

Supreme Court, U.S.  
FILED  
AUG 26 2024  
OFFICE OF THE CLERK

No. 24A222

# In the United States Supreme Court

OSCAR STILLEY,  
Petitioner,

v.

JOHN THURSTON, IN HIS OFFICIAL CAPACITY AS ARKANSAS SECRETARY OF  
STATE; ARKANSANS FOR LIMITED GOVERNMENT,  
Respondents.

\*\*\*\*\*  
**ON PETITION FOR WRIT OF CERTIORARI  
TO THE ARKANSAS SUPREME COURT**  
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**PETITIONER STILLEY'S EMERGENCY APPLICATION TO JUSTICE  
KAVANAUGH FOR STAY, TO COMPEL THE SECRETARY OF STATE TO  
INCLUDE THE POPULAR NAME AND BALLOT TITLE ON THE BALLOT  
AND PUBLISH AS REQUIRED BY LAW**  
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SUPREME COURT, U.S.

Comes now Petitioner Oscar Stilley (Stilley) and for his Emergency Application to Justice Kavanaugh for Stay, to Compel the Secretary of State to Include the Popular Name and Ballot Title on the Ballot and Publish as Required by Law states:

1. Stilley on July 16, 2024 filed Arkansas Supreme Court case number CV-24-453, an original action petition, seeking to compel the Arkansas Secretary of State to include the Arkansas Abortion Amendment of 2024 on the November ballot.
2. The Arkansas Supreme Court has original and exclusive jurisdiction over any cause to determine the sufficiency of an initiative petition. Ark. Const. Art. 5, §1.
3. Stilley's standing as a legal registered voter was challenged in a motion to dismiss filed by Respondent John Thurston, Secretary of State. Stilley's standing has not yet been decided by the Arkansas Supreme Court.
4. Stilley challenged *inter alia* the facial validity of Arkansas Act 1413 of 2023, and Act 236 of 2023. Respondent Thurston answered Stilley's petition on July 18, 2024. The merits of Stilley's petition have not been briefed or decided.
5. Respondent Arkansans for Limited Government (AFLG) filed a related case the same day as Stilley's petition. *Lauren Cowles et al v. John Thurston*, Ark. Sup. Ct. CV-24-455. Their petition challenged the application of certain parts of Act 1413 of 2013 but did not include a facial challenge to Act 1413 of 2013 or Act 236 of 2023. AFLG's petition was denied August 22, 2024 in a 4-3 decision. *Cowles v. Thurston*, 2024 Ark. 121 (Ark. 2024). The docket is available at <https://caseinfo.arcourts.gov/opad/case/CV-24-455> Changing the last digit to "3" brings up Stilley's docket.
6. AFLG remains a Respondent in Stilley's petition number CV-24-453.

7. Secretary of State Thurston sent the list of ballot measures to the county election commissioners of Arkansas on August 22, 2024, the statutory deadline. His emailed document did not include the popular name or ballot title of the Arkansas Abortion Amendment of 2024.

8. Time is of the essence. Stilley made inquiry of his local County Clerk's office and has been advised that the sooner this motion is disposed of, the less likely a favorable ruling would impose a significant burden on Arkansas election officials. September 19, 2024, is the deadline to *deliver* absentee ballots to the county clerk but changes less than a week or ten days prior to that date become increasingly untenable, in light of the election calendar. See page 26 of [https://www.sos.arkansas.gov/uploads/elections/2024\\_Election\\_Calendar\\_Rev.\\_1-2024\\_.pdf](https://www.sos.arkansas.gov/uploads/elections/2024_Election_Calendar_Rev._1-2024_.pdf).

9. Absent a prompt stay sufficient to 1) compel the addition of the popular name and ballot title to the physical ballots, and 2) compel the statutorily required publications, Stilley is likely be *de facto* precluded from seeking certiorari in the US Supreme Court. At minimum Stilley's path to seeking certiorari would be drastically more complicated.

10. Stilley has already posted a \$5,000 bond for costs, in CV-24-453. The likelihood that Respondent would suffer any adverse consequences due to a stay is negligible.

