

**IN THE ARKANSAS SUPREME COURT**

**BONNIE MILLER, individually and on behalf of  
ARKANSAS VOTERS FIRST and  
OPEN PRIMARIES ARKANSAS,  
BALLOT QUESTION COMMITTEES**

**PETITIONERS**

**NO: CV—20-454**

**VS**

**JOHN THURSTON IN HIS CAPACITY  
AS ARKANSAS SECRETARY OF STATE**

**RESPONDENT**

**AMENDED CONSOLIDATED ORIGINAL PETITION**

Come the Petitioners and for their amended consolidated original petition states:

1. Petitioner, Bonnie Miller, is an Arkansas citizen, resident and registered voter. This is an original action filed in this Court pursuant to Article 5, Section 1 of the Arkansas Constitution, Amendment 7 to the Arkansas Constitution and Rule 6-5 of the Rules of this Court. This Court has original and exclusive jurisdiction to review the sufficiency of statewide initiative petitions.

2. Petitioner Arkansas Voters First is an Arkansas ballot question committee as defined in Ark. Code Ann. § 7-9-402(2)(A), registered with the Arkansas Ethics Commission (“Arkansas Voters First”). Exhibit 1, Arkansas Voters First Ballot Question Committee Statement of Organization.

3. Petitioner Open Primaries Arkansas is an Arkansas ballot question committee as defined in Ark. Code Ann. § 7-9-402(2)(A), registered with the

Arkansas Ethics Commission (“Open Primaries Arkansas”). Exhibit 2, Open Primaries Arkansas Ballot Question Committee Statement of Organization.

4. Arkansas Voters First was established to support the Arkansas Citizens’ Redistricting Commission Amendment and a constitutional amendment requiring open primary elections and instant runoff general elections in Arkansas. Exhibit 1, Arkansas Voters First Ballot Question Committee Statement of Organization.

5. Open Primaries Arkansas was established to advocate for a constitutional amendment requiring open primary elections and instant runoff general elections in Arkansas, and oppose any efforts in opposition. Exhibit 2, Open Primaries Arkansas Ballot Question Committee Statement of Organization.

6. Respondent John Thurston is Secretary of State of the State of Arkansas.

7. The Secretary of State of the State of Arkansas is charged with reviewing, certifying and taking actions regarding initiative petitions in accordance with Arkansas law. Ark. Code Ann. § 7-9-126.

8. In compliance with Ark. Code Ann. §7-9-101, *et seq*, Arkansas Voters First submitted valid initiative petitions to John Thurston, the Arkansas Secretary of State on July 6, 2020, in support of Arkansas Voters First’s proposed Arkansas Citizens’ Redistricting Commission Amendment and a proposed constitutional

amendment requiring open primary elections and instant runoff general elections in Arkansas, respectively. Exhibits 3 and 4.

9. John Thurston is being sued in his capacity as the Arkansas Secretary of State for failing to perform his duties as required by Ark. Code Ann. §7-9-126.

10. Ark. Code Ann. §7-9-126(a) provides: (a) Upon the initial filing of an initiative petition or referendum petition, the official charged with verifying the signatures shall: (1) Perform an initial count of the signatures; and (2) Determine whether the petition contains, on its face and before verification of the signatures of registered voters, the designated number of signatures required by the Arkansas Constitution and statutory law in order to certify the measure for the election ballot.

11. Ark. Code Ann. §7-9-126(b) provides: (b) A petition part and all signatures appearing on the petition part shall not be counted for any purpose by the official charged with verifying the signatures, including the initial count of signatures, if one (1) or more of the following is true: (4)(A) The canvasser is a paid canvasser whose name and the information required under § 7-9-601 were not submitted or updated by the sponsor to the Secretary of State before the petitioner signed the petition.

12. Ark. Code Ann. §7-9-601(b)(1) provides: To verify that there are no criminal offenses on record, a sponsor shall obtain, at the sponsor's cost, from the

Division of Arkansas State Police, a current state and federal criminal record search on every paid canvasser to be registered with the Secretary of State; (2) The criminal record search shall be obtained within thirty (30) days before the date that the paid canvasser begins collecting signatures; (3) Upon submission of the sponsor's list of paid canvassers to the Secretary of State, the sponsor shall certify to the Secretary of State that each paid canvasser in the sponsor's employ has passed a criminal background check in accordance with this section.

