1 IN THE ARKANSAS SUPREME COURT

2 BONNIE MILLER, Individually and on)
behalf of ARKANSAS VOTERS FIRST and)
3 OPEN PRIMARIES ARKANSAS, BALLOT)
QUESTION COMMITTEES,)
4 PETITIONERS,)
) CASE NO.
5 VS.) CV-20-454
)
6 JOHN THURSTON, IN HIS CAPACITY AS)
ARKANSAS SECRETARY OF STATE,)
7 RESPONDENT,)
)
8 ARKANSANS FOR TRANSPARENCY, A BALLOT)
QUESTION COMMITTEE, and JONELLE)
9 FULMER, individually and on behalf)
of ARKANSANS FOR TRANSPARENCY,)
10 INTERVENORS.

11 ----------

12 REPORTER'S RECORD

13 SPECIAL MASTER HEARING

14 VOLUME 3

15 JULY 30, 2020

16 625 MARSHALL STREET, SUITE 101, LITTLE ROCK, ARKANSAS

17 BEFORE THE HONORABLE JOHN FOGLEMAN

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21 _____

22 Before Dana Hayden, CCR in and for the State of

23 Arkansas, RMR, CRR, CRC, and Tammie L. Foreman,

24 CCR in and for the State of Arkansas, RPR, CRR,

25 Reported in realtime by machine shorthand

APPEARANCES

FOR THE PETITIONERS:

Messrs. Adam Butler and Robert F. Thompson
Branch, Thompson, Warmath & Dale
414 West Court Street
Paragould, Arkansas 72450
Abutler@paragouldlawyer.com
Rft3@paragould.net

Messrs. Ryan Owsley
Steel, Wright, Gray, PLLC
400 West Capitol Avenue, Suite 2910
Little Rock, Arkansas 72201
Ryan@capitollaw.com

FOR THE RESPONDENT:

Mr. Gary L. Sullivan
Arkansas Secretary of State's Office
500 Woodlane Street, Suite 256
Little Rock, Arkansas 72201
gary.sullivan@sos.gov

FOR THE INTERVENOR:

Ms. Elizabeth (Betsy) Robben Murray
Mr. Kevin A. Crass
Ms. Kathy McCarroll
Friday, Eldredge & Clark, LLP
400 W Capitol, Suite 2000
Little Rock, Arkansas 72201
(501) 370-1534
Murray@FridayFirm.com
Crass@FridayFirm.com
MMcCarroll@FridayFirm.com

Mr. A.J. Kelly
Kelly Law Firm, PLC
PO Box 251570
Little Rock, Arkansas 72225-1570
(501) 374-0400
Kellylawfedecf@aol.com

I N D E X

(VOLUME 3)

July 30, 2020

	PAGE:
Appearances	399
Court Reporter Certification	587

WITNESSES IN CHRONOLOGICAL ORDER:

	PAGE:
HEIDI GAY	
Direct Examination By Mr. Butler	404
Cross-Examination By Mr. Owsley	434
Cross-Examination By Ms. Murray	441
MARY CLAIRE McLAURIN	
Direct Examination By Mr. Owsley	497
Cross-Examination By Mr. Crass	505
Redirect Examination By Mr. Owsley	523
Recross-Examination By Mr. Crass	529
HEIDI GAY (cont'd)	
Cross-Examination (Cont'd) By Ms. Murray	534
Redirect Examination By Mr. Butler	563
Recross-Examination By Ms. Murray	570

EXHIBITS FOR THE PETITIONERS:

NO.	DESCRIPTION	OFFERED	ADMITTED
24	Arkansas State Police request for a background check (Redacted version)	427	427

EXHIBITS FOR RESPONDENT:

NO.	DESCRIPTION	OFFERED	ADMITTED
2	Alphabetical List of Canvassers for Redistricting	553	553

EXHIBITS FOR INTERVENORS:

NO.	DESCRIPTION	OFFERED	ADMITTED
3	BeenVerified for Anthony Quinn Newkirk (redacted version)	457	458
4	Case Detail for Anthony Quinn Newkirk from Broward County, Florida Clerk of Courts (redacted version)	457	458
5	Tyler Dale Merkle's BeenVerified Report	479	479
6	Missouri Case.net Report for Tyler Merkle	479	480
7	BeenVerified Report for Demetriuse A. Martin	468	470
8	Case Information for Docket Number CP-67-CR-00005945-2005 Demetriuse A. Martin from Court of Common Pleas of York County, Pennsylvania	471	472

9	Case Information for Docket Number CP-67-CR-0006050-2004 for Demetriuse A. Martin from Court of Common Pleas of York County, Pennsylvania	472	473
10	BeenVerified report for Shaqwetta Lee	535	536
11	Information from State of Florida that was not yet certified	537	538
12	National Ballot Access file for Shaqwetta Lee	538	543
13	National Ballot Access file for Tyler Merkle	544	545
14	National Ballot Access file on Demetriuse Martin	547	548
15	National Ballot Access file relating to Anthony Newkirk	551	551
16	National Ballot Access file relating to Josef Bautista	555	555
17	ASP Form 122	507	508
18	Printout of Arkansas State Police website frequently asked questions	511	513
19	Screenshot of Online Criminal Background Check System from the Arkansas State Police	513	
20	Printout from Arkansas State Police website	516	517
21	Excerpt from Code of Federal Regulations	522	523
22	Portion of FBI website regarding background checks	531	532

23	Series of Google Maps and photos for 9009 Southeast Adams Street, Clackamas, Oregon	555	558
24	Josef Bautista's file-stamped sworn statement to the Secretary of State regarding personal information	561	561
25	U.S. Postal Service web page as to address of post office in Clackamas, Oregon	562	563

***** PROCEEDINGS *****

(Whereupon, the witness was duly sworn.)

MR. BUTLER: Your Honor, may I proceed?

THE COURT: You may.

HEIDI GAY,

having been first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. BUTLER:

Q. Good morning, Ms. Gay. Are you able to hear me okay? We're dealing with Zoom and a mask. So are you able to hear me okay?

A. Yes.

Q. Okay. Please state your name for the record.

A. Heidi Ingrid Gay.

Q. Where do you live, Ms. Gay?

A. In Rochester, Michigan.

Q. Where do you work?

A. National Ballot Access.

Q. What is your job title, or what do you do?

A. I am the copresident of our company.

Q. Okay. And what com- -- and National Ballot Access is your company, correct?

A. Yes.

Q. And what does your company do? What services do you provide?

A. We are a ballot access company, and we conduct petition drives in 23 states and all 50 states of sorts when candidates require ballot access. But we conduct petition drives and function as the liaison between the sponsor of any initiative or political candidate and the Secretary of State to help gather those signatures via paid canvassers and sometimes volunteers; confirm their eligibility to sign the petitions; and submit those signatures to the Secretary of State.

Q. And is Arkansas one of the states in which you perform or provide those services?

A. Yes.

Q. Okay. And I'm going to talk generally -- I'm going to ask you to talk generally about that process. Let's talk about -- let's talk about Arkansas. When you're involved in an initiative petition action, or when you're asked to start with petition drives, what is the first thing that you do when you're hired to do something like that on a case in Arkansas?

A. In Arkansas, we review the current ballot initiative and referendum handbook that's published by the Secretary of State's office and that serves as a guide for any new processes that may have been invoked or new legislation or anything like that. It serves

as our guide to the processes there in Arkansas. So that's the very first thing we do is look for the new handbook.

Q. Okay. And then what's the next thing that you do?

A. We generally will put together a proposal, and once we've been engaged and a start date for gathering signatures has been confirmed, we don't -- we don't design the petition or print the petition parts.

We receive those in our possession, and once we know we are ready to begin signature gathering, we go ahead and begin recruiting petitioners that would -- that we believe would qualify to circulate the petition in the state of Arkansas.

Q. Okay.

A. And the state has guidelines for who is eligible to circulate.

Q. Are you familiar with those guidelines?

A. Yes, I am.

Q. Okay. And so then when you start identifying people who you believe are -- who are good candidates for signature getting, what do you do? Or how do you begin that process of gathering those folks or recruiting those folks? What do you do?

A. Once we have recruited them, we have them complete the state police background check form, which provides their information. And the first thing that's required in the state of Arkansas is that they complete and pass a state and federal background check.

So once they have completed the state form, we then transmit that information to the state police via the sponsor's state police account where they have -- that they have set up to allow us to run background checks. We submit that information to the state police and simultaneously submit that information to a federal background check service --

Q. Why is it --

A. -- to be verified. Seems to, in the past, and currently provide us the most detailed and comprehensive data on the individuals. So we also have the ability, when we use BeenVerified, to see what states they have possibly lived in. And if we have any suspicions, it allows us to dig deeper in those particular states.

If we have some guess that the person may not have resided in the state that transmits that information publicly on a federal level. So if we can't find any information on the individual through

BeenVerified, we then use another checking company called SentryLink and then we transmit information to them in an effort to make sure that we've done our due diligence.

Q. Why is that the first thing that you do in this process?

A. In the state of Arkansas, in order for an individual to circulate a petition, they have to pass, "pass" meaning they have to not have any -- they have not pled guilty or nolo to a felony on their record. And there's also some other misdemeanor charges related to identity theft and things of that nature that could also disqualify the person from circulating the petition.

So if we have any questions -- of course, if we see a felony on the record, they are done. We don't proceed any further and they are not eligible to circulate the petition.

If we have -- if we see misdemeanors, we typically consult with legal counsel from the sponsor of the initiative to clarify that whatever misdemeanor they may have been convicted of does not disqualify them under the statutes.

Q. Okay. And so after you've done that, or maybe as you're doing that -- I don't know -- tell me. Is

there -- what do you do next? Is there some sort of orientation process for folks as you're doing this recruiting? I mean, what do you do?

A. Absolutely. So after we've confirmed that they've passed the background check, we then move on to our training and orientation and going over Arkansas unique laws with regards to the petitioning process there.

We also go over talking points for the initiative that the client would have provided us. We go into extreme detail to make sure that they have also received, as a guidebook for themselves, a copy of the initiative handbook, which is required that we provide them a copy in our training process.

So it's a very long training. It generally takes well over an hour to complete, just going through all the paperwork and making sure that they understand how watchful they have to be with the petitions themselves to make sure that they are completed correctly.

Q. Okay. And so you do this work in lots of different states. Based on your experience, is Ark -- are there a lot of requirements of canvassers in Arkansas?

MS. MURRAY: Objection, Your Honor.

THE COURT: Sustained.

Q. Tell me some of the -- what's next? What do you have to do next?

A. Well, as part of our training, we also -- we also submit paperwork each night at the close of business of our office whenever we're done for the day of the names of the canvassers, the paid canvassers.

So we transmit our paid canvasser list up to the state, which will include their current residential address, which is a location in Arkansas, and -- generally, unless they're out of order, as well as their permanent domicile address.

And nightly, if we are aware of any updates to those -- a change in either of those addresses, we provide a continued update. So if John Smith registers on the first day and, two weeks later, we know that he's moved within the state and we send up an update to that address of where he is at, at that particular time.

