

IN THE ARKANSAS SUPREME COURT

EDDIE ARMSTRONG and LANCE HUEY,
Individually and on behalf of
RESPONSIBLE GROWTH ARKANSAS,
A Ballot Question Committee

PETITIONERS

V. NO. CV-22-482

JOHN THURSTON, in his official capacities as
SECRETARY OF STATE, and Chairman of the
STATE BOARD OF ELECTION COMMISSIONERS;
And STATE BOARD OF ELECTION COMMISSIONERS

RESPONDENTS

SAVE ARKANSAS FROM EPIDEMIC,
A Ballot Question Committee; and
DAVID BURNETT, individually and as
Chairman of Save Arkansas from Epidemic
Ballot Question Committee

RESPONDENT-INTERVENORS

RESPONDENT-INTERVENORS' ANSWER

Come now Respondent-Intervenors, for their Answer to Petitioners' Original
Action Complaint, and state:

1. Respondent-Intervenors deny each and every material allegation made in
the Original Action Complaint, ("Complaint") unless specifically
admitted herein.

2. Respondent-Intervenors state that the allegations made in paragraph 1 of the Complaint state legal conclusions and so require no response. To the extent that there are factual allegations therein, Respondent-Intervenors deny those allegations.
3. Respondent-Intervenors state that the allegations made in paragraph 2 of the Complaint state legal conclusions and so require no response. To the extent that there are factual allegations therein, Respondent-Intervenors deny those allegations.
4. Respondent-Intervenors state that the allegations made in paragraph 3 of the Complaint state legal conclusions and so require no response. To the extent that there are factual allegations therein, Respondent-Intervenors deny those allegations.

“Purported Jurisdiction and Parties”

5. Respondent-Intervenors state that the allegations made in paragraph 4 of the Complaint state legal conclusions and so require no response. To the extent that there are factual allegations therein, Respondent-Intervenors deny those allegations.
6. Respondent-Intervenors state that the allegations made in paragraph 5 of the Complaint state legal conclusions and so require no response. To the

extent that there are factual allegations therein, Respondent-Intervenors admit that this Court has jurisdiction and venue, but deny the remaining allegations made in paragraph 5.

7. Respondent-Intervenors lack sufficient information and belief as to the allegations of Paragraph 6 of the Complaint, and so deny those allegations.
8. Respondent-Intervenors lack sufficient information and belief as to the allegations of Paragraph 7 of the Complaint, and so deny those allegations.
9. Respondent-Intervenors admit the allegations made in paragraph 8 of the Complaint.
10. Respondent-Intervenors state that the allegations made in paragraph 9 of the Complaint state legal conclusions and so require no response. To the extent that there are factual allegations therein, Respondent-Intervenors deny those allegations. Respondent-Intervenors admit that Respondent Thurston is the Secretary of State, and that the Arkansas Constitution and the Arkansas Code say what they say, and speak for themselves.
11. Respondent-Intervenors state that the allegations made in paragraph 10 of the Complaint state legal conclusions and so require no response. To

the extent that there are factual allegations therein, Respondent-Intervenors deny those allegations. Respondent-Intervenors admit that Thurston is the Chair and Secretary of the State Board of Election Commissioners, and that the Arkansas Code says what it says, and speaks for itself.

“Purported Factual Allegations”

12. Respondent-Intervenors lack sufficient information and belief to admit or deny the allegations made in paragraph 11 of the Complaint, and so deny those allegations. Respondent-Intervenors admit the authenticity of Exhibit 2 to the Complaint, and that it speaks for itself.
13. Respondent-Intervenors lack sufficient information and belief to admit or deny the allegations made in paragraph 12 of the Complaint, and so deny those allegations. Respondent-Intervenors admit that the Arkansas Code says what it says and speaks for itself.
14. Respondent-Intervenors lack sufficient information and belief to admit or deny the allegations made in paragraph 13 of the Complaint, and so deny those allegations. Respondent-Intervenors admits the authenticity of Exhibit 3 to the Complaint, and that it speaks for itself.