13. Ark. Code Ann. §7-9-601(f) provides: Signatures incorrectly obtained or submitted under this section shall not be counted by the Secretary of State for any purpose.

14. On July 6, 2020, Arkansas Voters First submitted timely, valid initiative petitions with the requisite accompanying signatures to the Secretary of State. Copies of the enclosure letters attached hereto as Exhibits 3 and 4.

15. Eight days later, on July 14, 2020, the Secretary of State issued "insufficiency letters" to Arkansas Voters First on both petitions, and, citing Ark. Code Ann § 7-9-601, refused to count any of the signatures provided by Arkansas Voters First in support of the respective initiative petitions to the Secretary of State. Copies of the enclosure letters attached hereto as Exhibits 5 and 6.

16. The Secretary of State's insufficiency letters to Arkansas Voters First indicated the Secretary of State's position that the paid canvassers soliciting

signatures for Arkansas Voters First in support of the respective initiative petitions to the Secretary of State certified, “On behalf of the sponsors, this statement and submission of names serves as certification that a statewide Arkansas State Police background check, as well as {SIC}, 50-state criminal background check have been timely acquired in the 30 days before the first day the Paid canvasser begins to collect signatures as required by Act 1104 of 2017”.

17. The Secretary of State’s insufficiency letters to Arkansas Voters First further indicated his position that “acquiring” a criminal background check is different than “passing” a background check, and that as a result, he deemed the certifications provided by Arkansas Voters First canvassers to be non-compliant with Ark. Code Ann. § 7-9-601(b)(3), which provides that: (3) Upon submission of the sponsor’s list of paid canvassers to the Secretary of State, the sponsor shall certify to the Secretary of State that each paid canvasser in the sponsor’s employ has passed a criminal background check in accordance with this section.

18. Ark. Code Ann. § 7-9-601(b)(1) provides, “To verify that there are no criminal offenses on record, a sponsor shall obtain, at the sponsor’s cost, from the Division of Arkansas State Police, a current state and federal criminal record search on every paid canvasser to be registered with the Secretary of State.”

19. Citing Ark. Code Ann. § 7-9-601(b)(3), the Secretary of State, in its insufficiency letters to Arkansas Voters First took the position that their respective

petitions were insufficient, none of the signatures may be counted for any purpose, and he was statutorily prohibited from counting the submitted signatures for any purpose.

20. The Secretary of State's summation of the certifications provided by paid canvassers for Arkansas Voters First is conveniently incomplete. Notably, the certifications paid by canvassers for Arkansas Voters First each indicated that they were in compliance with Ark. Code Ann § 7-9-601.

21. The Secretary of State's refusal to count any of the signatures provided by Arkansas Voters First and in support of their respective initiative petitions is in violation of Ark. Code Ann. §7-9-126.

22. The Secretary of State's position is disingenuous and contrary to his position with regard to the counting of signatures in support of Safe Surgery Arkansas in *Arkansas for Healthy Eyes v. Thurston*, Arkansas Supreme Court Case No. CV 20-136, in which the Secretary of State counted signatures with the same certifications. Said contradictory approaches reflect that, rather than fulfill the duties of his job, the Secretary of State has instead decided to rely upon sophistry in an attempt to thwart the statewide initiative process.

23. The insufficiency letters sent to Arkansas Voters First contained no other criticisms of the respective initiative petitions.

24. Arkansas Voters First's initiative petitions met the statutory requirements for statewide ballot initiatives.

25. Additionally, Arkansas Voters First is entitled to a 30-day "cure period," which is being denied by the Secretary of State's refusal to count any of the signatures in support of their respective initiatives.

26. This Court has consistently held that Article 5 § 1 of the Arkansas Constitution (and Amendment 7 to the Arkansas Constitution) provides that if a petition is found to be insufficient, time (at least 30 days) *must* be allowed for correction or Amendment. *See, e.g. Arkansas Hotels & Entm't, Inc. v. Martin*, 2012 Ark. 335, 423 S.W.3d; *Ellis v. Hall*, 219 Ark. 869, 245 S.W.2d 223 (1952); *Dixon v. Hall*, 210 Ark. 891, 198 S.W.2d 1002 (1946) (Emphasis Added).