So on top of that, we also transmit a paid canvasser affidavit, their sworn statement, and -- in addition so that the -- which is also part of the -- a new requirement this cycle in Arkansas so that people, they have their sworn statement that they have passed the background check and they have not

pled guilty or nolo to any felonies, et cetera, as the requirements stand.

Q. You talked about that, I guess, canvasser sheet. Is that a rolling document, the way you're describing it? I mean, it's something that's updated on a daily basis? Is that what you're talking about, and you send updates on a daily --

A. Yes. We do send updates, sometimes multiple times a day.

Q. And as you're developing these recruiters and signing up these recruiter -- I'm sorry, canvassers, and recruiting these canvassers, do you maintain files on them that would reflect or indicate the different steps that you've done according to this process under Arkansas law?

A. Yeah. We maintain independent contractor files on each of the individuals, which would include their independent contractor agreement, their paid canvasser statement, the signature as -- signature card as required by the State, which we turn in at the time that we submit the signatures, or the sponsor turns it in at the time that they submit the signatures.

We also have a W-9, a copy of their ID, several internal documents such as rules, the rules of Arkansas, just particular items that we want to make

sure that we highlight for them within the handbook.

We also have them do a signature sample for us that has multiple versions, I guess, of their signature, where it would allow them to show any sort of digression in their handwriting. If they use two different types of signatures, one when they are not tired and one when they are tired, we want to see them on that sheet.

Q. Okay.

A. We also have in the files their state -- their Arkansas State Police request for a background check. We also have their Arkansas State Police background check results. We also have the federal background check.

If there wasn't a federal background check, we couldn't find any information on the individual; and sometimes that happens because the individual is maybe 18 or 19 and they just don't have a publicly-accessible record and there's no public files on them yet.

We usually -- there won't be a federal -- evidence of a federal packet in their file, or they will have a piece of paper in there that says "no criminal history found." And I think that's probably all that's in the files themselves.

Q. Okay. And those are --
A. There's also a check sheet, our internal checking sheet to make sure we have all the documents completed.
Q. Okay. And are those forms that you maintain in your -- in your business, in your ordinary course of business? Are you the person who maintains those, keeps up with those?
A. Yes.
Q. Do you think that it would be helpful for the judge to be able to take a look at one of these files as an example?
A. Oh, absolutely. Our files are -- what I consider the contents of our files to show how consistent we are in the process and that we actually collect all the data and try to go above and beyond to ensure that if there is any question or doubt about a person's signature or their understanding of the law, that we have trained them properly.
Q. Is Victor Childress someone who you recruited to be a canvasser for the re- -- the Arkansas Voters First Redistricting signature drive?
A. Yes, he was a canvasser. I did not personally recruit him but, yes, he is one of our canvassers.
MR. BUTLER: Judge, I have a document

I'm going to mark for identification purposes as Petitioner's Exhibit --

THE COURT REPORTER: 24.

MR. BUTLER: -- 24.

The way that we're set up, am I able to use the ELMO and she be able to see it?

Your Honor, may I have a moment to cross the room and hopefully not trip over these cords?

THE COURT: You may. Do you have an exhibit sticker?

MR. BUTLER: I do.

THE COURT: Oh, you've got that one marked. Okay.

MR. BUTLER: I can switch with you as I walk by.

THE COURT: That would be -- why don't you do that.

Q. Ms. Gay, I'm going to place some documents under this projector. Tell me if you're able to see this first one.

A. And, again, I can't read it in detail, but I can see what it is.

Q. Okay. Can you tell the Court or describe to the Court what this document is?

A. That's the Arkansas State Police request for a background check.
Q. Okay. And is that the document that you talked about being the first thing, or one of the first things that you do whenever you're starting this process?
A. Yeah, that's the -- that is the starting point of -- for any canvasser who is paid in Arkansas.
Q. Okay. And what happens with that document? Tell me typically what happens with these documents. Who fills them out and how do they get transmitted and all that? I think you might have talked about it, but this document in particular, walk me through that.
A. Well, this is a document that's completed by the potential canvasser at the time. It's notarized, as you can see; and once the individual has completed the required information authorizing the state police, then we manually hold the sheet in our hands and type it into the Arkansas State Police system or a background check request.
Q. Okay. Who does that?
A. In the case of the Arkansas Voters First, it was Alita, our office -- our project manager.
Q. Someone who works for your company?
A. Alita Bush.

Q. Okay. Is there anything else of note on this document, or is that the --
A. That's the authorization form that allows us to do the background check.
Q. And so I'm going to show you another document. Are you able to see that a little better?
A. Yes.
Q. Okay. Can you describe for the Court, what is this document?
A. That is the printout of the completed background check from the Arkansas State Police.
Q. Okay. And this is just the result from the first document, the document that initiated the search? This is the result, the report that you do?
A. Yes, that --
Q. And typically, when do you receive those back after submission?
A. Ooh. We hope the same day; however, on some occasions, it's taken three, four, five days to get it back. Generally if it's taking longer than that, we call to see where we are at in the process and if there's -- if we can expect a delay in -- a longer delay, typically within 24 hours.
But like I said, at the end of -- especially at the end of this particular petition

drive season, we were -- we were waiting three and four days, five days. I think we had a couple people we waited over a week.

Q. Okay. I'm not very good with this ELMO, but I'm trying. Can you see this document, Ms. Gay?

A. Yes.

Q. Okay. Can you describe for the Court, what is this document?

A. This is our paid canvasser statement. This is a document that's transmitted every day with our paid canvasser list. For everyone that's on the paid canvasser list, we submit a paid canvasser statement which says that they understand the rules and the laws applicable to obtain signatures on an initiative or referendum in Arkansas. They have been provided a copy, the most recent initiative, the Secretary of State's Initiative and Referenda Handbook, and that they have not pled guilty or nolo to or been found guilty of a criminal felony offense or a violation of election laws, fraud, forgery, or identification theft in any state of the United States, the District of Columbia, Puerto Rico, Guam, and any other United States territory. It also has their addresses on it.

Q. Thank you. Can you see that document, Ms. Gay?

A. Yes.
Q. What is this?
A. This is the paid canvasser signature card that's required by the State at the time of submission on the turn-in date. So in this case, it was July 6. When we are submitting the petitions, we're responsible to also submit a paid canvasser signature card. And in this case, this is a copy because we don't maintain originals of these -- of this particular document.
Q. Who maintains the original?
A. We turn them in to the State.
Q. Do you require -- the folks who you sign up, do you require them to have this paid canvasser statement or Paid Canvasser Affidavit and a signature card on file with you? Does everyone have to have --
A. Yes. It's absolutely part of our training process and the paperwork that's completed at the time.
Q. Can you see that document?
A. Yes.
Q. Can you tell me what that is? It looks like the same thing we just went over.
A. It is, except for on this document, we have exchanged the current residence address for the permanent domicile address just, again, trying to

cover all bases and provide the best information we can, especially, we find that the permanent domicile address is important for the Secretary of State to have accessible on the canvasser signature card because a lot of times, once the signatures have been submitted, the person is no longer in Arkansas. So we want to make sure they know what their permanent domicile is just in case there is a reason to contact them.

Q. And so this is just a reflection in the documentation of you continuing to keep up with this gentleman in terms of residence and then transmitting that information?

A. Yes.

THE COURT: Before you get too much further and show other documents, I notice there are some documents in here that show this person's driver's license number, his Social Security number and things like that, and there are people outside this room who are watching this. Not that I think any of them are criminals, but I don't want those shown on the screen for Zoom outside the room.

MR. BUTLER: Thank you, Your Honor.

THE COURT: Unless somebody has a better idea.

MR. BUTLER: I can just -- if no one has a problem, I can just ask questions related to the document but not show it, so as to not give away that information.

THE COURT: Mr. Sullivan, any problem with that, following that?

MR. SULLIVAN: No, Your Honor.

THE COURT: Ms. Murray?

MS. MURRAY: No, Your Honor, particularly if it does show the information you've been talking about. I think probably just noting what type of document it is. She's using this just as an exemplar. So the type, I think Ms. Gay will be able to sufficiently talk with us about them if they do contain that.

THE COURT: All right.

MS. MURRAY: I may want to display some of these that have no personal information on it.

THE COURT: Okay. Go ahead.

MR. BUTLER: Thank you, Your Honor.

Q. Are you able to see that document, Ms. Gay?

A. Yes.
Q. What is that?
A. This is our internal signature sample that we maintain. Again, you can see towards the bottom, his signature starts to look not quite as it did the first time he signed. So it shows just the degradation of a tired, you know, signer and when they are in a hurry. It gets redundant, and that was our intent with this is to be redundant with the signature so that a person has opportunity to record in front of a notary the multiple versions of their signature.
Q. And --
A. Should there be any question from the State as to whether or not their individual signature on the petition form actually matches their signature card. If it didn't, this would hopefully provide clarification on that.
Q. And that's the reason for the documentation being in this file?
A. Yeah. That's not a file that -- that's not a form that is transmitted to the Secretary of State or turned over. It's more of an assurance on our part that we maintain in the files.
Q. All right. And you do not -- do you believe -- you don't believe that that is a requirement? You do

this for -- to hopefully be helpful, if ever needed?
A. Yes, we do it. We do it for the voters' benefit so that if, for some reason, this individual's signature on the petition page doesn't match the signature card that the Secretary of State has on -- that we filed with the petition, that hopefully this would help, help the reviewer to be able to not have to disenfranchise the voters on the page who have signed the petition because of an individual's rushed signature.
Q. And you said you have it notarized?
A. We certainly were doing notary on this page from the very beginning, and towards the end of the petition drive, there were several individuals that we were just swamped --
Q. Right.
A. -- at the end of this particular drive. And in the Little Rock office, we didn't notarize all of the -- of the internal signature cards from the paid canvasser but still wanted to have them on file.
Q. Right. And this document is not something you believe to be mandatory; it's something that you just do yourself?
A. Correct.
Q. And the next page in the file, I'm not going to

1 put on the projector so as to protect personal
2 information, but I'll ask you some questions. Do
3 you -- in each canvasser's file, do you maintain a
4 copy of their driver's license or identification card?
5 A. Yes.
6 Q. Okay. And why do you do that?
7 A. It's, again, just part of our internal process.
8 Also, when -- in Arkansas, the petitions themselves
9 have a notary requirement. And in order to appear
10 before the notary, they have to provide a piece of ID
11 to that notary. We, in particularly, require our
12 notaries to keep notary logs that show -- that the
13 person has to sign in the notary log, show their ID,
14 which the notary then records in the log that they've
15 seen the ID. And then we thumbprint them all to show
16 personal appearance.
17 Q. And do you also maintain other documents in
18 their file, like a W-9 and an independent contract,
19 independent contractor agreement?
20 A. Yes.
21 Q. And is that --
22 A. Those are, again, internal documents that we
23 use. Just as a side note. In the notary log,
24 that's -- notary logs are not required by the State of
25 Arkansas for notaries to keep. We require the

notaries to keep a log, so as there's no question as to whether or not the person individually personally appeared before the notary.

Q. Thank you. What is this document, Ms. Gay?

A. This is a document that we worked with our -- with the sponsors of the petition to develop that gave them some assurance that we were conscious and doing something, doing our part to prevent the pandemic. We provided the face masks, hand sanitizer, disposable pens. We provided all of these things as far as tools available for anyone to grab in our office and -- that they wanted. Above and beyond the disposable face masks, we also provided face shields.