15. Respondent-Intervenors state that the allegations made in paragraph 14 of the Complaint state legal conclusions and so require no response. To the extent that there are factual allegations therein, Respondent-Intervenors deny those allegations. Respondent-Intervenors admit that the Arkansas Code says what it says, and speaks for itself.
16. Respondent-Intervenors lack sufficient information and belief to admit or deny the allegations made in paragraph 15 of the Complaint, and so deny those allegations.
17. Respondent-Intervenors lacks sufficient information and belief to admit or deny the allegations made in paragraph 16 of the Complaint, and so deny those allegations. Respondent-Intervenors admit that the State Board of Election Commissioners issued Exhibit 4 to the Complaint, a written notice refusing to certify the sufficiency of the popular name and ballot title for the proposed Amendment to the Constitution, and that Exhibit 4 is authentic.
18. Respondent-Intervenors admit the allegations made in paragraph 17 of the Complaint, that the deadline for the Secretary of State to certify any proposed constitutional amendment to the County Boards of Election Commissioners is August 25 for the 2022 General Election.

“Allegations in Count I”

19. Respondent-Intervenors incorporate by reference their preceding responses and denials in the Complaint in response to paragraph 18 of the Complaint. To the extent that there are additional factual allegations therein, those allegations are denied.
20. Respondent-Intervenors state that the allegations made in paragraph 19 of the Complaint state legal conclusions and so require no response. To the extent that there are factual allegations therein, Respondent-Intervenors deny those allegations. Respondent-Intervenors state that the Arkansas Constitution says what it says, and that it speaks for itself.
21. Respondent-Intervenors state that the allegations made in paragraph 20 of the Complaint state legal conclusions and so require no response. To the extent that there are factual allegations therein, Respondent-Intervenors deny those allegations. Respondent-Intervenors admit that the Arkansas Code says what it says, and that it speaks for itself.
22. Respondent-Intervenors state that the allegations made in paragraph 21 of the Complaint state legal conclusions and so require no response. To

the extent that there are factual allegations therein, Respondent-Intervenors deny those allegations. Respondent-Intervenors admit that the Arkansas Code says what it says, and that it speaks for itself.

23. Respondent-Intervenors admit that the State Board of Election Commissioners issued Exhibit 4 to the Complaint. Respondent-Intervenors lack sufficient information and belief as to the remaining allegations made in paragraph 22 of the Complaint, and so deny those allegations.

24. Respondent-Intervenors admit that the State Board of Election Commissioners issued Exhibit 4 to the Complaint. Respondent-Intervenors lack sufficient information and belief as to the remaining allegations made in paragraph 23 of the Complaint, and so deny those allegations.

25. Respondent-Intervenors state that Exhibit 5 to the Complaint speaks for itself. Respondent-Intervenors lack sufficient information and belief as to the remaining allegations made in paragraph 24 of the Complaint, and so deny those allegations.

26. Respondent-Intervenors state that the allegations made in paragraph 25 of the Complaint state legal conclusions and so require no response. To

the extent that there are factual allegations therein, Respondent-Intervenors deny those allegations. Respondent-Intervenors admit that the Arkansas Constitution says what it says, and that it speaks for itself.

27. Respondent-Intervenors state that the allegations made in paragraph 26 of the Complaint state legal conclusions and so require no response. To the extent that there are factual allegations therein, Respondent-Intervenors deny those allegations.

28. Respondent-Intervenors state that the allegations made in paragraph 27 of the Complaint state legal conclusions and so require no response. To the extent that there are factual allegations therein, Respondent-Intervenors deny those allegations.

29. Respondent-Intervenors state that the allegations made in paragraph 28 of the Complaint state legal conclusions and so require no response. To the extent that there are factual allegations therein, Respondent-Intervenors deny those allegations.