27. This Court has further consistently held that, to qualify for additional time, a petitioner must only make a *prima facie* showing that it has submitted the requisite number of valid signatures of legal voters to qualify the petition for the cure. *See, e.g. Arkansas Hotels & Entm't, Inc. v. Martin*, 2012 Ark. 335, 423 S.W.3d; *Ellis v. Hall*, 219 Ark. 869, 245 S.W.2d 223 (1952); *Dixon v. Hall*, 210 Ark. 891, 198 S.W.2d 1002 (1946).

28. When reviewing initial signature count and cure period qualification, this Court is not tasked with reviewing a challenge to the final sufficiency of a

petition. Instead, this Court looks to the accuracy of the cure. *See* Ark. CONST. art. 5 § (a)(1), (a)(2)(A)(Supp. 2017).

29. This Court's only concern when examining a decision by the Secretary of State of whether to grant a cure period is a simple one--whether, on the face of the petition, the signatures were of a sufficient number. *See Leigh v. Hall*, 232 Ark. 558, 566, 339 S.W.2d 104, 109 (1960)(quoting *Ferrill v. Keel*, 105 Ark. 380, 385, 151 S.W. 269, 272 (1912); *Stephens v. Martin*, 2014 Ark. 442, at 12, 491 S.W.3d 451, 457 (2014).

30. On July 6, 2020, Arkansas Voters First filed statutorily valid initiative petitions and made a prima facie showing that they have submitted the requisite number of valid signatures.

31. As a result of their prima facie showing of the submission of the requisite number of valid signatures, Arkansas Voters First is entitled to a cure period of at least 30 days under well-settled Arkansas law.

32. The Secretary of State violated Ark. Code Ann § 7-9-126 by flatly refusing to count any of the signatures provided by Arkansas Voters First and refusing to provide a cure period.

33. The Secretary of State decision to refuse to grant Arkansas Voters First the mandated cure period was a blatant attempt to shirk his duties and deny the voters of Arkansas the opportunity to initiate proper legislation.

34. Arkansas Voters First must collect 89,151 signatures of registered voters. The deadline for the Arkansas Secretary of State to certify any proposed amendments to the Arkansas Constitution to the County Boards of Election Commissioners is August 20, 2020. Each day that passes without the Secretary of State counting signatures makes the certifying of these measures for the ballot much more difficult.

35. Pursuant to A.R.C.P. 65, the Court should enter a preliminary and permanent injunction compelling the Secretary of State to begin counting the signatures provided by Arkansas Voters First within three days or less. The preliminary injunction should be issued immediately and without notice to the Arkansas Secretary of State. Petitioners will be irreparably harmed by not having their signatures counted in a very timely manner in the fast-approaching run-up to the November election.

WHEREFORE, the Petitioner requests that the Court enter a preliminary and permanent injunction, without notice to the Arkansas Secretary of State, compelling the Arkansas Secretary of State to begin counting the signatures provided by Arkansas Voters First in support of their respective initiative petitions, immediately, for this Court to Order the Arkansas Secretary of State to provide Petitioner with a “cure period” of at least 30 days, and, for all other just and proper relief to which she may be entitled.

Respectfully Submitted,

/s/ Adam H. Butler

Adam H. Butler  
AR Sct. # 2003007  
414 West Court Street  
Paragould, AR 72450  
870.239.9581  
abutler@paragouldlawyer.com

**CERTIFICATE OF SERVICE**

I, Adam H. Butler, hereby certify that on July 21, 2020, I electronically filed the foregoing with the Clerk of the Court using the eFlex filing system, which shall serve all counsel of record.

/s/ Adam H. Butler

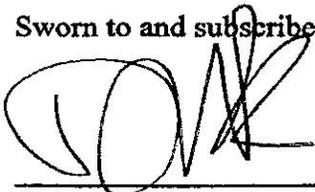
STATE OF ARKANSAS  
COUNTY OF WASHINGTON

VERIFICATION

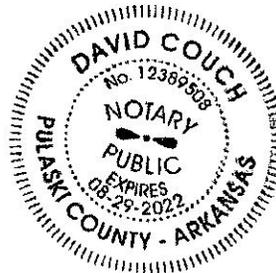
I, Bonnie Miller, do hereby affirm that the allegations contained in this petition are true and correct to the best of my knowledge, information and belief.