11. The custom in Arkansas is that in case of a challenged initiative petition, the popular name and ballot title is published according to law and the text thereof is placed on the physical ballots in the customary way. If the proponents of the initiative are unsuccessful, the Secretary of State is ordered by the Arkansas Supreme Court not to officially count the votes or enroll the measure as part of Arkansas law.

12. Cowles in her case unsuccessfully requested the relief sought herein at least twice. Motion to Expedite and for Emergency Relief filed 7-16-2024 at pages 9-10; Merits Brief filed 8-2-2024 at page 32, Reply Brief 8-9-2024 at page 16. Stilley in his own case CV-24-453 moved for the relief sought herein 8-22-2024. His motion was denied as moot in a 4-3 decision. That order is attached hereto.

13. Respondent John Thurston objects to the relief sought. AFLG and Lauren Cowles take no position as to the relief sought.

### DISCUSSION

Pursuant to Arkansas Constitution Article 5, §1, state court litigation over initiatives and referenda starts and ends at the Arkansas Supreme Court. That's understandable and warranted considering the necessarily compressed time frames for litigating such matters. However, that also means that a petition for certiorari to this Court is the *only* avenue for review by a superior tribunal.

Stilley filed his petition on July 16, 2024. The Court expedited the matter. Respondent Thurston filed a motion to dismiss on July 18, 2024 at 1:50 PM. Included therein was a challenge to Stilley's standing. The Arkansas Supreme Court on 7-26-2024 appointed a Special Master to make findings concerning whether Stilley is a validly registered voter. The Special Master filed his report on the deadline, 8-26-2024. According to the rules a briefing should be ordered, with a ruling to follow.

At 10:00 AM on Thursday 8-22-2024, the Arkansas Supreme Court in *Cowles v. Thurston* CV-24-455 ruled that the Arkansas Abortion Amendment of 2024 was not legally qualified for the ballot. At 1:58 PM the same day (the statutory deadline) the



Secretary of State emailed the list of material to be included on the ballot to county election commissioners.

At 3:08 PM the same day Stilley filed a motion in *Stilley v. Thurston et al*, CV-24-453, to compel the Secretary of State to provisionally certify the Arkansas Abortion Amendment of 2024 in the materials provided to county election commissioners, for use in preparing suitable ballots for the various political subdivisions in each county. By clerk email time-stamped 4:18 PM the same day, the Court gave Respondent Thurston until 6:00 PM to respond to the motion. He complied. At 9:03 PM the Arkansas Supreme Court by 4-3 vote denied Stilley's motion as moot.

Most respectfully, the Arkansas Supreme Court erred in finding mootness. A case becomes moot only when it becomes impossible for a court to grant any effectual relief whatever to the prevailing party. *Chafin v. Chafin*, 568 U.S. 165, 172 (2013). The Arkansas Supreme Court majority may have conflated mootness with chance of winning. *McDaniel v. Spencer*, 457 S.W.3d 641 (2015) involved another challenge to Act 1413 of 2013. That was another split decision, in which three justices would have held Act 1413 unconstitutional in its entirety. *Cowles v. Thurston* is a 4-3 decision upholding Act 1413 *as applied*. Stilley's petition CV-24-453 challenged Act 1413 as applied but also challenged it facially, asking the Arkansas Supreme Court *inter alia* to overturn *McDaniel* and strike Act 1413 as unconstitutional.

The Arkansas majority can doubtless count the votes, and conclude that Stilley is likely to lose, probably 4-3, as to all of his facial and as-applied challenges. That doesn't make Stilley's cause of action moot. Stilley needs the requested stay to ensure that his case does not *become* moot. Absent the stay requested herein, Respondent

Thurston will likely win on his standing challenge simply by running the clock. It is exceedingly difficult to conceive of theory whereby a request for a stay is moot, but some other part of the case is not.

