

IN THE ARKANSAS SUPREME COURT

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

v. **No. CV-20-454**

**JOHN THURSTON, in his capacity as
Arkansas Secretary of State; and
The State Board of Election Commissioners** **RESPONDENTS**

**ARKANSANS FOR TRANSPARENCY,
a ballot question committee; and
JONELLE FULMER,
individually and on behalf of
ARKANSANS FOR TRANSPARENCY** **INTERVENORS**

RESPONSE TO PETITION FOR REHEARING
AND
MOTION TO RECALL MANDATE

For his Response to Petition for Rehearing and Motion to Recall
Mandate, Secretary of State John Thurston states:

1. The Secretary admits that this Court’s Rules allow for rehearing when “specific errors of law or fact” are contained within the opinion deciding a case. Ark. R. S.Ct. 203(g). The Secretary denies that this Court’s opinion in this matter, *Miller v. Thurston*, 2020 Ark. 267 (August 27, 2020), contains errors of

law and fact causing conclusions it reaches to be incorrect. The Secretary denies the opinion *turns* on the determination that the only assurance the people have that the paid canvassers circulating the petitions at issue met the standard for having “passed” criminal background checks is a strictly-compliant certification under Ark. Code Ann. § 7-9-601(b)(3). The Secretary denies that the referenced determination is factually incorrect under the circumstances of this case. The Secretary denies that it leads to a legal conclusion that is inconsistent with the opinion’s logic. The Secretary denies the assertions infect the entire opinion and necessitate rehearing.

Affirmatively, the Secretary states that this Court’s opinion herein turned on the plain language of the statute. “Simply acquiring or obtaining a background check is not sufficient under the plain language of the statute.” *Miller*, 2020 Ark. 267, at 3. This Court’s opinion herein is consistent with prior initiative cases, holding that when the General Assembly enacts laws, “‘shall’ means ‘shall’” and the sponsor of the two petitions at issue did not comply with the statutory

requirements regarding paid canvassers. *Id.*, citing *Benca v. Martin*, 2016 Ark. 359, at 26, 500 S.W.3d 742, at 752.

2. The Secretary admits that this Court addressed the question of whether the sponsor of the two petitions complied with Ark. Code Ann. § 7-9-601(b)(3). The Secretary admits that this Court held that the sponsor did not meet the statutory requirement. The Secretary admits the Court held in essence that strict compliance with the statute is required, which is consistent with precedent.
3. The Secretary denies that the Court's opinion turns on the language cited in paragraph 3. The Secretary denies that this Court made any factually incorrect statements or that there was an error of law.
4. This Court expressly considered the requirements of Ark. Code Ann. § 7-9-601(d)(3) that the paid canvassers submit sworn statements that they had not pleaded guilty or *nolo contendere* to or been found guilty of certain disqualifying offenses. *Miller*, at *fn. 4*. The opinion does not state that the paid canvassers who solicited signatures for the two petitions failed to comply

with section 601(d)(3), which, as the petitioners pointed out in their opening brief, was an uncontroverted fact. Thus, the Secretary denies that this Court's opinion missed a critical fact.

5. The Secretary denies that the sworn statements of each paid canvasser met the requirements of section 7-9-601(b)(3). As this Court correctly held, the sponsor of the petitions is required to certify that its paid canvassers passed a criminal background check pursuant to section 7-9-601(b)(3) *and* the paid canvassers were required to provide sworn statements pursuant to section 7-9-601(d)(3). The sponsor failed the section 7-9-601(b)(3) requirement.
6. The Secretary states that the Court's Amendment 7 jurisprudence speaks for itself. The Secretary states that the cases cited speak for themselves. The Secretary denies that the assurance meant to be given to the people was given. The Secretary denies that the standard established by the statute was met. The Secretary denies that approximately 90,000 Arkansans were disenfranchised by any decision made by the Secretary. Affirmatively, the Secretary states that the failure of

the two petitions was squarely the fault of the sponsor, as this Court correctly held.

7. The petition/motion does not have a paragraph numbered 7.
8. The Secretary denies the conclusions stated in paragraph 8.
9. The Secretary admits that this Court directed that the mandate should issue immediately with the issuance of its opinion. The Secretary admits that issuance of the mandate makes the opinion final.
10. The Secretary denies that the petition for rehearing states adequate cause for recalling the mandate. The Secretary denies that the petition for rehearing is based on well-founded reasoning and argument. Affirmatively, the Secretary states that the Petitioners have not cited any provision of Ark. R. S.Ct. 5-3 that supports their request to recall the mandate.

WHEREFORE, Secretary of State John Thurston prays that the Petition for Rehearing/Motion to Recall Mandate be denied; and for all other proper relief.

Respectfully submitted,

JOHN THURSTON
Arkansas Secretary of State

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CERTIFICATE OF SERVICE

I, Gary L. Sullivan, hereby certify that on September 3, 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/ Gary L. Sullivan