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**

An Original Action

Respondent's Opening Brief

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Table of Contents

POINTS ON APPEAL

I. Whether this Court has jurisdiction over AFLG's complaint.

II. Whether the Secretary correctly rejected AFLG's petition for failure to comply with Ark. Code Ann. 7-9-111(f)(2)(B).

Table of Authorities

Cases

Statutes and Constitutional Provisions

Other Authorities

JURISDICTIONAL STATEMENT

"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." Ark. Const. art. 5, sec. 1. This Court's jurisdiction over sufficiency determinations is "original and exclusive." But "the Secretary of State must make the initial decision before [this Court] can exercise original jurisdiction over the sufficiency of a petition." *Reynolds v. Thurston*, 2024 Ark. 97, at 8, 689 S.W.3d 48, 52.

As explained below, the Secretary did not make such a determination here. Instead, he determined that Arkansans for Limited Government's petition "failed for want of initiation." *Dixon v. Hall*, 210 Ark. 891, at 893, 198 S.W.2d 1002, 1003 (1946). This Court therefore lacks jurisdiction over the complaint.

STATEMENT OF THE CASE AND FACTS

The Secretary of State correctly rejected Arkansans for Limited Government's submission because AFLG failed to submit with its petition a statement signed by the sponsor indicating that it had (1) provided a copy of the Secretary's initiatives and referenda handbook to its paid canvassers and (2) 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.

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. Ark. Code Ann. 7-9-126(b). And without them, AFLG's petition—as the Secretary has determined—falls short of the facial number required to qualify for a cure period. So either way, AFLG's petition falls short and this Court should deny relief.

A. Statutory 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 antifraud rules regulating paid canvassers. Under these rules, sponsors of ballot measures are responsible for training paid canvassers they hire on the requirements of Arkansas law and ensuring those requirements are followed.

As relevant here, 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). Sponsors must do so before a paid canvasser collects any signatures. *See id.*

To ensure compliance with those antifraud requirements, the statutory framework also imposes separate attestation requirements on canvassers and sponsors. On the canvasser side, before collecting signatures each paid canvasser must submit to the sponsor (1) "[a] signed statement that the person has read and understands the Arkansas law" that the sponsor was required to explain to him, *id.* -601(d)(4); and (2) "[a] signed statement that the person has been provided a copy of [Secretary's] handbook by the sponsor," *id.* -601(d)(5). The sponsor is not

required to submit those canvasser statements to the Secretary with its submission,[1] but the sponsor must maintain the records for at least three years. *Id.* -601(e). And on the sponsor side, 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 before the paid canvasser solicited signatures." *Id.* -111(f)(2).

That sponsor statement requirement responds to the unique risk of fraud associated with paid canvassers, ensures compliance with the statutory framework, and ultimately helps streamline the process for determining whether a sponsor has submitted a valid petition. To start, requiring independent certifications from sponsors and individual paid canvassers ensures that everyone involved in the process understands and has complied with Arkansas law. Requiring the sponsor itself to submit a signed compliance statement also ensures that the sponsor itself—as opposed to just paid canvassers—is on the hook for any misstatements or

[1] By contrast Section 601(d)(3) requires canvassers, prior to collecting signatures, to sign and submit to the sponsor a statement under oath that he or she does not have any disqualifying convictions, and the sponsor must in turn submit those under-oath canvasser statements to the Secretary. *See* Ark. Code Ann. 7-9-601(a)(2)(D).

inaccuracies. Moreover, the sponsor statement ensures efficiency since it allows the Secretary to quickly check whether a petition complied with Section 601(d)(4)-(5). Indeed, a different system requiring each individual paid canvasser statement to be submitted and reviewed one-by-one on the front end would be unwieldy and threaten the Secretary's ability to verify the sufficiency of a ballot measure within the statutorily limited 30-day period. *See id.* -111(a). That would threaten Arkansas's ability to ensure ballots are finalized in a timely manner. So far from being a mere paperwork requirement, as AFLG hints, the sponsor statement requirement is vital and a central part of the initiative and referendum process.

Given that, this Court has unsurprisingly 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. In fact, far from being a mere clerical requirement, this Court has previously held that the requirements at issue here rationally respond to the incentives that paid canvassers have to submit invalid signatures. *Id.*, 2015 Ark. 94, at 10, 457 S.W.3d at 650.

