulative of the previous list. The last certification was submitted to the respondent on June 27, 2024, and included all paid canvassers that had been hired by that date. The petitioners' decision to file this certification on a rolling basis clearly satisfied the requirements set forth in subdivision (f)(2)(B) because the certifications were submitted well before the July 5 petition deadline. The fact that the petitioners did not file a certification contemporaneously with the petition is of no moment. To be clear, nothing in the statute requires that the certification and the petition be filed simultaneously. On the contrary, this requirement was made up out of whole cloth by the respondent and inexplicably ratified by the majority of this court. However, the rules of statutory construction do not permit us to read into a statute words that are not there. *Ark. Dep't of Fin. & Admin. v. Trotter Ford, Inc.*, 2024 Ark. 31, at 9, 685 S.W.3d 889, 896. It is absurd to hold that a certification cannot be submitted early, and by concluding otherwise, the

[1]After the attorney general certified the ballot title and popular name, AFLG hired Verified Arkansas, LLC, to provide canvassing services related to the ballot initiative.

majority has added yet another obstacle that prevents Arkansans from exercising their constitutional rights.

The majority's position is that there can be only "one single statement" that covers "each paid canvasser," and they state that "[t]he dissenting justices want to argue that . . . we should give partial credit for the partial attempt to comply." This is a disingenuous mischaracterization of my position. At no point do I give the paid canvassers "partial credit for the partial attempt to comply" with the statute at issue. Rather, my analysis affords "full credit" to the 191 paid canvassers included on the June 27 cumulative list and certification because this was a complete list covering each paid canvasser that had been hired by that date. Stated differently, the June 27 submission was not a "partial attempt" to comply by the petitioners; rather, it was full compliance as to the 191 paid canvassers. Contrary to the majority's tortured statutory analysis, while there were paid canvassers hired after June 27, nothing in the statute justifies the exclusion of the signatures collected by the paid canvassers included with the June 27 certification.

In defense of his rejection of the petition at issue, the respondent also argues that the petitioners did not submit a statement "signed by the sponsor" as required by section 7-9-111(f)(2)(B). Specifically, the respondent argues that the June 27 certification signed and submitted by Clark is insufficient because she is not the sponsor of the petition. The petitioners respond that it is basic agency law that an agent with authority to act on an organization's behalf may do so. *See Evans v. White*, 284 Ark. 376, 682 S.W.2d 733 (1985). I agree. The petitioners confirm that Clark was given and accepted authority to sign and submit the certifications to the respondent on behalf of AFLG and was subject to AFLG's control. The respondent makes no convincing argument to support his position to the

contrary, and as the intervenors note, the legal effect of the respondent's position would turn basic agency law on its head.

The majority deliberately bypassed the issue concerning who has the authority to sign the certification even in light of the allegations of disparate treatment that have been made regarding the respondent's treatment of three initiative petitions—the current petition and two others in circulation during this election cycle. Even a cursory review of how the present ballot initiative has progressed since its inception demonstrates that both the respondent and the majority have treated it differently for the sole purpose of preventing the people from voting on this issue. The intervenors argue that the respondent's absurdity is highlighted by his differing and conflicting positions on each proposed amendment. As to the petitioners, the respondent refused to count any signatures gathered by paid canvassers. The intervenors allege that, as to Local Voters in Charge, the respondent certified its petition for the ballot on July 31, 2024, because the respondent determined that the signatures gathered by the paid canvassers that had been certified by its agents were sufficient. The intervenors allege further that, as to Arkansans for Patient Access, the respondent has recently concluded that additional signatures gathered by paid canvassers—also certified by its agents—during the cure period will not be counted because the respondent allegedly just "discovered" its noncompliance with Arkansas Code Annotated section 7-9-601(b)(3)—another statute related to paid canvassers that requires the sponsor of an initiative petition to submit a certification to the respondent. However, the respondent assured the group that the thousands of signatures gathered by paid canvassers that he had previously deemed valid will remain so, despite any alleged statutory violation—a courtesy that the respondent chose not to extend to the petitioners in the present case. I would be remiss if I neglected to

highlight these allegations, as the differing treatment of these petitions is alarming. As set forth above, the initiative is the first power reserved for the people by the Arkansas Constitution. Why are the respondent and the majority determined to keep this particular vote from the people? The majority has succeeded in its efforts to change the law in order to deprive the voters of the opportunity to vote on this issue, which is not the proper role of this court.

Based on the foregoing, the petitioners fully complied with the plain language of section 7-9-111(f)(2)(B). Therefore, I dissent and would order the respondent to conduct an initial count of all signatures, including those gathered by paid canvassers, and a verification analysis in accordance with Arkansas Code Annotated section 7-9-126. I would also appoint a special master to make findings of fact, grant a thirty-day provisional cure period, and order conditional certification of the proposed amendment.

HUDSON, J., joins.

Shults Law Firm LLP, by: *Amanda Orcutt*, *Peter Shults*, and *Steven Shults*, for petitioners.

Tim Griffin, Att'y Gen., by: *Nicholas J. Bronni*, Solicitor Gen.; *Dylan L. Jacobs*, Dep. Solicitor Gen.; and *Asher Steinberg*, Sr. Ass't Att'y Gen., for respondent.

Friday, Eldredge & Clark LLP, by: *Elizabeth Robben Murray* and *Kathy McCarroll*, for intervenors Local Voters in Charge, a ballot question committee; and Jim Knight, individually and on behalf of Local Voters in Charge.

Wright, Lindsey & Jennings LLP, by: *Stephen R. Lancaster*, *Gary D. Marts, Jr.*, and *Erika Gee* for intervenors Arkansas for Patient Access, a ballot question committee; and Bill Paschall, individually and on behalf of Arkansans for Patient Access.