The petitioners primarily work outside, and we wanted to make sure that we were keeping safe and using face masks. However, on some days it's really hot. And if they have been out there too long, we don't want them passing out. So we also purchased thousands of face shields, the medical sort of -- the clear plastic shields so that people could see their face still, especially if they are going door to door. It could be intimidating for someone with a mask on their face knocking on your door in the evening hours.

Q. Thank you. Can you see that document? Are you able to see that document --

A. Yes.
Q. -- or that piece of paper? What is this?
A. That's the printout from BeenVerified, which is one of the services that we use to obtain a federal background check.
Q. Okay. And I'm not going to go through all the pages of that because I want to be very careful not to -- I don't want to put too much information out that -- or any information out that shouldn't be. But can you describe a little bit -- if you have this file in front of you, can you describe a little bit what that document is and what it details?
A. Sure. So it's the part of the reason that we like the -- and our clients tend to like the BeenVerified service is that it provides extensive documentation regarding even traffic tickets, or it also shows -- historically it will show addresses that they have lived at. It shows family members or relationships.

It shows also original charges, and it isn't always accurate as far as the -- like, it will have the original charge but it will also have the pled-to charge. So if somebody gets a driving license while suspended at a felony level, it will show a felony, but it will also show that it was pled to a

1 misdemeanor. But it doesn't say "pled." So it allows
2 us to actually pull the record and confirm that this
3 felony is not on their record and that it was the
4 original charge that ended up getting pled down
5 typically.
6 So we like the extent to which it shows
7 everything on it to the best of the ability really for
8 the states that do report.
9 Q. Why is this not from the Arkansas State Police?
10 A. The Arkansas State Police does not conduct
11 federal criminal background checks.
12 Q. How do you know that?
13 A. We -- as part of our just routine, because we
14 work so frequently in Arkansas, we speak pretty
15 regularly, especially at the beginning of a petition
16 drive, with Mary Claire, and she is the person who
17 does the background checks for us, and she has stated
18 to us that they don't do background -- they don't do
19 federal checks, but she can do the fingerprinting for
20 us for a background check, but the state police in
21 Arkansas doesn't conduct the background check.
22 Q. Thank you.
23 MR. BUTLER: Your Honor, I --
24 A. As required by State.
25 Q. Thank you.

(Petitioners' Exhibit 24 offered into evidence.)

MR. BUTLER: Your Honor, I would move to introduce what had previously been marked for identification purposes as Petitioner's Exhibit 24 into evidence.

THE COURT: Mr. Sullivan?

MR. SULLIVAN: I'm sorry. Which one is 24?

MR. BUTLER: The complete -- it's all the documents that we just went over.

MR. SULLIVAN: No objection.

THE COURT: All right. Ms. Murray?

MS. MURRAY: No objection.

MR. BUTLER: That would be --

THE COURT: Let me finish.

MR. BUTLER: I'm sorry.

THE COURT: That will be received as Petitioner's Exhibit 24. And I would suggest that redactions be made to the exhibit.

(Petitioners' Exhibit 24 received into evidence.)

MR. BUTLER: Yes, Your Honor.

Q. Ms. Gay, do you maintain -- you may have already

said this. Did you maintain folders and files like the one that we just went through for all the canvassers for the Arkansas Voters First Redistricting petition?

A. Yes.

Q. And did you submit all of those to me recently?

A. Yes, although I believe there is updates to the files that I submitted to you yesterday that include Northwest Arkansas files that aren't maintained in the Little Rock office but are scanned when they are brought to the Little Rock office.

Q. So but for that, but for that, they are up to date?

A. Yes.

Q. As of yesterday?

A. Yes. There was 251.

Q. And are those the -- are those documents and folders that you -- again, you maintain, your business maintains?

A. Yes.

Q. Okay. And are you the person who does that?

A. Yes. I -- I am the person who is adamant about the system --

Q. Okay.

A. -- in place that we have to track all these

1 doc- -- because there's so many documents, we have to
2 do the same thing every time, and I'm the person who
3 developed that and maintains the records.
4 MR. BUTLER: Your Honor, I would,
5 subject to redaction, move to introduce all
6 of the files that she just described that
7 she has submitted to me to reflect the
8 documentation that she has for canvassers on
9 the Arkansas Voters First Redistricting
10 petition. What we have done, Your Honor,
11 there were quite a bit of documents, and
12 there were issues because of the time frame
13 with the technology. They are not -- just
14 like the one that you saw today, they are
15 not redacted.
16 So what I would like to do is move to
17 have these introduced but what we actually
18 end up introducing is a redacted form that
19 just takes out driver's license and all
20 those type of things.
21 THE COURT: Mr. Sullivan?
22 MR. SULLIVAN: Your Honor, unless the
23 files are of canvassers that are in question
24 who have had petition parts culled, I object
25 to the rest of them on relevance.

THE COURT: Ms. Murray?

MS. MURRAY: Your Honor, if I could see a sample of what he's talking about before submitting.

MR. BUTLER: A sample of the actual zip drive?

MS. MURRAY: What you're talking about submitting.

MR. BUTLER: Okay.

THE COURT: Is it the same thing you just went over but every one of them that the witness has?

MR. BUTLER: There are differences, but Ms. Gay could speak a little bit more to that. But, yes, it is essentially the files that she has for all the canvassers, as I understand it.

THE WITNESS: Yeah, it's our -- it's our independent contractor files that we maintain in Arkansas. And if it is something -- if I need to send it to Betsy, if you would like to see it, I am happy to -- I can e-mail them to you, Betsy.

MS. MURRAY: Your Honor, and I appreciate Ms. Gay offering that. It's

whether they all need to be in the record. I'd love to have them, but I'm not sure. We have some questions about some of their people, but we certainly don't have questions on the specifics of each of these people.

THE COURT: Well --

MS. MURRAY: I realize we're going to electronic records and it's not the same thing as paper transcript.

THE COURT: Let me ask you a question. What -- at least at this point, what has been attacked is the actual certification language and then the numbers basically. What is the relevance to all of the information that Ms. Gay might have in her files as to whether or not the certification is good?

MR. BUTLER: For me, I think the relevance is it shows that they have done their due diligence, that they have performed those background checks.

THE COURT: Well, has anybody, at least at this point, contended they have not?

MR. BUTLER: I'm not sure.

MS. MURRAY: Your Honor, I'll tell you what. At the first break, I will get with Mr. Butler and the names that I currently have where we have a question. We will give him those names before we cross-examine about them, and he can have -- I think Ms. Gay can probably, from my recollection of her file, she has a PDF file on each of them by name and can -- we can kind of limit what we have to look at because most of us are going to be looking at it on paper at some time.

THE COURT: Right. Okay.

MS. MURRAY: If that's agreeable to Mr. Butler and to you and everyone else.

THE COURT: That's agreeable to me.

Why don't you move on to something else and come back to this.

MR. BUTLER: Okay.

Q. So after you've -- after you've gone through this process, I mean, what do you do? Is this just a rolling update of the documents that we went through until you're -- to the point where your services are no longer needed or you've done what you need to do in this case, or in these cases?

A. Yeah. Once we have achieved the quantity of signatures that the sponsor's comfortable with an overall submission; and in some cases, and especially in this particular cycle, we gather frequently past the initial submission to achieve the overall goal, expecting some insufficiency letter from the Secretary of State but offering a 30-day cure period for us to gather additional signatures.

So once we -- once the client is satisfied with the quantity of signatures, then we're done.

MR. BUTLER: Your Honor, I believe that those are all the questions I have of this witness at this time but that cocounsel may have some questions for her as well.

THE COURT: Subject to that other document that you're going to visit with Ms. Murray about?

MR. BUTLER: Yes, Your Honor.

THE COURT: All right. Mr. Owsley?

MR. OWSLEY: Thank you, Your Honor.

THE COURT: So, Mr. Butler, why don't you --

MR. BUTLER: Switch?

THE COURT: Or I'll tell you what. Will

it work with him sitting here? Okay. You can sit there.

MR. OWSLEY: I'll just turn my chair a little bit so I can --

CROSS-EXAMINATION

BY MR. OWSLEY:

Q. Ms. Gay, can you hear me?

A. I can.

Q. Okay. Ryan Owsley, Arkansas Voters First, Open Primaries. Are you familiar with the language that was submitted to the Secretary of State in connection with Arkansas Voters First and the background checks for their paid canvassers?

A. Yes.

Q. What is your understanding of what is required -- the kinds of things that the sponsor has to certify to the Secretary of State regarding the background checks for paid canvassers?

MS. MURRAY: Objection, Your Honor, as to her understanding.

THE COURT: Well, I'm going to allow the question just as to why she did whatever she did. It certainly doesn't make it right, whatever she understood.

Go ahead.

A. We -- the statement at the top of the paid canvasser list that's sent every night is -- serves to certify that we're in compliance with the statute, which has -- I believe there's three parts. I don't have it in front of me, but if -- I can pull the -- I can pull the statute and read you the three sections.
Q. Well, I have it here.
A. I think it's three sections.
Q. I have it here in what's been marked as Intervenors' Exhibit -- what's been introduced as Intervenors' Exhibit Number 1. This is the Secretary of State's Initiative and Referenda Handbook that you referenced earlier?
A. Yes.
Q. One of the things that you'll look at right off the bat whenever you start a canvassing effort, correct?
A. Yes.
Q. On Page 47 of that handbook, the Secretary of State has listed the statutes that pertain to paid canvassers, and I'm going to read Subsection (b)(1): To verify that there are no criminal offenses on record, a sponsor shall obtain, at its cost, from the department of Arkansas State Police a current state and federal criminal record search on every paid

canvasser to be registered with the Secretary of State.

Is that your recollection of the requirements?

A. Yes.

Q. Can you, as a -- could you obtain, for your paid canvassers, obtain federal criminal record searches from the department of Arkansas State Police?

A. No.

Q. Why not?

A. It's -- they don't do them. It's my understanding that they have not been authorized by the legislature to do so, and they don't conduct them.

Q. How do you know that they don't conduct them?

A. We ask. Every -- every time we start a new petition in Arkansas, we ask if they are now conducting those searches.

Q. Did you ask in this instance in connection with Arkansas Voters First?

A. I did not personally, but, yes, Alita spoke with Mary Claire at my behest because we always speak with her regarding this issue.

MS. MURRAY: Objection.

Q. And that's --

THE COURT: Hang on.

MS. MURRAY: Wait. Objection, Your Honor. Move to strike. She's relying on hearsay. And if Alita Bush spoke with Mary Claire, I think that they should have Alita get on Zoom and go under oath.

THE COURT: I'm going to sustain the objection. If the -- if this witness had talked directly with Mary Claire, I would accept it not for the truth of the matter but for the fact that it was said, but this is two steps removed. So the objection will be sustained.

Q. Ms. Gay, is it the standard business practice for National Ballot Access to speak to a representative at the Arkansas State Police about federal background checks before canvassing?

MS. MURRAY: Objection, Your Honor, once again.