The fundamental requirement of due process is the opportunity to be heard “at a meaningful time and in a meaningful manner.” *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976); *Armstrong v. Manzo*, 380 U.S. 545, 552 (1965). Stilley paid the filing fee, drafted and filed many pleadings, posted a \$5,000 bond, appeared in Little Rock for a hearing, yet is faced with the prospect that his petition may be deemed moot despite his best efforts and a plausible route for a decision on the merits.

Stilley’s case has not been decided on the merits. AFLG’s petition has been finally decided, in a published decision. Two dissenters note that the Arkansas Abortion Amendment has been treated differently than two other citizen initiatives in this election cycle. *Cowles v. Thurston*, 2024 Ark. 121, 18 (Ark. 2024). A stay will allow Stilley to litigate his issues, some of which were not pleaded by AFLG.

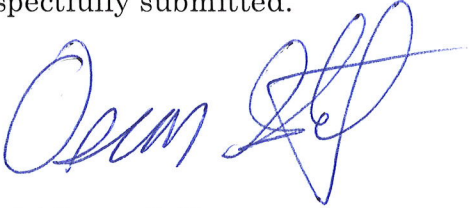
## CONCLUSION

To protect and defend due process and an orderly election process, stay should be granted to the extent of commanding Respondent Arkansas Secretary of State to provisionally include the popular name and ballot title of Arkansas Abortion Amendment of 2024 on the ballots, and to perform all publications as may be required pursuant to Arkansas law.

## VERIFICATION

Petitioner Oscar Stilley by his signature below declares under penalty of perjury pursuant to 28 USC 1746 that the facts set forth herein are true and correct to the best of his knowledge and belief.

Respectfully submitted.



By: /s/ Oscar Stilley  
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August 26, 2024

STATE OF ARKANSAS, )  
 )  
 SUPREME COURT )

Kyle E. Burton  
CLERK



CC: OSCAR STILLEY  
STEVEN SHULTS, AMANDA ORCUTT AND PETER SCHULTS  
NICHOLAS J. BRONNI, SOLICITOR GENERAL  
DYLAN L. JACOBS, DEPUTY SOLICITOR GENERAL  
ASHER STEINBERG, SENIOR ASSISTANT SOLICITOR GENERAL

# Oscar Stilley

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August 26, 2024

Scott S. Harris, Clerk  
Supreme Court of the United States  
1 First Street, NE  
Washington, DC 20543

Re: *Oscar Stilley v. John Thurston, et al*  
Arkansas Supreme Court Original Action # CV-24-453  
Application to a justice for stay

## CERTIFICATE OF SERVICE

Petitioner Oscar Stilley by his signature below certifies that his Emergency Application to Justice Kavanaugh for Stay, to Compel the Secretary of State to Include the Popular Name and Ballot Title on the Ballot and Publish as Required by Law will be served by email this August 26, 2024 to:

Dylan Jacobs [dylan.jacobs@arkansasag.gov](mailto:dylan.jacobs@arkansasag.gov),  
Nicholas Bronni [nicholas.bronni@arkansasag.gov](mailto:nicholas.bronni@arkansasag.gov),  
Beth Buckley (Paralegal) [<bbuckley@shultslaw.com>](mailto:bbuckley@shultslaw.com),  
Steven Shults [sshults@shultslaw.com](mailto:sshults@shultslaw.com),  
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Asher Steinberg [asher.steinberg@arkansasag.gov](mailto:asher.steinberg@arkansasag.gov)

And also will this day be served by placing three copies in US First Class mail to:

For Lauren Cows and Arkansans for Limited Government:

Peter Shults, Attorney  
Shults Law Firm LLP  
200 West Capitol Avenue Suite 1600  
Little Rock, AR 72201-3621

For John Thurston, in his official capacity as Secretary of State of the State of Arkansas, by three copies to:

Justin Brascher, Assistant Attorney General  
Arkansas Attorney General  
323 Center Street, Suite 200  
Little Rock, Arkansas 72201

### VERIFICATION

Petitioner Oscar Stilley by his signature below declares under penalty of perjury pursuant to 28 USC 1746 that the facts set forth herein are true and correct to the best of his knowledge and belief.

Respectfully submitted,



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