B. Procedural History

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,[2] it submitted an affidavit by the controller of a canvassing company hired by AFLG, Allison Clark—who was herself a paid canvasser—asserting the required information and documentation was given to a subset of the paid canvassers. *See* Compl. Ex. 3 at 4 (affidavit); *id.* 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.

Days later, AFLG brought this action challenging that decision. The Secretary moved to dismiss, and this Court took that motion with the case. *See* Formal

[2] AFLG claims to have submitted "approximately 17 signed statements . . . between May 8 and June 27," Compl. ¶ 36. As previously explained in earlier briefing (to no retort from AFLG), 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.

Order, July 26, 2024. The Court ordered the Secretary to determine the number of volunteer-canvasser signatures submitted by AFLG, *see* Formal Order, July 23, 2024, which came to at most 88,587—2,117 short of the 90,704 required for a cure period. Bellamy Aff. ¶ 6 (attesting that volunteer canvassers collected 87,675 signatures"); *id.* ¶ 7 (noting that "an additional 912 signatures . . . do not indicate whether the canvasser was volunteer or paid").

STANDARD OF REVIEW

Though not labeled as such, ALFG's original action complaint seeks a writ of mandamus. The purpose of a writ of mandamus "is to enforce an established right or to enforce the performance of a duty." *Safe Surgery Ark. v. Thurston*, 2019 Ark. 403, at 7, 591 S.W.3d 293, 297 (quotation omitted). "The writ is issued where (1) the duty to be compelled is ministerial and not discretionary; (2) the petitioner has shown a clear and certain right to the relief sought; and (3) the petitioner lacks any other adequate remedy." *Id*. "The Secretary of State's obligation to count and verify signatures for initiatives and referenda is a ministerial duty, dictated by the constitution and by statute." *Id.* Where a sponsor sues and asks the Court to order the Secretary to act on a rejected petition, he asks the court to "compel an official… to take [an] action." *Manila Sch. Dist. No. 15 v. Wagner*, 357 Ark. 20, at 26, 159 S.W.3d 285, 290 (2004).

AFLG therefore bears the burden to "show a clear and certain right to the relief sought and the absence of any other adequate remedy." *Pritchett v. Spicer*, 2017 Ark. 82, at 2, 513 S.W.3d 252, 254; *see also Safe Surgery*, 2019 Ark. 403, at 7, 591 S.W.3d at 297 (applying "clear and certain right" standard to petition seeking to compel Secretary to count signatures); *Ark. Hotels & Ent., Inc. v. Martin*, 2012 Ark. 335, at 11 n.2, 423 S.W.3d 49, 55 n.2 (applying that standard to action

to compel Secretary to accept petition and permit the sponsor a cure period). It utterly fails to meet that standard.

ARGUMENT

I. This Court lacks jurisdiction because the Secretary has not made a sufficiency determination.

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 8, 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, and accordingly, it should be dismissed.

The Secretary determined that AFLG's petition "failed for want of initiation." *Dixon v. Hall*, 210 Ark. 891, at 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 17-23. 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. And the review of volunteer signatures following the Court's July 23, 2024 Order proved that to be true. *See* Bellamy Aff. ¶ 8. But critically, the Secretary's courtesy (and the raw volunteer-signature count at this Court's order) 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.

II. The Secretary properly rejected AFLG's petition for failure to comply with Section 111(f)(2).

Even if this Court had original jurisdiction over this matter, AFLG's claims fail as a matter of law, and it is not entitled to relief.

A. AFLG failed to comply 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.

1. AFLG did not submit a "statement signed by the sponsor."

The core feature of the statement required by Section 111(f)(2)(B) is that it be "signed by the sponsor." Ark. Code Ann. 7-9-111(f)(2)(B). That's true because the sponsor is the one charged with providing each paid canvasser with an explanation of Arkansas law and a copy of the Secretary's handbook prior to the canvasser collecting signatures; the sponsor collects and maintains each canvasser's individual statement testifying to compliance; and the sponsor statement is the only complete document submitted that attests to everyone's compliance with Section 601(d)(4)-(5). Indeed, that requirement reflects the fact that it is the sponsor that has both the legal obligation to ensure compliance with the underlying requirements and the unique knowledge required to attest that those requirements were, in fact, met. And ultimately, that is why Section 111(f)(2)(B) singles out "the sponsor"—among the many categories of persons and organizations involved in the initiative process—as the one who must sign this statement.