MR. OWSLEY: She's the director of National Ballot Access. She can speak about business practices.

THE COURT: I'm going to allow her to talk about business practices.

Go ahead.

A. It is our business practice to verify whether or

not the Arkansas State Police is able to run federal background checks.

Q. Do you have any reason to believe that that was not done in this case?

A. I do not have any reason to believe that.

Q. This statutory subsection that I read from earlier, again on Intervenors' Exhibit Number 1, Page 47, which is 7-9-601(b)(1), where it requires the sponsor to obtain from the department of Arkansas State Police a current state and federal criminal records search, I'm going to drop down a couple of subsections and now I'm on subsection (b)(3). I'm going to read this language here, Ms. Gay: Upon submission of its list of paid canvassers to the Secretary of State, the sponsor shall certify to the Secretary of State that each paid canvasser in its employ has passed a criminal records -- a criminal background check in accordance with this section.

Is this, the language that I just read, is that the reason why you -- National Ballot Access attaches that language at the top of those Excel spreadsheets?

A. The language that's attached to the top of the spreadsheet serves that because we -- it's written as that we're certifying on behalf of the sponsor, that

is language that's reviewed by our sponsor and, inevitably, their legal counsel, and approved and authorized by -- for us to use to say that we are in compliance with that entire section.

Q. And the next, the next subsection under that -- this is (b)(4) -- a willful violation of this section by a sponsor or paid canvasser constitutes a Class A misdemeanor.

Is it your understanding that if you certify something to the Secretary of State in connection with a paid canvasser that you know to be false, that is a crime?

A. Yes, fully aware.

Q. If you were -- as a director of National Ballot Access, if you were to certify to the Secretary of State that you had obtained a federal criminal record search from the department of state police, would that be true?

A. No.

Q. You couldn't make that representation; isn't that right?

A. No, I cannot. They do not provide the federal background check to us, nor do they complete them, to our understanding and knowledge.

Q. How long, how many years, have you been engaged

in canvassing efforts on the part of sponsors in Arkansas?

A. I think over 12 years now. I'm going to say 20- -- well, 2011 is -- so it's nine, nine years.

Q. How many canvassing drives have you -- has National Ballot Access undertaken between 2015 and the present?

A. I have to look at our records, but I'm going to say 2015 would be -- so 2016, 2018. Probably eight to ten, I would say.

Q. Are you aware that a paid canvasser can go to the Arkansas State Police and get their fingerprints made?

A. Yes. It's my understanding that Arkansas State Police will fingerprint anyone for a fee, I believe.

Q. Why don't -- why don't you have your paid canvassers go to the state police and have their fingerprints made and take those cards to the FBI?

A. That's not what the statute requires of us to do. If you relook at that section, it says "to obtain from." So our understanding and our clients' understanding ultimately, because we always advise them that they should speak with legal counsel regarding this matter because we are not lawyers, that if it's not obtained from -- obtaining a background

check from the FBI is not obtaining a background check from the Arkansas State Police, and the statute requires us to obtain it from the Arkansas State Police, which they are not able to complete.

MR. OWSLEY: No further questions, Your Honor.

THE COURT: All right.

Mr. Sullivan?

MR. SULLIVAN: No questions, Your Honor.

THE COURT: Ms. Murray?

MS. MURRAY: Yes, Your Honor. Is this sitting here all right?

THE COURT: That's fine.

MS. MURRAY: All right.

CROSS-EXAMINATION

BY MS. MURRAY:

Q. Good morning, Ms. Gay.

A. Hey. How are you?

Q. I'm good.

A. Didn't get to have our normal greeting.

Q. Every two years, correct?

A. Every two years.

Q. I want to go -- first of all, let's stay with your background check practices first, if we could, please.

A. Mm-hmm.
Q. And first of all, your canvassers that you recruit, a majority of them, first of all, are from outside of the State of Arkansas; is that correct?
A. Yes.
Q. And would it be fair to say that a fair majority of them are people that you have recruited and worked with over at least anywhere from five to fifteen years?
A. Yes.
Q. And you are familiar with how to obtain the information check from the FBI; is that correct?
A. Am I familiar -- could you repeat the question? I'm sorry.
Q. Sure. I was just trying to cut forward to the FBI criminal information check, and you are familiar with how to obtain that from the FBI?
A. Yes.
Q. And --
A. I'm familiar with it. Not extensively, but familiar.
Q. Are you familiar with, they have a form on their website that if you want to do it by mail, you can do it by filling in their FOIA request, for one step?
A. Yeah, I have seen -- I have -- I have read that,

yes.
Q. And your canvassers, if they were interested in doing that, they could to any FBI office in the nation and have their fingerprints done, or a state agency and have that done; is that correct?
A. I can't speak to their familiarity with the places or locations that they are able to conduct them, but I know that they can go to a police station and get their fingerprints.
Q. Right. And have you had canvassers do that in the past?
A. No, not to my knowledge.
Q. All right. And then either by electronic transmission or by mail, fingerprints -- and a request by the canvasser for their personal information the FBI has can be obtained, correct?
A. I am sorry. I didn't hear the first part of the question.
Q. If the canvasser fills out the form and sends it to the FBI asking for his or her own records at the FBI with their fingerprints, they can obtain that, correct?
MR. OWSLEY: Your Honor, object. Calls for a conclusion.
A. I honestly don't know. I don't know what their

process is and --

THE COURT: Okay. Stop.

THE WITNESS: And the FBI's process for actually completing them. So I --

THE COURT: Just stop a minute.

THE WITNESS: I'm guessing.

THE COURT: Just stop a minute.

MR. OWSLEY: The objection is that it calls for speculation on the part of the witness.

THE COURT: Okay. Ms. Murray?

MS. MURRAY: She said she doesn't know, Your Honor. I don't want her to speculate.

THE COURT: All right. Great.

Q. So, Ms. Gay, is it fair to say, having your canvassers request their records from the FBI was not something National Ballot Access ever considered?

A. It isn't a decision that National Ballot Access makes. It's a decision that our sponsor makes.

Q. Did you discuss that possibility with the sponsor or sponsors of the Redistricting amendment or the Open Primary amendment?

A. Yes. We discussed all of the options that we were aware of with the sponsor's appointed representative to us.

Q. And did you discuss the option of having the canvassers go to the FBI?
A. Yes. We've -- yes, we have.
Q. And did you -- first of all, there's about three committees operating now as sponsors or interested ballot question committee. First of all, with Arkansas Voters First, who did you discuss all those possibilities of obtaining background checks with?
A. David Couch.
Q. All right. On behalf of the committee of Open Primaries Arkansas, a ballot question committee, with whom on that committee with -- whom on that sponsor did you discuss the options for obtaining background checks?
A. David Couch.
Q. I want to talk, if we can. You mentioned that in addition to obtaining the canvasser consent and obtaining an Arkansas State Police background check, you used two other what you call background check services; is that correct?
A. Yes.
Q. One was BeenVerified?
A. Mm-hmm, yes.
Q. You have to say yes or no for the record. Thank you.

And on BeenVerified, if you -- I assume that National Ballot Access or the sponsor obtained a subscription to BeenVerified; is that correct?
A. Yes.
Q. And on BeenVerified, if you type in someone's name and if you have, I suppose, a date of birth or Social Security number such as you do, you will type that in and they will print out a search for you, correct?
A. Yes.
Q. And it will cover where they live, where they have lived or their neighbors, their family members, things like that, first of all, correct?
A. Yeah. It's a -- it's a public record search.
Q. Right. And they disclaim that you should rely on this, correct?
A. They dis -- I'm sorry. They disclaim?
Q. The site does not certified that any of this is true and correct, do they?
A. Correct.
Q. And in the criminal action, was it National Ballot Access or your practice -- I know that you drive how the investigations or evaluations are done, correct?
A. Yes. For the most part.

Q. And if there was an indication of someone having a felony charge or conviction, what did you do with that information?
A. We immediate -- we would speak with David Couch regarding the -- what the record says, and he would obtain for us clarification as whether or not the person was actually eligible.
Q. And if you had any that came back from the Arkansas State Police with a felony noted, did you just tell the people they weren't eligible, the canvasser, potential?
A. Yes, we absolutely did.
Q. BeenVerified did not include a search of federal courts -- is that correct? -- or did it?
A. I honestly do not -- I'd have to reread their information. I'm not sure that federal -- I'm not sure that I've ever seen any distinguishing notes on any paperwork regarding federal court, so I couldn't say with all certainty.
Q. Okay. And then you mentioned a SentryLink service?
A. Yes.
Q. Is that quite similar to BeenVerified?
A. Yes. Although they take quite a bit longer in some cases to return with information. I'm not sure

exactly what their process is, but they do usually take a little longer.

Q. And do you --

A. It isn't a -- it isn't a "type in your name and print it out" service.

Q. Right. So you do -- and let's focus on this year, in your 2019-2020 work here in Arkansas. Did you run all of your potential canvassers through BeenVerified?

A. That's usually the first step, yes. After the Arkansas State Police.

Q. And BeenVerified comes back quite quickly, correct?

A. Yes.

Q. And let me ask you. I did have one question. You've never spoken to Mary Claire, have you, at the state police?

A. Me personally?

Q. You personally.

A. No.

Q. Okay. And do you recall in your deposition that was taken, I think in June maybe, in the *Safe Surgery* proceeding?

A. Yes.

Q. Do you recall stating that National Ballot

Access primary contract was a woman named Sherri West?
A. Sherri -- no. Yes, Sherri is the one that we e-mail, I believe. Isn't it -- I'd have to double-check, but I know Sherri is the one that we send the fingerprints to, or not -- I'm sorry. I misspoke. She's the one that we send the information up to the Secretary of State when we -- or to the state police. When you go on their website and you type in your -- the information off of your authorization form, she's the one that responds with that.
Q. And do you recall stating under oath that Sherri West was the one who always answers the phone at the state police?
A. Yes.
Q. And the only other person at that time of your deposition under oath, do you recall that the state police was someone named Terry, last name unknown?
A. That -- I remember having that conversation, and I went back through my e-mails and conversations with Alita and Edee Baggett, my business partner, and it wasn't a Terry. It was Mary.
Q. But you personally still have never talked to Mary Claire, correct?
A. Not -- not in the sense that I personally called

her specifically, but I have been on the phone when Edee has called her, but I wasn't a participant in the conversation. I was just listening.

Q. And, in fact, the Arkansas State Police offered to help you get fingerprints for your canvassers, correct?

A. Yes. Sherri, the fingerprinting gal.

Q. And just to make sure, that is an additional expense, the FB -- applying for an FBI information, and your sponsor would have to pay for that additional search, wouldn't they, under your contract?

A. I -- I don't know. I don't know --

Q. What your agreement was?

A. -- if they would want us to pay for or the individual canvasser to pay for or how that would be perceived to be done correctly, I guess. I don't know. We didn't discuss in that detail what and who should pay for that aspect if they wanted to go that way.

Q. Did your agreement cover that with the sponsors?

A. Our agreement says that they will pay for the records, the Arkansas State Police background check, and any other additional searches.