  
Bonnie Miller

Sworn to and subscribed before me this 17th day of July, 2020

  
\_\_\_\_\_  
Notary Public

My Commission Expires:  
8/29/2022



**BALLOT QUESTION COMMITTEE (BQC)\*  
STATEMENT OF ORGANIZATION**

To be filed with:  
Arkansas Ethics Commission  
Post Office Box 1917  
Little Rock, AR 72203  
Phone (501) 324-9600  
Fax (501) 324-9606

(Arkansas Ethics Commission File Stamp)

**FILED**

MAR 05 2020

ARKANSAS ETHICS  
COMMISSION

BY 

Check if this is an amendment to a previously filed statement of organization

**Section One: BQC Name**

Name of BQC (in full): Arkansas Voters First, Inc.

**Section Two: BQC Address & Phone Number**

If BQC has no office address, use the address of the BQC officer authorized to receive notices on behalf of the BQC.

Address: 417 Main Street

City: Little Rock State: AR Zip: 72211 Telephone Number: (501) 420-2699

**Section Three: BQC Officers and Directors**

Provide the name, title, address, and telephone number of the treasurer and other principal officers and directors of the BQC.

Name: Bonnie Miller Title: Chair

Address: 21 E. Center Street, #203 City: Fayetteville State: AR Zip: 72701

Telephone Number: (760) 792-5289

Name: T.J. Boyle Title: Treasurer

Address: 425 W. Capitol Avenue, #3300 City: Little Rock State: AR Zip: 72201

Telephone Number: (501) 376-9241

Name: Brett Kincaid Title: Director

Address: 8 Red Maple Court City: Little Rock State: AR Zip: 72211

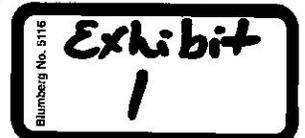
Telephone Number: (479) 530-1122

Name: \_\_\_\_\_ Title: \_\_\_\_\_

Address: \_\_\_\_\_ City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Telephone Number: \_\_\_\_\_

\* The term "ballot question committee" is defined in Ark. Code Ann. § 7-9-402(2)(A) and (B) and § 600(c)(1) and (2) of the Ethics Commission's Rules on Ballot and Legislative Question Committees.



**Section Four: Financial Information**

Provide the name and address of each financial institution in which the BQC deposits money or anything else of monetary value.

Name of Financial Institution: Arvest Bank

Address: 500 Broadway Street City: Little Rock State: AR Zip: 72201

Name of Financial Institution: \_\_\_\_\_

Address: \_\_\_\_\_ City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

**Section Five: Members**

Provide the name of each person who is a member of the committee. A person that is not an individual may be listed by its name without also listing its own members, if any.

Nell Matthews, Carol Young, Terri Berkshire, John Krebs, Michelle Rhoden,

League of Women Voters of Arkansas, Inc.

**Section Six: Brief Statement**

Provide a brief statement identifying the substance of each ballot question as to which the BQC will expressly advocate the qualification, disqualification, passage, or defeat, and, if known, the date each ballot question shall be presented to a popular vote at an election.

To support The Arkansas Citizens' Redistricting Commission Amendment. Assuming qualification of  
the proposed amendment to the Arkansas Constitution, this ballot question would be presented to a  
popular vote at the General Election in November, 2020.

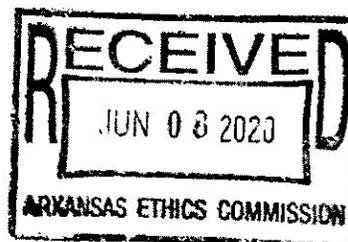
03/05/2020  
Date

  
Signature of BQC Officer

### BALLOT QUESTION COMMITTEE (BQC) STATEMENT OF ORGANIZATION

To be filed with:  
Arkansas Ethics Commission  
Post Office Box 1917  
Little Rock, AR 72203  
Phone (501) 324-8600  
Fax (501) 324-8900

(Arkansas Ethics Commission File Stamp)



Check if this is an amendment to a previously filed statement of organization

**Section One: BQC Name**

Name of BQC (in full): Open Primaries Arkansas

**Section Two: BQC Address & Phone Number**

If BQC has no office address, use the address of the BQC officer authorized to receive notices on behalf of the BQC.