AFLG did not file any statement signed by "the sponsor"—AFLG—with its petition. Instead, it submitted several statements signed by its paid canvassers

between May 8, 2024, and June 27. Compl. ¶ 36. Of those, AFLG chiefly relies on Allison Clark's June 27 affidavit, which purported to make the required Section 111(f)(2)(B) statement as to 191 of the 266 paid canvassers AFLG eventually disclosed. *See* Compl. Ex. 3, at 4-7; Compl. ¶¶ 15-17. But Clark is not "the sponsor" of the measure, so her affidavit does not satisfy that requirement. Ark. Code Ann. 7-9-111(f)(2).

Far from being the sponsor, it is undisputed that Clark is a paid canvasser. That difference matters because the statutory framework carefully delineates the various separate roles that individuals and organizations play in the initiative process. To start, "[s]ponsor" 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). By contrast, a "canvasser" is defined as "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."). Moreover, Section 601(b)(5) provides that a "paid canvasser [is] registered by the sponsor" with the Secretary and that the sponsor is responsible for ensuring that their paid canvassers comply with applicable legal requirements. And Section 601(d)(4)-(5) says that the sponsor is required to provide each paid canvasser with

a copy of the Secretary's handbook and an explanation of Arkansas law. *Id.* -601(d)(4)-(5).

These provisions and requirements would make little sense if paid canvassers could sign sponsor statements, and that's not how this Court reads statutes. *See State v. Oldner*, 361 Ark. 316, at 329, 206 S.W.3d 818, 824 (2005) (noting that this Court "will not interpret statutory provisions so as to reach an absurd result"). Indeed, having canvassers—like happened here—submit statements on behalf of the sponsor would defeat the whole purpose of requiring a separate sponsor's statement, and the Court should reject AFLG's suggestion to the contrary.

Applying that framework, Clark is a paid canvasser, and she cannot sign as "the sponsor" for purposes of Section 111(f)(2). In fact, AFLG's own documents demonstrate as much, identifying Clark as a paid canvasser with Verified Arkansas, LLC, a company that AFLG "hired . . . to provide canvassing services." Compl. ¶ 14; *see* Compl. Ex. 3 at 15 (listing Clark as a paid canvasser).[3] Thus, as Clark is not a sponsor and AFLG does not point to any statement that it signed

[3] Further underscoring that Clark—by way of Verified Arkansas—isn't "the sponsor," AFLG's financial report lists Verified Arkansas as a "contractor." Arkansans for Ltd. Gov't, *Ballot Question Committee Financial Report* (filed Jun. 14, 2024) https://perma.cc/3PUH-DCVA.

before the submission deadline passed, its claims fail as a matter of law and it is not entitled to any relief.

In response, AFLG ultimately appears to concede that Clark is not "the sponsor" for purposes of Section 111(f)(2). Yet it maintains that when she signed the June 27 affidavit, she "was acting as an agent of AFLG" and that should be enough. MTD Resp. 8; *see also* Compl. ¶ 15 (alleging that Clark was acting "on behalf of AFLG"). 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. AFLG's claims thus fail as a matter of law.

2. AFLG did not submit a statement that it had provided the required information and documents "to each paid canvasser."

Section 111(f)(2)(B) requires the sponsor to submit a statement certifying the applicable legal requirements have been met as to "each paid canvasser it used." Even if a paid canvasser could be the sponsor, Clark's June 27 affidavit also undisputedly did not make the required certification as to each of the paid canvassers AFLG employed. AFLG thus failed to comply with the law.

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 had 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 thus incomplete, and that is an independent reason why they did not comply with the statute. Again, AFLG's claim fails a matter of law.

3. AFLG's after-the-fact attempt to satisfy Section 111(f)(2) does not suffice.

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, at 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 separate requirement that the signature-number affidavit and the paid-canvasser sponsor statement be filed contemporaneously with 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 does not 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 (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.[4]

[4] Arkansas Secretary of State, *2024 Initiatives and Referenda Handbook* 17-18, available at https://perma.cc/D36D-ZDTR.

B. AFLG's failure to comply with the law means that it is not entitled to relief from this Court.

Failure to comply with the law has consequences. As the Secretary correctly explained in his July 10, 2024 letter, AFLG's failure to comply with Section 111(f)(2) required the Secretary to reject its submission entirely. Yet even if that were not the case, it's now crystal clear that AFLG failed to submit enough qualifying signatures at the initial-count stage to be entitled to a cure period. It is not entitled to any relief.

1. Compliance with Section 111(f)(2) is mandatory, and AFLG's failure to submit a sponsor statement required rejecting its petition.