Q. All right.

A. Although I'm, again --

Q. I'm sorry. Go ahead. Finish, please.
A. I'm sorry?
Q. Your fee, your fee does not include National Ballot Access paying for background checks, correct?
A. Correct, it does not.
Q. On Mr. Childress, in Petitioner's Exhibit 24, was there any search done of any federal charges? I know you have a 50-state search in there from BeenVerified, correct?
A. Yes.
Q. And you have the Arkansas State Police, correct?
A. Right.
Q. And he was a Michigan resident, permanent resident, correct?
A. Yes.
Q. And he even gave you his expired Michigan driver's license to take a picture of, correct?
A. Yes.
Q. Did you do any federal search for records pertaining to Mr. Childress?
A. Outside of the searches that I've specified, we have -- we did not do anything else.
Q. All right. So you did not receive federal background searches from BeenVerified, correct?
A. No, we did not do -- we conducted to the best of

our ability and at our client's and sponsor's understanding of a 50-state background check to the -- there was not a federal courts special anything, that I'm aware of.

Q. And BeenVerified simply shows 50 states, correct?

A. Yes. For the states that contribute and have their records public.

MS. MURRAY: Your Honor, I'm going to start going through some exhibits now for our purposes with the witness.

THE COURT: Okay. I couldn't understand what you said.

MS. MURRAY: I'm sorry. We're going to now, we've got some exhibits to give to the Court and to everyone --

THE COURT: Okay.

MS. MURRAY: -- so that we can question Ms. Gay about that.

THE COURT: Tell you what. We're going to -- now would be a good time for a break.

MS. MURRAY: Okay.

THE COURT: Ms. Gay, we're going to take a 15-minute break, and we'll see you in 15 minutes.

THE WITNESS: Okay.

(Recess from 10:17 a.m. to 10:38 a.m.)

MR. BUTLER: Your Honor, at this time I'm going to renew our previous objection that we made at the outset of this case. We provided a brief about the *Stephens v. Martin* case and talking about the scope of kind of where we are with things right now. And I anticipate that Ms. Murray is about to attempt to do things that are not appropriate at this time in terms of where we are procedurally.

The things that I anticipate she's going to try to raise are not things that can be raised to challenge the initial count determination. And I don't think they are appropriate at this time.

THE COURT: All right. I'm going to overrule the objection. I've applied a relaxed standard due to the nature of the hearing. And since I am only the factfinder, although I have made a few evidentiary rulings, I am going to allow a relaxed standard and allow it. Whether I consider it or not is a different story, but

I'm going to allow it.

MS. MURRAY: Are you ready, Your Honor, for us to proceed?

THE COURT: I'm ready.

Q. Ms. Gay?

A. Yes.

Q. We are back on the record. We are using the ELMO because the Zoom sharing of the document was freezing up. Are you able to see the BeenVerified report of Anthony Quinn Newkirk, which is on the screen in front of you?

A. Yes.

MS. MURRAY: And I'm going to mark this as Intervenors' Exhibit 3 for purposes of the record and for identification at this time.

Q. And I am turning to the criminal records section, if we could, please, and that is beginning for orientation, the title is on Page 5 and the information begins on Page 6 and 7 of the report. First of all, do you recognize Anthony Quinn Newkirk as one of your canvassers for both Redistricting and for Open Primary?

A. The name in particular does not sound familiar, but there's a lot of people on that list. So if you

are showing it to me, I will take that as he's one of our canvassers.

Q. Do you have access to the thorough investigation that your office did before submitting his name for registration with the Arkansas Secretary of State as a canvasser?

A. I can pull his file.

Q. All right.

A. I don't have it up right now, but I can pull it up.

Q. And Mr. Newkirk, in BeenVerified's report on Pages 6 and 7, has a variety of charges either pending or listed. Do you see that?

A. Yes, I do.

Q. Did you do any checking further into the result of any of those records -- of those infractions?

A. I could not speak to it specifically without looking at the file and reviewing our communications with David Couch.

Q. All right. If you had found a felony conviction in Mr. Newkirk's investigation, would you have eliminated him as a potential canvasser for your efforts on the two amendments here in Arkansas?

A. If we found a felony conviction, he would not be eligible to circulate the petition and we would not

have used him.
Q. And you mentioned that, if there were questions, that others would go forward and check court records for you?
A. We would specifically reach out to David Couch, and he would provide us clarification as to whether or not the individual was able to participate.
Q. Well, let me show you what we've marked as Intervenors' Exhibit 4, and that is from Brenda D. Forman, clerk of the courts of Broward County, Florida, and I believe that Broward County is mentioned by BeenVerified. And can you take a moment --
MS. MURRAY: And we have, Your Honor, on these documents we're using, we've already redacted Social Security numbers and the confidential information from them.
Q. Can you look through that, please? Let me show you. On the first page, it says State of Florida versus Newkirk, Anthony Quinn. Gives the case number, a state reporting number. Court type: Felony; case type: 3rd degree felony; case status: Disposed - probation.
Do you see that?
A. Yes, I do.

Q. And then on the second page, there is an offense date and one of them is from 1/12/2013, carrying of concealed firearms. Do you see that?
A. Yes.
Q. Do you recall seeing any information about Mr. Newkirk in your file?
A. I don't -- I don't know.
Q. And if we take another break, would you be able to check and see if you investigated his charges in Broward County?
A. I can certainly check.
Q. All right.
(Intervenors' Exhibit 3 offered into evidence.)
(Intervenors' Exhibit 4 offered into evidence.)
MS. MURRAY: Your Honor, at this time, we would offer -- we would mark that as Exhibit 4, and we would offer it as Intervenors' Exhibit 3, first of all, the BeenVerified report; and the Broward County Clerk of Courts report as Intervenors' Number 4.
THE COURT: Objection, Mr. Sullivan?
MR. SULLIVAN: No objection.

MR. OWSLEY: Your Honor, we maintain the previous objection to the relevancy and scope of proceedings. Understand the Court's ruling. We don't want to waive that with respect to these documents.

THE COURT: Any other objection?

MR. OWSLEY: No, Your Honor.

THE COURT: All right. And you are offering 3 and 4?

MS. MURRAY: Yes, Your Honor.

THE COURT: All right. Exhibits 3 and 4 will be received subject to the previous ruling of the Court.

(Intervenors' Exhibit 3 received into evidence subject to the previous ruling.)

(Intervenors' Exhibit 4 received into evidence subject to the previous ruling.)

Q. Ms. Gay, I am now marking for a canvasser Tyler Dale Merkle, M-e-r-k-l-e, and I am marking for Mr. Merkle as Intervenors' Exhibit 5. And do you recognize Mr. Merkle's name as a canvasser registered by National Ballot Access with the State of Arkansas for the Redistricting and for the Open Primary amendments?

A. Yes.

Q. Have you worked with Mr. Merkle before?
A. His name is not familiar to me prior to -- prior to this cycle, but I couldn't say with all certainty that he hasn't worked with us before.
Q. All right. I want to go through with you the BeenVerified report which I've marked as Intervenors' Exhibit Number 5, and the report itself begins on about the second page of the multipage exhibit. But the report itself has page numbers that I'll refer to, all right, for the record and for your sake.
A. Yes.
Q. I am turning, first of all, to Page 3 to show that the report is on Tyler Dale Merkle, age 26, of Columbia, Missouri. Do you see that?
A. Yes.
Q. And then I am going down to Page 6 at the bottom. And under the heading of BeenVerified's report of Criminal and Traffic Records, BeenVerified reports a -- number 1 on his record a 5/16/2019. The offense is a level of felony. And they have described the offense as fugitive from out of state. Do you see that?
A. Yes, I do.
Q. Did you -- did National Ballot Access follow up on this information with the court involved?

A. I'm going to guess that we absolutely did, although I'd have to consult our records to confirm that, and I'd also have to confirm that at the time that we ran his report that that was appearing on it as well.

Q. Right. And then on the second page under the number 2 criminal record, it has another incident reported criminal record, Tyler D. Merkle. The date of it is 8/24/2017. It gives a case number. It says disposition not provided by source. The level of the charge, or at least the incident, is a felony. Offense: Fugitive from out of state.

Do you see that?

A. I see that.

Q. And then again on number 3 on Mr. Merkle, they have an August 5th, 2015 case, or incident. There's a date under the case number of 4/14/16, and that involved a felony Class C, possession of controlled substance, 35 grams or less of marijuana. And under the note on disposition, it says, suspended. Status: Suspended imposition of sentence.

And then on number 4 for Mr. Merkle, there is a fourth case number, and it has a date of 3/8/26 [sic], but the level of the infraction and the type of infraction is not noted. Do you see that.

A. Yes, I see that.
Q. And you would have a BeenVerified report for Mr. Merkle in your file, correct?
A. I'm sure we do.
Q. And that would have been done in this election cycle; is that correct?
A. I would need to consult the file to ensure that I'm speaking truthfully regarding the contents of it, so --
Q. All right. And just overall, when did you start collecting signatures for, first of all, the Redistricting amendment?
A. Redistricting started, I want to say -- I want to say it was like -- it may have been May 26th, or that may have been when we executed the agreement. But I don't think we began until, like, June 4th.
Q. All right.
A. I'd have to -- I'd have to re -- I'd have to relook at that. Whatever the first date that we sent the canvasser lists to the Secretary of State would be the first date.
Q. When did you first start talking with the sponsor about recruiting canvassers to come in and collect signatures?
A. We've been talking with the sponsors of these --

of this -- of Redistricting petition since May of last year.
Q. And when did you begin putting out word or other messages to canvassers you knew, that you wanted to -- I think you said recruit and come to Arkansas on these, on at least initially, the Redistricting amendment?
A. It would be probably the last week of May, first week of June.
Q. You would not have reached out to any of them before that?
A. It's -- we may have said we have some upcoming work potentially, but we don't -- we don't actively recruit until we're engaged.
Q. And as part of -- I know that you pay your canvassers a certain amount per signature; is that correct?
A. Yes.
Q. And that payment per signature can vary from one petition drive to another; is that correct?
A. Yes.
Q. And on these two -- and were you involved in any other petition drives in Arkansas this year?
A. Yes.
Q. Which other ones?

A. We're currently collecting for an independent candidate.
Q. Any others?
A. Not -- no, we were not.
Q. National Ballot Access was not?
A. No, we were not engaged on any other petition drives in Arkansas this cycle.
Q. Did you perform any background checks for any other petition drive?
A. No, we did not.
Q. So going back to Mr. Merkle, you would have to look at your files to see what information as of late May was available to you on BeenVerified; is that correct?
A. Yeah, I would definitely want to consult the information that we had obtained.
Q. And this particular BeenVerified report was generated on 7/15/2020 -- is that correct -- based on Page 1 of what's been marked for identification as Intervenors' Exhibit 5?
MS. MURRAY: Can you show her the front page? I'm sorry.
A. Oh, I'm sorry. I didn't hear the question. Yes, it is dated 7/15/2020.
Q. All right. Now if we could turn to Intervenors'

Exhibit 6, and that is from the Missouri courts, and it indicates that it is in relationship to Tyler Merkle. Do you see that?

A. Oh, thank you. Tyler Merkle, yes, I see that.

Q. And if there was information on Tyler Merkle from your BeenVerified report, would you have gone -- I think you mentioned about someone going to the court records to look and see what might be there, correct?