Address: 31 East Center Street, Suite 300

City: Fayetteville State AR Zip: 72701 Telephone Number: 479-236-7473

**Section Three: BQC Officers and Directors**

Provide the name, title, address, and telephone number of the treasurer and other principal officers and directors of the BQC.

Name: Dan Douglas Title: Chairman

Address: 6251 500 Regional Airport City: Badenwille State: AR Zip: 72713

Telephone Number: \_\_\_\_\_

Name: Cale Turner Title: Treasurer

Address: 11300 Cantrell Road, suite 301 City: Little Roc, State: AR Zip: 72212

Telephone Number: 501-227-5800

Name: Sam Sicard Title: Director

Address: 3576 Old Oaks Ln. City: Ft Smith State: AR Zip: 72903

Telephone Number: 479-988-4228

Name: \_\_\_\_\_ Title: \_\_\_\_\_

Address: \_\_\_\_\_ City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Telephone Number: \_\_\_\_\_

\* The term "ballot question committee" is defined in Ark. Code Ann. § 7-9-402(2)(A) and (B) and § 600(o)(1) and (2) of the Ethics Commission's Rules on Ballot and Legislative Question Committee.

Revised 12/2017



**Section Four: Financial Information**

Provide the name and address of each financial institution in which the BQC deposits money or anything else of monetary value.

Name of Financial Institution: Citizen's Bank

Address: 17300 Chenal Parkway, STE 332 City: Little Rock State: AR Zip: 72223

Name of Financial Institution: \_\_\_\_\_

Address: \_\_\_\_\_ City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

**Section Five: Members**

Provide the name of each person who is a member of the committee. A person that is not an individual may be listed by its name without also listing its own members, if any.

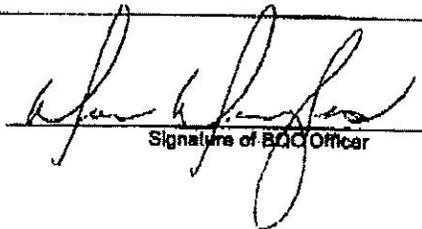
Open Primaries Arkansas, Inc.  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Section Six: Brief Statement**

Provide a brief statement identifying the substance of each ballot question as to which the BQC will expressly advocate the qualification, disqualification, passage, or defeat, and, if known, the date each ballot question shall be presented to a popular vote at an election.

Open Primaries Arkansas will advocate for a constitutional amendment requiring open  
primary elections and instant runoff general elections in Arkansas, and oppose any  
efforts in opposition.

6-4-20  
Date

  
Signature of BQC Officer



JOHN THURSTON  
ARKANSAS SECRETARY OF STATE

F I L E D

JUL 06 2020  
Arkansas  
Secretary of State

Receipt for Initiative or Referendum Petition

Name of Petition:

CITIZENS' COMMISSION FOR AN INDEPENDENT REDISTRICTING COMMISSION

Petition Sponsor:

Arkansas voters First

Person Designated to Receive Information from the Secretary of State:

Name: Bonnie Miller

Phone Number: 501-792-5289

Address: 21 S. Center St. Apt. 203, mailing: 1010 E. Walnut Pl., Fayetteville, AR

Email Address: bonniehmliller@gmail.com

Date Petition Text was Published: 5/13/2020

Name of Newspaper: The Demo crat Gazette

List of the 15 counties designated/chosen by the Petition Sponsor:

Washington, Saline, Pulaski, Mississippi, Lonoke  
Jackson, Hot Springs, Garland, Faulkner, Craighead  
Greenland, Cleveland, Clark, Bradley, Newton,  
etc

This petition submitted to the Arkansas Secretary of State on the 10th day of July, 2020, at 11:53am (time).

Winnie Miller

Petition Representative

Secretary of State Representative



Signature Count Affidavit

Name of Petition: ATTORNEYS' WITH ATTORNEY FOR AN INDEPENDENT POLITICAL PARTY COMMITTEE

Petition Sponsor: ARKANSAS VOTES FIRST

I certify that a total of 15,110 Petition Parts containing 90,700 signatures are being filed.

