

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 Chair of the State Board
of Election Commissioners; STATE BOARD
OF ELECTION COMMISSIONERS

RESPONDENTS

**MOTION TO EXPEDITE
AND FOR PRELIMINARY INJUNCTION**

Petitioners move to expedite and for a preliminary injunction in this original action over a ballot title because the pressing August 25, 2022, deadline for certification of initiated measures is pressing, and petitioners will suffer irreparable harm unless the Court expedites this action and orders respondent John Thurston, the Arkansas Secretary of State, to conditionally certify petitioners' proposed initiated amendment pending this Court's decision in this case:

1. Petitioner Responsible Growth Arkansas is the sponsor of a proposed initiated amendment to the Arkansas Constitution with the popular name “An Amendment to Authorize the Possession, Personal Use, and Consumption of Cannabis by Adults, to Authorize the Cultivation and Sale of Cannabis by Licensed Commercial Facilities, and to Provide for the Regulation of Those Facilities” (“Amendment”).

2. Petitioners filed this original action to challenge the State Board of Election Commissioners’ (“Board”) incorrect rejection of the ballot title for the Amendment. Petitioners’ complaint asks this Court to find the ballot title sufficient and to order Secretary Thurston to certify the Amendment to appear on the November 2022 general election ballot.

3. Secretary Thurston has already certified that Responsible Growth Arkansas submitted a sufficient number of valid petition signatures to qualify the Amendment for the ballot. The only issue standing in the way of certification is the Board’s rejection of the popular name and ballot title.

4. The Board made its decision a meeting held August 3 but did not provide written notice of its decision until the following day.

Petitioners filed their complaint and this motion as soon as practicable after receiving the Board's decision.

5. The deadline to certify measures for the November general election ballot is August 25, 2022. It is unlikely that this Court will be able to decide this action before that deadline. Petitioners therefore ask the Court to issue an expedited briefing schedule, to expedite its consideration of this action, and to issue a preliminary injunction requiring Secretary Thurston to certify the Amendment provisionally by the August 25 deadline.

6. In the past, the Court has expedited original actions like this one in which parties were contesting the validity of a proposed initiated measure. *See, e.g., Miller v. Thurston*, No. CV-20-454 (July 24, 2020) (per curiam) (granting expedited consideration in case challenging disqualification of a measure based on invalid signatures and the Board's rejection of a ballot title). Petitioners request that the Court do the same here by ordering an expedited briefing schedule and expedited consideration so that the case can be decided before too late in the upcoming election cycle.

7. Even with expedited consideration, the Court will not be able to decide this case before the August 25 certification deadline. Petitioners therefore also request that the Court grant a preliminary injunction requiring Secretary Thurston to certify the Amendment provisionally by the August 25 deadline so that the Amendment can appear on the ballot if petitioners prevail in this action.

8. One of the primary purposes of a preliminary injunction “is to maintain the status quo until the merits of a controversy are decided.” *Am. Invs. Life Ins. Co. v. TCB Transp., Inc.*, 312 Ark. 343, 345, 849 S.W.2d 509, 510 (1993) (citation omitted). Obtaining that protection requires two elements. First, petitioners must show that irreparable harm will result without a preliminary injunction.

Hutchinson v. Armstrong, 2022 Ark. 59, 5, 640 S.W.3d 395, 398.

Second, petitioners must show a likelihood of success on the merits. *Id.*

9. Irreparable harm will result if the Court does not grant petitioners preliminary injunctive relief. If the August 25 deadline passes without Secretary Thurston certifying the Amendment to appear on the ballot, the Amendment will be summarily defeated before petitioners have the benefit of this Court’s ruling on the sufficiency of

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

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

11. Petitioners have a reasonable probability of success because the Board did not apply this Court's standards for the sufficiency of popular names and ballot titles correctly. First, the statute under which the Board acted because it impermissibly expanded the Board's authority over ballot titles under Amendment 7 and thus unduly restricts the right to initiative. Second, the Board ignores the "most significant rule in determining the sufficiency of the title," which "is that it be given a liberal construction and interpretation in order that it secure the purposes of reserving to the people the right to adopt, reject, approve, or disapprove" the amendment. *Rose v. Martin*, 2016 Ark. 339,

500 S.W.3d 148. The Board instead applied an overly stringent standard that ignored this Court’s precedent, which does not require a ballot title to include every detail, term, definition, or how the proposed measure may work. *Stiritz v. Martin*, 2018 Ark. 281, 6, 556 S.W.3d 523, 528 (citation omitted). Under the proper standard, the ballot title is sufficient, and petitioners have a reasonable probability of prevailing on their claims.

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


13. For those reasons, the Court has issued preliminary injunctions in the past to ensure that the passage of time does not prevent sponsors seeking this Court’s review of certification decisions

from obtaining relief. *See Miller, supra*, at 2 (granting preliminary injunction requiring continued facial review of petition and verification of signatures pending the Court's resolution of original action).

Petitioners request that the Court do so again to ensure that rejection of a ballot title does not prove fatal to the Amendment if the Court decides that the Board erred.

WHEREFORE, petitioners request that the Court expedite the briefing schedule and consideration of this original action, issue a preliminary injunction directing Secretary Thurston to certify the Amendment for the ballot by the August 25, 2022, deadline for doing so, and grant petitioners all other proper relief.


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CERTIFICATE OF SERVICE

I certify that on August 5, 2022, I electronically filed the foregoing with the Clerk of the Court using the Arkansas Judiciary Electronic Filing System, which shall send notification of the filing to all counsel of record. I also served a copy of the motion on respondents by email on the same date.


Gary D. Marts, Jr.