"The first rule in considering the meaning and effect of a statute is to construe it just as it reads, giving the words their ordinary meaning and usually accepted meaning in common language." *Miller*, 2020 Ark. 267, at 7, 605 S.W.3d 255, 258-59. In the initiative and referendum context, this Court has held that "'shall' means 'shall'" and indicates that compliance is mandatory. *Benca*, 2016 Ark. 359, at 16, 500 S.W.3d 742, 752. Otherwise, "the term 'shall' . . . would become permissive," and "that would leave no remedy for the canvasser's failure to comply with" mandatory language. *Zook v. Martin*, 2018 Ark. 306, at 8, 558 S.W.3d 385, 392; *accord id.* ("To interpret the word 'shall' as permissive would lead to an absurd result, which this court will not do."). Indeed, where the General Assembly intends the opposite—that is, for compliance with a statute to be

something other than mandatory—it says so. *See, e.g.*, Ark. Code Ann. 7-9-109(b) ("Forms herein given are not mandatory, and if substantially followed in any petition it shall be sufficient, disregarding clerical and merely technical errors."). As a result, this Court applies "a strict-compliance analysis" where a statute's requirements are mandatory. *Arkansans for Healthy Eyes v. Thurston*, 2020 Ark. 270, at 9, 606 S.W.3d 582, 587.

Applying that framework here, compliance with Section 111(f)(2)(B) is mandatory because that statute provides that sponsors submitting paid-canvasser signatures "shall" submit the required sponsor statement at the time the ballot measure is filed. Ark. Code Ann. 7-9-111(f)(2). Thus, AFLG's failure to comply with that provision renders its entire submission invalid and required the Secretary to reject it. *See Zook*, 2018 Ark. 306, at 8, 558 S.W.3d at 392.

AFLG resists that straightforward conclusion on two grounds—neither one of which has any merit. First, it argues that despite Section 111(f)'s use of the word "shall," compliance isn't really mandatory because that section doesn't have its own separate "do not count" language, like some other provisions do. This Court has already rejected that line of argument. *Zook*, for example, involved the canvasser statement required under Section 601(d), which does "not state that a failure to obtain a sworn statement will result in the signatures not being counted." *Zook*, 2018 Ark. 306, at 8, 558 S.W.3d at 392. But the Court held that the use of

mandatory language is enough to require the rejection of signatures even where "there is no specific statutory provision that allows" the Secretary to reject them. *Id.* To hold otherwise, as this Court explained, would "absurd[ly]" transform mandatory language into permissive language. *Id*.

Second, AFLG argues that it can correct its error during a cure period and that, as a result, the Secretary wasn't entitled to reject its petition. But Section 111 lacks any mechanism by which a sponsor may cure the failure to submit a sponsor statement or meet any other mandatory requirement. And against that backdrop, this Court has unsurprisingly never held that noncompliance with any mandatory requirement in Act 1413 may be corrected during a cure period. Nor could it since if a sponsor were free to ignore mandatory language and "correct" the error later, that'd produce the "absurd" result of interpreting "shall" to be permissive. *Zook*, 2018 Ark. 306, at 8, 558 S.W.3d at 392.

Compliance with Section 111(f)(2)(B) is mandatory, and AFLG's failure to comply warranted outright rejection of its submission. AFLG's claims to the contrary therefore fail as a matter of law.

2. At a minimum, no paid-canvasser signatures may be counted for any purpose, and without those signatures, AFLG's petition fails.

As the Secretary correctly explained in his July 10 rejection letter, even if AFLG's failure to comply with Section 111(f)(2)(B) did not require outright

rejection of its submission, it would still render its petition insufficient at the initial-count stage. That is because a failure to submit the required sponsor statement means the sponsor is not permitted to use paid canvassers. Any petition part submitted by a paid canvasser is thus materially defective on its face and cannot be counted for any purpose. And without those signatures, AFLG's petition falls well short of the statutory requirements for further consideration.

a. Section 126(b) lists several defects in a petition part that 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*, 2020 Ark. 270, at 8, 606 S.W.3d 582, 587. Critically, here, 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). This Court has upheld that provision as "within th[e] authority" of the General Assembly "to prohibit and penalize fraud in the securing of signatures or the filing of petitions." *McDaniel*, 2015 Ark. 94, at 18, 457 S.W.3d 641, 654. And a defect is "material" where it is "significant" or "essential." *Material*, Black's Law Dictionary (11th ed. 2019).