Sponsor Signature: Margaret Mueller Date: 7/14/2020

State of Arkansas  
County of Blacksburg

Subscribed and sworn before me this 6<sup>th</sup> day of July 2020

[Legible Notary Seal]

Signature of Notary Public  
My Commission expires: 11-14-23



FILED

JUL 08 2020

Arkansas  
Secretary of State

OFFICIAL SEAL - #12386578  
JOSH BRIDGES  
NOTARY PUBLIC-ARKANSAS  
WHITE COUNTY  
MY COMMISSION EXPIRES: 11-14-23

Paid Canvasser Certifications - § 7-9-111(D)(2)

Name of Petition: CITIZEN'S INITIATIVE FOR AN INDEPENDENT RESISTING COMMISSION

I am submitting a final total paid canvasser list and a signature card for each paid canvasser on this total paid canvasser list in compliance with § 7-9-111(D) and § 7-9-501(a).

I have provided a copy of the most recent edition of the Secretary of State's initiatives and referendum handbook to each paid canvasser before the paid canvasser solicited signatures on this petition.

I have 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 on this petition.

Date: 7/16/2020

Sponsor Name (Print): Bernice Miller Arkansas Voters First

Sponsor Signature: Bernice Miller

**FILED**

JUL 06 2020

Arkansas  
Secretary of State



JOHN THURSTON

ARKANSAS SECRETARY OF STATE

FILED

JUL 06 2020  
Arkansas  
Secretary of State

Receipt for Initiative or Referendum Petition

Name of Petition: A Constitutional Amendment Establishing Top Four Open  
Primary Elections and Majority Winner General Elections with Instant  
Runoff if Necessary

Petition Sponsor: Arkansas Voters First

Person Designated to Receive Information from the Secretary of State:

Name: Stephanie R. Matthews

Phone Number: 985-856-9878

Address: ~~720 Hall Dr, Little Rock, AR 72205~~ 31 E Centon St #300  
Fayetteville, AR 72701

Email Address: stephanie@openprimariesarkansas.org

Date Petition Text was Published: 05/31/2020

Name of Newspaper: Democrat-Gazette

List of the 15 counties designated/chosen by the Petition Sponsor:

Benton, Bradley, Cleburne, Columbia, Faulkner,  
Garland, Jefferson, Lee, Lonoke, Miller, Mississippi,  
Phillips, Pulaski, Saline, Washington

This petition submitted to the Arkansas Secretary of State on the 06 day of July  
2020, at 4:52PM (time).

Stephanie Matthews

Petition Representative

[Signature]

Secretary of State Representative

State Capitol • Suite 256 • 500 Woodlane Street • Little Rock, Arkansas 72201-1094

501-682-1010 • Fax 501-682-3510

e-mail: arsoa@sos.arkansas.gov • www.sos.arkansas.gov

Blumberg No. 5116  
**Exhibit**  
**4**

Paid Canvasser Certifications - § 7-9-111(f)(2)

Name of Petition: A Constitutional Amendment Establishing Top Four  
Open Primary Elections and Majority Winner  
General Elections with Instant Runoff if Necessary

I am submitting a final total paid canvasser list and a signature card for each paid canvasser on this total paid canvasser list in compliance with § 7-9-111(f) and § 7-9-601(a).

I have 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 on this petition.

I have 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 on this petition.

Date: 07/06/2020

Sponsor Name (Print): Stephanie Matthews

Sponsor Signature: Stephanie Matthews

**FILED**

JUL 06 2020

Arkansas  
Secretary of State



JOHN THURSTON  
ARKANSAS SECRETARY OF STATE

David A. Couch  
Attorney at Law  
1501 N. University Ave., Suite 228  
Little Rock, AR 72207

via electronic mail to [arhog@me.com](mailto:arhog@me.com)

July 14, 2020

Re: Declaration of Insufficiency  
Petition Sponsor: Arkansas Voters First  
Petition: Citizens' Commission or an Independent Redistricting Commission

Dear Mr. Couch:

Upon initial review of the above referenced petition, our office has determined that the petition must be declared insufficient for the reason cited herein.