A. Yes. We would have consulted with David and looked further if there was some suspicion that it wasn't the actual pled case.

Q. And here under "Charge and Judgment" on the possession of controlled substance, except 35 grams or less of marijuana, it is a felony evidently under the decided Missouri statute. And the disposition says a guilty plea, 4/14/2016. Do you see that?

A. I see that.

Q. And it appears, as you go down, that the probation of --

THE COURT: Ms. Murray, let me interrupt.

MS. MURRAY: Yes.

MR. OWSLEY: Sorry. Your Honor, we'd like to make an objection here to this document. This -- as for a hearsay

1 objection. This document appears -- unless
2 I'm incorrect on this, this doesn't appear
3 to be a certified copy of any conviction.
4 It appears to have just been printed off a
5 website called Case.net, and Ms. Murray is
6 attempting to read into the record from a
7 hearsay document. I believe she will need a
8 sponsoring witness.
9 THE COURT: Ms. Murray?
10 MS. MURRAY: And, Your Honor, we intend
11 to -- I had asked if they had done this
12 thing. We have requested certified copies
13 of this document in that from the court in
14 Missouri. It has not yet arrived. We even
15 checked this morning to see if it was here
16 yet. It was requested well over a week ago,
17 but a lot of offices are --
18 THE COURT: I'm going to allow it to be
19 used for examination, but it will not be
20 introduced without being a certified copy.
21 MS. MURRAY: Correct, Your Honor.
22 MR. OWSLEY: Thank you, Your Honor.
23 Q. So in investigating your 50-state criminal
24 background check, will your file reflect if you
25 investigated Mr. Tyler based on the information

provided you by BeenVerified?
A. I don't -- it's not our traditional practice to print out additional information if we have them listed as a paid canvasser that it was our belief, based on the information that we had, and our consult with David Couch that he was eligible to circulate.
So if there are -- if there are additional documents in the file like the one that you're holding, I can't speak to that without seeing the file, but I would guess that there isn't.
Q. Do you recognize the name of Demetriuse A. Martin?
MS. MURRAY: And that is spelled for the court reporter D-e-m-e-t-r-i-u-s-e, A. Martin, M-a-r-t-i-n.
A. May I pull up, or can I pull up one of the paid canvasser lists that was most recent, the last one that -- I'm assuming that you guys have already entered it as an exhibit?
Q. Yes. I tell you what.
A. Can I look at that to confirm this information?
Q. We have one that was introduced into evidence yesterday that is in alphabetical order. So let me -- that is Respondent's, the Secretary of State's Exhibit 1. And on Demetriuse Martin, let me find the

page. I believe that was on July 1 -- well, July 2nd, it appears that the registrations were done. Let me give this to our paralegal to -- so that you can confirm it, all right, Ms. Gay? And that is from the primary, Open Primary.

A. Yes, I see it there.

Q. And so we know that he was registered at least for Open Primary by your company with the Secretary of State, correct?

A. Yes.

Q. Let me show you what will be marked currently for identification purposes as Intervenors' Exhibit 7, which is a BeenVerified report on Demetriuse A. Martin generated on June 12 -- I'm sorry, July 12th of 2020. And do you have that before you?

A. I see that, yes.

Q. You see it? And if we can go, once again, to past the -- their personal information. And when we go to Page 9, there is the heading for Criminal and Traffic Records.

And then on the following pages, there are -- well, several pages dating back several years. Let's see. There are 13 -- and I'm not representing to you that there were 13 felony charges on this at all. We can let you go through. But do you know

what, if any, follow-up National Ballot Access did on Mr. Martin?

A. I could not speak to that without reviewing his file.

Q. And in particular, if you go to Page 25 and 26, under the number 20 for criminal record, the 20th item is a case in the state of Pennsylvania, and it is from -- the date of the case number is 1/19/2005. Then it has a case number of -- or a date of 5/4/2006, indicating a guilty plea, and the offense was theft by deception-false impression. Do you see that?

A. I see that.

Q. And then on 21, there is another offense detail. It says the date is 12/20/2003. And it also, there was a guilty plea on it, 7/28/2005, and that was a theft by deception-false impression. Do you see that?

A. I see that.

Q. Is that the type of information, if you received from BeenVerified, you would have investigated further?

A. Yes, we would have consulted with David Couch.

(Intervenors' Exhibit 7 offered into evidence.)

MS. MURRAY: Your Honor, at this time we would move for the introduction of

Intervenors' Exhibit 7.

THE COURT: Any objection to 7?

MR. BUTLER: We would renew our objections for the previous reasons stated.

THE COURT: All right. As to 7, the same objection that y'all made the very first?

MR. BUTLER: Go ahead.

MR. OWSLEY: Sorry to pingpong a little bit here. I believe Mr. Butler is raising the -- I'll just say two objections. One is the continuing objections that we've made. And if it's okay -- we don't have to keep repeating -- just have a continuing objection on those grounds.

The other thing is, I'm not sure what the purpose of introducing this document is. If you are trying to introduce it to prove that the person here actually has a disqualifying crime, then we have the same hearsay issue as before.

MR. BUTLER: The hearsay issue was the one I was not raising particularly enough, but the hearsay one I'm raising. I don't want to have to -- like Mr. Owsley said, I

hope that we don't have to continue to renew the very first one, but we will. But the hearsay aspect of all of it is the one I'm trying to raise again at this point as well.

THE COURT: All right.

Mr. Sullivan, any problem with 7?

MR. SULLIVAN: No objection.

THE COURT: All right. I'm going to admit 7 for the -- not necessarily for the truth of the contents of it but to show that the witness had this information available to her, or in their file. So 7 is going to be admitted. Whether it's considered or not will be determined later.

MR. OWSLEY: Thank you, Your Honor.

(Intervenors' Exhibit 7 received into evidence.)

THE COURT: Did you also offer 8?

MS. MURRAY: No, I have not, Your Honor. I thought I would do them separately because I knew there was a certified copy objection on this.

THE COURT: Right.

MR. MURRAY: So I thought for the sake of the record on this, I would start doing

them separately.

I do want to display on the ELMO to Ms. Gay Intervenors' Exhibit 8 marked for identification purposes.

Q. Ms. Gay, what we're showing and hope you can see is the Court of Common Pleas of York County, Pennsylvania, the docket number and criminal docket of a court case, and it is CP-67-CR-0005945 of 2005, and it is nine pages long.

And on the -- is this something that, when you have ever followed up on charges, the type of document that you would be provided?

A. Yes. After verifying that it was actually the individual and that he is -- yeah, we would do it after we were sure that that was them.

Q. Do you -- okay. And --

A. Certainly something I've looked at, yes.

Q. That would be something you would look at?

A. But I have looked at similar dockets.

Q. And if you see evidence of a guilty or a conviction, a guilty plea or a conviction by trial of a felony, do you disqualify those individuals?

A. Yes, we do.

(Intervenors' Exhibit 8 offered into evidence.)

MS. MURRAY: Your Honor, we would offer Intervenors' Exhibit 8.

THE COURT: All right. I'm going to accept it for identification purposes only at this time subject to there being a certified -- properly certified copy from the Court of Common Pleas of York County.

MS. MURRAY: Thank you.

(Intervenors' Exhibit 8 received into evidence provisionally.)

THE COURT: Before me, I've got two of them. Are there two different ones?

MS. MURRAY: Yes, Your Honor. Thank you for reminding me.

(Intervenors' Exhibit 9 offered into evidence.)

MS. MURRAY: There's another 2004 case. I'm sorry. And we will make that Intervenors' Exhibit 9, and that is the criminal docket for Mr. Martin, same thing out of the Court of Common Pleas of York County for docket number CP-67-CR-006050-2004, showing a sentence imposed 7/28/2005, and that there was a guilty plea to theft by deception - false

impression. And there were also --

THE COURT: Would you repeat that number again, the case number you said?

MS. MURRAY: The one I'm looking at is CP-67-CR-0006050-2004. The other one was a 2005.

THE COURT: All right.

MS. MURRAY: So we would -- before we move on, we would also offer that into evidence as the information available pertaining to Mr. Martin.

THE COURT: All right. We're treating them as a continuing objection, and the ruling would be the same. I'm not going to admit it at this time. I will for identification purposes only, subject to a certified copy.

(Intervenors' Exhibit 9 received into evidence provisionally.)

Q. Ms. Gay, we're now going to turn to another canvasser whose name is Shaqwetta, S-h-a-q-w-e-t-t-a, S. Lee, L-e-e. And if we could show you the Respondent's Exhibit Number 2 with showing that Ms. Lee was registered, and we have that for Open Primary, and it will show you the dates also.

MS. MURRAY: Are you able to make that larger for her?

A. I see Shaqwetta, yes. I see she's on the list.

Q. All right. And do you know Shaqwetta?

A. I know her name.

Q. Has she worked for National Ballot Access before this petition cycle?

A. I cannot verify that without consulting our records.

Q. All right. And once again, we have a BeenVerified report dated 7/12 of 2020. Do you see that?

A. Yes, I see that there is a report there, yes.

Q. And in the interest of time, I'm going to go back to Pages 10, Criminal and Traffic Records. And I believe there are one, two, three, four, five, six, seven, eight, nine, ten, eleven, eleven different criminal incidents noted, and I believe they are all out of, or in large part out of Broward County, Florida. Do you -- we'll see if we can show that to you on the pages. And I note that number 1 and 2 show that a level of misdemeanor for those two charges.

And then on number 3, it is a case of 2008. No action was taken. It was a felony third-degree charge. Then on the next page, Page 12,

we have 4 and 5. That appears to be a similar one on the no action that we mentioned earlier, felony.

But on Number 5, it shows a 4/27/2007 date and a court date or a court case in Broward County of 07005918CF10A of May 14th, 2007. It says convicted by plea; level, felony; grand theft in the third degree.

Do you see that?

A. I see that, yes.

Q. And is that the type of charge that would have had your attention to go investigate further?

A. Yes, if this was one of our petitioners, yes.

Q. Well, we know she was a petitioner.

A. I don't know. I can't see the date of birth and I don't know that that's the record that we had available to us.

Q. All right. We'll do that with the Secretary of State as far as the date of birth and all of that, all right? Or with your records. I'm happy that your -- the lawyers who have called you here today to testify to share this with you.

We also -- and one of the misdemeanors in Arkansas that -- or other offenses that your canvassers swear they have never had convictions of involves forgery; is that correct?

A. Yes.
Q. And I wanted to take a look, if we could, on Number 5 in Broward County. It looks like a charge in 2007 of uttering a forged instrument, in 2007. Do you see that notation?
A. I can see that on the page, yes.
Q. And more details about it below -- or, I'm sorry, on Page 13 about that incident. And there's 2/6/2008, it says uttering a forged instrument. There's no information on BeenVerified as to it other than it's a felony, correct? But you don't know whether you had this information on the BeenVerified report that National Ballot Access obtained, correct?
MR. BUTLER: Your Honor --
A. I don't --
THE COURT: Hang on.
A. I don't know that this is the report that we obtained for Shaqwetta, no.
THE COURT: All right. Hang on.
MR. BUTLER: Your Honor, and that question and this whole line of questioning is part of what I think is the issue with the objections that were made previously with regard to the evidence that we tried to submit in terms of the canvasser files.