30. Respondent-Intervenors state that the allegations made in paragraph 29 of the Complaint state legal conclusions and so require no response. To the extent that there are factual allegations therein, Respondent-

Intervenors deny those allegations. Respondent-Intervenors deny that Petitioners are entitled to preliminary injunctive relief.

31. Respondent-Intervenors deny any factual allegations made in the prayer for relief, and state that Petitioners are not entitled to any relief.

AFFIRMATIVE DEFENSES

32. Pleading affirmatively, Respondent-Intervenors state that the Complaint should be dismissed for failure to state sufficient facts upon which relief can be granted. ARCP 12(b)(6).

33. Pleading affirmatively, Respondent-Intervenors state that, as set forth on Exhibit 4 to the Complaint, the State Board of Election Commissioners found the proposed Ballot Title to the measure “misleading” in material respects, such that the failure to disclose the elimination of the currently-existing THC limitations in the Arkansas Constitution was a material element that voters should see; is an illegal ballot title under Arkansas law; and is a fraudulent ballot title under Arkansas law; Respondent-Intervenors attach Intervenors’ Exhibit A to their Answer, Affidavit of Kevin A. Sabet, in support of these assertions.

34. Pleading affirmatively, Respondent-Intervenors state that Petitioners are precluded from challenging the constitutionality of the State Board’s

authority because they waited too long, and so their claim is barred by laches.

35. Pleading affirmatively, Respondent-Intervenors state that Petitioners are precluded from challenging the constitutionality of the State Board's action because Petitioners willingly participated in those actions, failed to make these objections to the State Board, and Petitioners are now estopped to challenge those actions after losing on the State Board's finding (and conclusions) of material omissions in Petitioners' Ballot Title.

36. Pleading affirmatively, Respondent-Intervenors state that Petitioners' claims are barred by estoppel, fraud, illegality, laches, waiver, and any other matter constituting an avoidance or affirmative defense, as set forth hereinabove, and on the Exhibits to this Answer.

37. Pleading affirmatively, Respondent-Intervenors state that the proposed Amendment has many hidden elements to it, which make its Ballot Title materially misleading, fraudulent, and illegal under Arkansas law. Intervenors' Exhibit B, certified copy of State Board's August 4, 2022, Notice, and State Board's July 27, 2022, Staff Report; and Intervenors'

Exhibit C, Affidavit of David Burnett (example of hidden problem with measure).

38. Respondent-Intervenors ask the Court to deny Petitioners any of the relief they seek; to dismiss the Complaint with prejudice; and for all other just and proper relief to which they may be entitled under the circumstances.

WHEREFORE, Respondent-Intervenors pray that the Court deny Petitioners the relief they seek; that the Court dismiss the Complaint with prejudice; and for such additional relief to which they may be entitled under the circumstances.

Respectfully submitted,

SAVE ARKANSAS FROM EPIDEMIC,
A Ballot Question Committee; and
DAVID BURNETT, in his individual
Capacity, and as Chairman of the
Ballot Question Committee,
RESPONDENT-INTERVENORS

/s/ AJ Kelly

Kelly Law Firm, PLC
AJ Kelly – ABA 92078
PO Box 251570
Little Rock, AR 72225-1570
(501) 374-0400
kellylawfedecf@aol.com
ajkiplaw@aol.com

CERTIFICATE OF SERVICE

I, AJ Kelly, hereby certify that on August 19, 2022, I electronically filed the foregoing (with exhibits) with the Clerk of Court using the CM/ECF system, which shall send notification of such filing to the following:

Stephen R. Lancaster
Gary D. Marts, Jr.
Erika Gee
Wright Lindsey & Jennings, LLP
200 West Capitol Avenue, Suite 2300
Little Rock, AR 72201

And

Kate Donovan
Carl F Cooper, III
Assistant Attorneys General
323 Center Street, Suite 200
Little Rock, AR 72201

And

Bret D. Watson, Attorney at Law, PLLC (and via email for proposed Intervenor)
PO Box 707
Searcy, AR. 72145-0707

/s/ AJ Kelly

AJ Kelly