Ark. Code Ann. § 7-9-601(b)(3) states, "Upon submission of the sponsor's list of paid canvassers to the Secretary of State, the sponsor shall certify to the Secretary of State that each paid canvasser in the sponsor's employ has *passed* a criminal background check in accordance with this section." (emphasis added).

Ark. Code Ann. § 7-9-601(f) states, "Signatures incorrectly obtained or submitted under this section shall not be counted by the Secretary of State *for any purpose*." (emphasis added) The term "shall" has been determined to be mandatory and that substantial compliance cannot be used as a substitute or fulfillment with the statute. *Benca v. Martin*, 216 Ark. 359, at 12-13, 500 S.W. 3d at 750; *Zook v. Martin*, 2018 Ark. 306.

The list of paid canvassers soliciting signatures for the above referenced petition was accompanied by the following certification: "On behalf of the sponsors, this statement and submission of names serves as certification that a statewide Arkansas State Police background check, as well as, 50-state criminal background check have been timely *acquired* in the 30 days before the first day the Paid canvasser begins to collect signatures as required by Act 1104 of 2017." (emphasis added)



D. Couch  
July 14, 2020  
Page 2

It has been determined that acquiring a criminal background check is not the same as passing a criminal background check. Because Arkansas Voters First did not comply with Ark. Code Ann. § 7-9-601(b)(3), none of the signatures solicited by the paid canvassers may be counted for any purpose. Thus, the petition is insufficient to qualify for the November 3, 2020 General Election Ballot.

Please note, that because this office is statutorily prohibited from counting the submitted signatures for any purpose, there may be other as yet undetermined reasons the petition may not be sufficient.

Sincerely,

A handwritten signature in black ink that reads "John Thurston". The signature is written in a cursive, flowing style.

John Thurston  
Secretary of State



JOHN THURSTON  
ARKANSAS SECRETARY OF STATE

David A. Couch  
Attorney at Law  
1501 N. University Ave., Suite 228  
Little Rock, AR 72207

via electronic mail to [arhog@me.com](mailto:arhog@me.com)

July 14, 2020

Re: Declaration of Insufficiency  
Petition Sponsor: Arkansas Voters First  
Petition: Citizens' Commission or an Independent Redistricting Commission

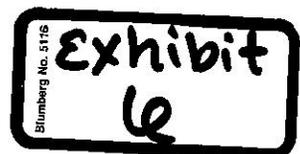
Dear Mr. Couch:

Upon initial review of the above referenced petition, our office has determined that the petition must be declared insufficient for the reason cited herein.

Ark. Code Ann. § 7-9-601(b)(3) states, "Upon submission of the sponsor's list of paid canvassers to the Secretary of State, the sponsor shall certify to the Secretary of State that each paid canvasser in the sponsor's employ has *passed* a criminal background check in accordance with this section." (emphasis added).

Ark. Code Ann. § 7-9-601(f) states, "Signatures incorrectly obtained or submitted under this section shall not be counted by the Secretary of State *for any purpose.*" (emphasis added) The term "shall" has been determined to be mandatory and that substantial compliance cannot be used as a substitute or fulfillment with the statute. *Benca v. Martin*, 216 Ark. 359, at 12-13, 500 S.W. 3d at 750; *Zook v. Martin*, 2018 Ark. 306.

The list of paid canvassers soliciting signatures for the above referenced petition was accompanied by the following certification: "On behalf of the sponsors, this statement and submission of names serves as certification that a statewide Arkansas State Police background check, as well as, 50-state criminal background check have been timely *acquired* in the 30 days before the first day the Paid canvasser begins to collect signatures as required by Act 1104 of 2017." (emphasis added)



D. Couch  
July 14, 2020  
Page 2

It has been determined that acquiring a criminal background check is not the same as passing a criminal background check. Because Arkansas Voters First did not comply with Ark. Code Ann. § 7-9-601(b)(3), none of the signatures solicited by the paid canvassers may be counted for any purpose. Thus, the petition is insufficient to qualify for the November 3, 2020 General Election Ballot.

Please note, that because this office is statutorily prohibited from counting the submitted signatures for any purpose, there may be other as yet undetermined reasons the petition may not be sufficient.

Sincerely,

A handwritten signature in black ink that reads "John Thurston". The signature is written in a cursive, flowing style.

John Thurston  
Secretary of State