She's asking her all these questions and she's not able to pull up her records or allow me to show her something that's been admitted because they have objected to that, but they basically want to read them, the parts that have been good for them, into the record.

THE COURT: Ms. Murray?

MS. MURRAY: Your Honor, let me speak to that. We objected to the volume of all of the ones that she has, and I suggested that on those that we were challenging, if they wanted to introduce their case files or -- I'm sorry, Ms. Gay and her company's files on those, we would give them those names right now, and I did that at the break. I've given those names to them. There are -- we're on the last one of these concerning criminal.

We have another one concerning current residence address and permanent address, and that's all we have right now. And I've provided them that. And they are welcome, and I'm more than happy for Ms. Gay to go look at what she has in her file and come

back and say, "Well, I did a report in June and none of this information showed up."

MR. BUTLER: I would just ask that she be allowed to do that, she be allowed to -- she be allowed to pull her files with regard to the people that she's being questioned on so that she can -- that she can answer to them as opposed to certain things being picked out of them and relying on her memory.

THE COURT: Okay. Here's what we're going to do. We're going to go ahead and recess until 1:00. Let Ms. Gay know which files she needs to look at.

And, Ms. Gay, look at whatever you need to look at in your files, and then we'll reassume at 1:00. All right. We're in recess.

MS. MURRAY: Thank you, Your Honor.

MR. BUTLER: Thank you, Your Honor.

(Recess from 11:21 a.m. to 1:00 p.m.)

THE COURT: All right. Are we ready to proceed?

MS. MURRAY: I think we are, Your Honor. I have a bit of housekeeping. I believe I

1 don't think I stated for the record but the
2 Shaqwetta F. Lee's BeenVerified should be
3 identified as Intervenors' Exhibit 10, at
4 least for identification right now.
5 THE COURT: Okay.
6 MS. MURRAY: I don't think I had gotten
7 it in, but somebody said you denied again
8 based on that I have a name written.
9 (Intervenors' Exhibit 5 offered into
10 evidence.)
11 (Intervenors' Exhibit 6 offered into
12 evidence.)
13 MS. MURRAY: And I am told there is some
14 doubt whether I moved for the admission of
15 Intervenors' 5 and 6. I thought maybe I
16 had.
17 THE COURT: 5 and 6 were -- I believe
18 you moved, and I said they were for
19 identification only.
20 MS. MURRAY: On 5 also?
21 THE COURT: That was what my notes
22 indicate.
23 MS. MURRAY: Thank you.
24 (Intervenors' Exhibit 5 received into
25 evidence provisionally.)

(Intervenors' Exhibit 6 received into evidence provisionally.)

MS. MURRAY: All right. Your Honor, we have one other issue. We were not provided with the files on those five individuals over lunch. They have, just minutes ago, e-mailed them to someone in my office, who will be making copies of them for us to all have in front of us.

But I can't proceed with that part of my questioning at this point with Ms. Gay. I can go over the remaining areas I have with her, and hopefully we will have those copies before I finish and we can see what their canvasser files reveal, if anything.

THE COURT: Okay.

MS. MURRAY: So it's going to break it up a little bit. I won't go back to Shaqwetta until we get those.

THE COURT: Okay.

MS. MURRAY: Shaqwetta, I should say.

THE COURT: All right. Well, let's proceed, to the extent we can.

MS. MURRAY: All right.

Q. Ms. Gay, good afternoon.

A. Hello.
Q. Hello. We're going to come back and talk about your files on those individual canvassers when we're provided with copies. We're trying to get copies made right now down at my office. All right? So I'm going to skip a little bit, if we can, still talking about canvassers, though. And since we have the file of Mr. Childress as Petitioners' Exhibit 24, I did have a couple questions on that, if we could. Do you have that file with you?
A. I don't, but I can easily open it.
Q. All right.
A. I can flip it quickly, if you'd like. One sec.
Q. The first pages -- and these are unnumbered. But it is a statement of the rules, state rules and standards that NBA wants to make sure you understand. Are you familiar with that form?
A. I am familiar.
MS. MURRAY: And, Your Honor, this is unnumbered. It looks like that (indicating).
THE COURT: Okay.
MS. MURRAY: It's just after the independent contractor agreement --
THE COURT: Okay.

MS. MURRAY: -- and the W&I.
THE COURT: All right. Go ahead.
Q. And you don't have a lot of the rules, standards. You know, it's not page after page, is it?
A. No. It's highlighted.
Q. It's highlights of the things you want them to not only make sure they read; they have to initial. Is that correct?
A. Yes.
Q. And the first one is, "I will not start the day by putting in the dates for the signers. All the information," and all caps it says, "must be in the signer's hand. Do not fix date." Is that correct?
A. Correct.
Q. And that rule is to prevent a petition part from being disqualified because the date is in a different handwriting than the rest of the identifying information; is that correct?
A. It is intended to make sure that they don't alter the dates on the petition parts referencing specifically the statute that would disqualify an entire page if a canvasser's -- if a signer's date is not consistent with the page.
Q. And you are well aware of that based on your, I think you said, eight to ten different initiatives

that you have -- initiatives or referendums you've been involved in collecting signatures for since 2015?
A. Yes, I know that rule.
Q. And the risks involved if it's not followed?
A. Yeah. You lose the whole page.
Q. And so if you skip down on the same page we're talking about, the second-to-the-last rule states, "If a signer makes a fatal error, just strike through and have them use the next line." And in all caps, "Do not have them sign over it." Is that correct?
A. That's what it says, yes.
Q. And so your canvassers, you instruct them to watch each petition signer sign, don't you?
A. Yes.
Q. And if they see that the signer is making a mistake in filling out their line of information and the date of signing, they are to cross it out and have them stop and start over, correct?
A. Yes-ish. If the person is willing to do that, that would be the ideal situation. However, sometimes a signer will quickly correct a number or something like that and keep moving, and we don't get them -- have the ability to force them to do the whole thing over again, but we don't want to also disenfranchise them. So we'll leave it to the Secretary of State's

judgment.
Q. So if your canvasser -- let me pose a hypothetical. If the signer has put their birth date as the date of signing rather than the actual date of signing, your canvasser, when they see that and know it's not today's date, are they to cross that out?
A. No, I wouldn't -- I wouldn't be able to tell you what a specific canvasser would do. I personally wouldn't cross -- I wouldn't strike through the signature.
Q. All right. Because you would then lose that signature and any count toward the initial count; is that correct? Any chance of it being included?
A. Well, it would depend on the location of the signature on the page and whether or not they had transposed and inserted a -- the actual date in the date of birth column. It just depends.
Q. Well, you know that the petition itself that your canvasser is circulating requires and states that the signer says they are printing it themselves and what the information is, correct?
A. Right.
Q. And so a birth date in the date of signing, that's an error, isn't it?
A. It is an error.

Q. And your canvasser has the ability and makes the decision whether to cross out that signature, correct?
A. Yes.
Q. And if your canvasser does not cross it out, when your canvasser turns in the petitions on one of your turn-in dates -- and I don't mean how many you have a week typically -- you have people who, when they turn in, they immediately begin looking at the petitions turned in that date by that canvasser, correct?
A. Yes.
Q. And if they see an error that puts the entire petition part in jeopardy, those people working for you at turn-in, they have the authority, on behalf of the sponsor, to cross that line out, correct?
A. Yes.
Q. And they make the decision whether to cross it out or not?
A. If they see it, yes.
Q. And if you cross it out, you don't pay the canvasser for that line, do you?
A. No.
Q. And the notaries who your canvassers appear in front of to sign their canvasser affidavit on each petition part, they are paid for by National Ballot

Access and ultimately the sponsor, correct?
A. Yes, we pay them.
Q. And the notaries are there at turn-in; is that correct?
A. Yes.
Q. And I'm talking about your weekly turn-ins where the canvassers come in and they have -- if it's a weekly, that week's petition parts to turn in. They sign them in front of a notary that you supp- -- your company supplies, correct?
A. Yes. The -- we have turn-ins twice a week. They submit signatures to the notaries who are sitting there at tables.
Q. And part of the intense training that you give your canvassers, you tell them that they must print their name in that canvasser box, correct?
A. In the -- on the affidavit on the petition part?
Q. Yes.
A. Yes. That's -- if that's what you're referencing, yes. That's what they are supposed to do.
Q. I want to move now, if we can, to your daily, sometimes twice a day, submissions to the Secretary of State's office when you are submitting canvassers to them, okay?

First I wanted to check with you, or ask you to give us an answer, as to the language that appears at the top of those sheets for these two proposals, for the Redistricting amendment and for the Open Primaries. Who drafted that language?

A. It originated, I typed it out at the -- from a previous petition drive. It was typed -- on the Safe Surgery petition, that is the approved language that our sponsors wanted us to use.

Q. All right.

THE COURT: It came from -- it came from that sponsor?

THE WITNESS: I'm sorry?

THE COURT: It came from that sponsor?

THE WITNESS: The --

THE COURT: The language?

THE WITNESS: Oh, do you want -- are you asking for me to read it?

THE COURT: No.

MS. MURRAY: Let me see if I can help.

Q. You -- National Ballot Access collected signatures in 2019 to collect enough signatures to place a piece of legislation on the ballot on a referendum, correct?

A. Yes.

Q. And we can refer to that as the Safe Surgery referendum, all right?
A. Yes.
Q. And on Safe Surgery referendum, you used two different sets of language on your petition part, as I understand it?
A. On the paid canvasser statements, the first -- I believe the first one or two days, the first two days that we sent the list up to the Secretary of State of paid canvassers, that had different language than the remaining lists of the drive.
Q. Right. And then your submissions to the Secretary of State, your spreadsheet began carrying a different phraseology of language; is that correct?
A. The ongoing submissions of paid canvasser lists had different language at the top than the initial first one or two lists.
Q. All right. And that second paragraph that you started using second, who draft -- did you originally draft that?
A. I would say that I, after a discussion with the sponsor of that initiative, I wrote it in a way I was requested and directed and to the best of my ability, which, I am not a lawyer; and I returned the new language to the sponsor for approval.