Applying that provision here, AFLG's paid signatures cannot be counted for any purpose. Compliance with Section 111(f)(2) is mandatory, and AFLG did not

comply with that provision when it submitted thousands of signatures collected by paid canvasser without a sponsor affidavit. That, at a minimum, means those signatures cannot be counted for any purpose. *See Zook*, 2018 Ark. 306, at 8, 558 S.W.3d at 392. And that such signatures were submitted in violation of Arkansas law is obvious from the face of the petition part since every petition part must disclose on its face whether the canvasser was collected by a paid canvasser. *See* Ark. Code Ann. 7-9-109(a).[5] Thus, under Section 126(b)(8), every petition part submitted by a paid canvasser is defective on its face, and none of AFLG's paid-canvasser signatures count for any purpose, including the initial count stage.

In response, AFLG argues that only noncompliance with the handful of statutes specifically listed in Section 126 trigger that section's do-not-count requirement. That reading effectively reads Section 126(b)(8) entirely out of the statute since—rather than cross-referencing other specific provisions—it more broadly excludes any petition part with "a material defect [] on its face." Ark. Code Ann. 7-

[5] AFLG submitted 912 signatures appearing on petition parts that "do not indicate whether the canvasser was volunteer or paid." Compl. Ex. 2. Those signatures were thus not included in the Secretary's initial count of raw signatures gathered by paid canvassers. And even if those 912 signatures were included in count of volunteer signatures, the petition would still be short of the 90,704 needed.

9-126(b)(8). That defies logic and isn't how we read statutes. Instead, the far better reading of Section 126—and the only one that meaningfully gives effect to Section 126(b)(8)'s more general language—is that it is a catchall provision that excludes from counting similar material defects not specifically delineated elsewhere in Section 126. *See, e.g.*, *Hotels.com, L.P. v. Pine Bluff Advert. & Promotion Comm'n*, 2024 Ark. 86, at 8-9, 688 S.W.3d 399, 406 (noting that under the *ejusdem generis* canon, "general words" that "follow specific words in a statutory preceding . . . are construed to embrace . . . objects similar in nature to . . . the preceding specific words"); *compare* Ark. Code Ann. 4-88-107(10) (ATDPA's catchall provision prohibiting "[e]ngaging in any other unconscionable, false, or deceptive act or practice in business, commerce, or trade").

Recognizing the weakness of its attempt to read Section 126(b)(8) out of the statute, AFLG alternatively argues that in deciding whether a material defect exists, the Secretary can't consider the lack of a sponsor affidavit. MTD Resp. 5. But a sponsor's noncompliance with Section 111(f)(2)(B) is apparent at the very start of the review process, and when the Secretary reviews any petition parts, he knows from the face of the petition part whether the signatures on that part were collected by paid canvassers and are therefore invalid. Nothing in Section 126 requires the Secretary to ignore a patently obvious failure to comply with a threshold requirement for sponsors to submit paid-canvasser signatures.

Thus, even if AFLG's failures did not mandate outright rejection of their submission, it means that all paid-canvasser signatures are invalid and cannot be counted for any purpose.

b. Excluding those facially invalid petition parts here means that AFLG failed to submit enough signatures to move past the initial-count stage. In accordance with the Court's July 23, 2024 order, the Secretary determined that AFLG submitted, at most, 88,587 volunteer-canvasser signatures. *See* Bellamy Aff. ¶ 8. That is far below the requirement of 90,704 to propose a constitutional amendment, even prior to the culling that would be required under Section 126(b)-(c) during a full initial count. Because AFLG cannot clear the initial-stage signature requirement, it isn't entitled to a cure period. *See* Ark. Code Ann. 7-9-126(d) (requiring the secretary to "declare the petition insufficient," and providing that he "shall not accept and file any additional signatures to cure the insufficiency of the petition on its face"). And that means AFLG is not entitled to any relief from this Court.

CONCLUSION AND REQUEST FOR RELIEF

The Court should dismiss the petition.

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*
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CERTIFICATE OF SERVICE

I certify that this brief complies with (1) Administrative Order No. 19's requirements concerning confidential information; (2) Administrative Order 21, Section 9 regarding the removal of any hyperlinks to external papers or websites; and (3) the word limitations under Ark. Sup. Ct. Rule 4-2(d) by containing a total of 5,177 words in the jurisdictional statement, the statement of the case and the facts, and the argument.

/s/ *Nicholas J. Bronni*
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