Q. And who with -- the sponsor was Safe Surgery, correct?
A. Yes.
Q. And who with Safe Surgery did you have that discussion?
A. Alex Gray.
Q. And did the discussion center around that there were no federal background checks being conducted?
A. I don't recall the particulars of our discussion, just that we wanted to -- there was a desire to make sure that the language at the top expressed all of the aspects of the statutes. I don't -- I couldn't identify at this time, thinking back on it, what specifically we talked about.
Q. So after you, as a layman, took your hand at drafting a new paragraph to be submitted on these spreadsheets to the Secretary of State, did you return your draft to the sponsor?
A. Yes.
Q. And were you given approval to use that language?
A. Yes.
Q. And who gave you that approval?
A. Alex Gray.
Q. And so from that day forward, this was the

language that was used in Safe Surgery, correct?
A. Yes.
Q. And when you began collecting in 2020 for Redistricting and for Open Primaries, this is the language you chose to use?
A. I did not make that decision. The decision was made by our sponsor and our contact through the sponsor, David Couch.
Q. Okay. Did you have a discussion as to whether to use that language with David Couch?
A. Yes, that's -- there was a discussion.
THE COURT: Let me interrupt just a minute.
Is all of this really relevant? Isn't what's relevant is the language itself --
MS. MURRAY: Correct.
THE COURT: -- and whether it meets the standard?
MS. MURRAY: Correct.
THE COURT: Okay. Well, then let's --
MS. MURRAY: I'm going to move on.
THE COURT: Okay.
MS. MURRAY: I didn't think this would really -- I thought it was going to be it was used in *Safe Surgery* and we started --

THE COURT: Let's move along.
MS. MURRAY: Sorry, Your Honor.
THE COURT: That's all right.
MS. MURRAY: Let me move on.
Q. Actually, as you know, as far as requiring background checks generally and registering -- a registration system for paid canvassers and some things pertaining to what appears on the petition parts in handwriting, you had some informal input into that, did you not, Ms. Gay?
A. I'm not sure I understand what your question is.
Q. We worked together in 2012 looking at the petition parts of two proposals that were being circulated. Do you recall that?
A. Yes. We worked extensively.
Q. That was a different company, not National Ballot Access. That was through your company that you have an interest in called Brushfire, as I recall?
A. Yeah, which is no longer in existence, yes, at the time.
Q. And we worked, looking at petition parts, on two separate proposals, didn't we?
A. Yes.
Q. And do you recall expressing to me about the lack of any regulation of our signature collection

process?
A. And I regret it to this day.
Q. And did you tell me about other states' registration systems?
A. I'm sure we spoke about other states.
THE COURT: Wait.
A. I think we probably at the --
THE COURT: Stop.
MS. MURRAY: One minute. There's an objection to my questioning on this.
THE COURT: I haven't figured out yet how to -- I'm used to a witness and putting my hand up.
MR. OWSLEY: I guess I could jump in, but I don't want to be rude to anyone.
I'm going to object to the relevance of what other states signature registration processes are.
MS. MURRAY: We talked about her background. They talked about her experience, and I wanted to --
THE COURT: Well, let's try to move this along. I really would like to spend the night somewhere else tomorrow -- tonight.
MS. MURRAY: Me, too.

MR. KELLY: That's not on the record.
THE COURT: It is now.
Q. And can you tell the Court, in case this comes up later, what is transcription?
A. It's when a, possibly -- so some -- and this is allowable in some states, where you'll have a signer who is signing multiple petitions and they sign the name and complete all the information on the first petition.
And then on all the other petitions that they are signing, they sign their name only, and you have -- in some states, they actually hire someone to transcribe the information, the personal information from the first petition to the next petition.
Q. And that is not allowed in Arkansas. Is that your understanding?
A. No, not allowed.
Q. And that makes it difficult, in your opinion, to --
MR. BUTLER: Objection to form. And relevance.
THE COURT: Well, let me hear the whole question first.
MS. MURRAY: Maybe I'll rephrase it.
THE COURT: Okay.

MS. MURRAY: It was coming out a poor question.

Q. When transcription is found, does that make it difficult to identify whether a signature on the petition is a forgery?

A. Whether -- I didn't hear the last word. The petition --

Q. Whether the signature is a forgery?

A. It -- transcription can definitely -- has the ability, in my opinion, to make original signatures appear less genuine, but I am not a handwriting expert certified by the FBI.

Q. But you've done some handwriting examination not as an expert?

A. Oh, yes.

THE COURT: Let's move along.

MS. MURRAY: All right.

Your Honor, while we wait on --

MR. OWSLEY: Your Honor, if I can make a suggestion in terms of -- it's my understanding that we're waiting on the additional documents from Mr. Butler.

I wonder if we could -- we have a witness under subpoena who is out waiting to come and testify. If Ms. Gay is available

after Ms. McLaurin, then perhaps we can resume her testimony once she gets the documents she needs, or we can cover her same one.

MS. MURRAY: That's fine with me.

THE COURT: Okay. How long do we anticipate this witness that's been waiting to take?

MR. OWSLEY: For direct, I would anticipate less than 30 minutes.

THE COURT: Okay.

MS. MURRAY: Mr. Crass is going to handle that questioning.

THE COURT: Okay.

MS. MURRAY: So he is not a lengthy questioner, nor am I.

THE COURT: Well, if it -- I really want to finish Ms. Gay today. I mean, I'm going to do that since we've got the -- y'all have got to get these documents anyway.

MR. BUTLER: I guess, Your Honor, I mean, I've got -- I've got the documents. I've sent them to them. The -- I mean, I have them all on these thumb drives. I don't know if she's needing them so she can

1 question them. Those documents can -- and
2 folders can each be pulled up on what we
3 have.
4 MS. MURRAY: I haven't reviewed them at
5 all. We thought we would get them over the
6 lunch hour, and I need at least a couple
7 minutes to review them.
8 THE COURT: Okay. Mr. Crass heard his
9 name called.
10 MR. CRASS: I was down the hall, Judge.
11 I said less than 30 minutes and nobody heard
12 me.
13 THE COURT: Let's -- I hate to do this
14 to Ms. Gay, but we're going to this other
15 witness. How do we manage this with Ms. Gay
16 so she will know when to come back?
17 THE WITNESS: If someone just wants to
18 shoot me a text, that works.
19 THE COURT: Okay. We'll do that. And
20 thank you for your patience.
21 THE WITNESS: Okay.
22 THE COURT: Let's get this other
23 witness. What's the name of that witness?
24 MR. OWSLEY: Your Honor, it's Mary
25 Claire McLaurin, M-c-L-a-u-r-i-n.

THE COURT: All right. If you'll raise your right hand.

(Whereupon, the witness was duly sworn.)

THE COURT: Okay. You can be seated.

MARY CLAIRE McLAURIN,

having been first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. OWSLEY:

Q. Thank you for being here today. Would you please state your name for the record.

A. Mary Claire McLaurin.

Q. And who is your current employer?

A. Arkansas State Police.

Q. What's your title and role there?

A. I am the staff attorney and the legislative liaison.

THE COURT: Let me interrupt just a minute. I hate to tell you this, but the Supreme Court has told us we have to all wear masks, even while you're testifying.

THE WITNESS: I mean, I understand, Your Honor.

I feel bad for you.

THE COURT: Well, I do, too. It was not my preference.

THE WITNESS: Okay.
THE COURT: All right. Go ahead.
MR. OWSLEY: Thank you, Your Honor.
Q. Your -- and the question was, what is your title and role with the Arkansas State Police?
A. Okay. I am a staff attorney for the regulatory division, and I'm the legislative liaison.
Q. Okay. And as the staff attorney at the state police, do you have any responsibilities in connection with background checks provided by the state police?
A. The background checks that are provided by the state police are performed under the Automated Fingerprint Identification System and the Criminal Background Check System that is part of the regular division. And so yes, I give legal counsel to those subdivisions of our agency.
Q. So part of your role as the staff attorney is to advise the regulatory division about their obligations under Arkansas law with respect to background checks?
A. Yes. That's correct.
Q. Are you familiar with the statute, the Arkansas statute governing background checks for paid canvassers?
A. Yes, I am.
Q. What is your understanding of what that statute

requires of paid canvassers?

MR. CRASS: Your Honor, I object to the extent it's asking her to render a legal opinion.

MR. OWSLEY: Your Honor, I'm just asking for her understanding.

MR. CRASS: Well, but she's been presented as a lawyer.

THE COURT: Why don't we just have her testify as to what she -- what they do, and I may actually have a question about that.

Q. Do you give counsel to the regulatory division about their obligations with respect to background checks on paid canvassers?

A. Yes.

Q. What do you advise them?

A. Well, under the statute, the only background checks that we can perform for sponsors seeking background checks on paid canvassers are state background checks, Arkansas state background checks.

THE COURT: Why is that?

THE WITNESS: Because the statute does not adequately authorize a federal background check.

THE COURT: Even when the statute says

the division of the state police, the background check state and federal is to be made through the division of the state police?

THE WITNESS: Yes. That's correct. There's short answers and then there's long answers.

The short answer is that the wording of the statute is not sufficient to grant the paid canvassers, the sponsors the authority under the FBI, the Department of Justice guidelines.

THE COURT: So it's not -- your advice to the state police is not based on the statute itself; it's based on what the FBI is telling you?

THE WITNESS: Not entirely. We -- it's based on factual knowledge, personal knowledge, and then how we know that the FBI interprets these statutes and what is required of these statutes to authorize a federal background check.

THE COURT: Okay. Go ahead.

Q. When you say that it's not sufficient under FBI regulations, explain why it's not sufficient.

A. There are several reasons. The Office of Legal Counsel for the DOJ has -- Department of Justice has set forth a series of memos, guidelines, directives illustrating and mandating what is required for a state to process/perform a federal background check through the FBI. There are numerous requirements.

The primary reason this statute does not fulfill those requirements set forth by the Department of Justice is that it does not mandate the taking of fingerprints.

Q. So the advice that you give to the regulatory division with respect to paid canvassers is due to reading the federal guidelines, together with the Arkansas statute; is that fair to say?

A. There are several intermediate steps, but that is why we cannot do them.

Q. And what would be involved in getting, in the state police -- strike that.

How does the state police access the federal records with respect to criminal histories?

A. Well, we have to have what's called an ORI, an originating agency that's issued by -- it's a number that's issued by the FBI. And so the Arkansas Crime Information Center and the FBI, whenever you get a statute such as the one we're discussing here, will

1 look at the statute to determine whether or not it
2 meets the guidelines, and they will issue that ORI.
3 Once we have the ORI, we can process the
4 background check. We get the fingerprints. They are
5 entered into our digital system, electronic system,
6 and we send them to the FBI with that ORI, that
7 purpose code, and the FBI will then send us back the
8 check.
9 Because the statute does not meet the
10 requirements, no ORI was issued with regard to the
11 statute, and if we were to receive fingerprints from a
12 sponsor seeking to get a federal background check for
13 a paid canvasser, we would not be able to -- the
14 process could not be completed.
15 Q. Because the ORI that you've received doesn't
16 cover that circumstance?
17 A. We don't have an ORI --
18 Q. Okay.
19 A. -- for that because it's issued by the FBI.
20 Q. And you would need that ORI to access to federal
21 criminal records for any particular purpose? The ORI
22 is tied to a purpose?
23 A. Yes. That's correct.
24 Q. And you don't have an ORI for paid canvassing?
25 A. That's correct.

THE COURT: Why doesn't the criminal records search go beyond just Arkansas?

THE WITNESS: We can do state background checks, which is a check of the Arkansas crime information system.

THE COURT: What about the national crime information system?

THE WITNESS: That is not a fingerprint-based check, and we cannot have access to it unless we have the ORI. It's either got to be for a law enforcement purpose or you have the ORI.

THE COURT: Okay. Go ahead.

Q. So when you said it would have to be for a law enforcement purpose, I take it your testimony is that when it comes to paid canvassers, that's not a law enforcement purpose?

A. It's a noncriminal justice purpose.

Q. If the statute that we're talking about here, 7-9-601, if it required sponsors to get their finger -- get the fingerprints of their paid canvassers, would that be sufficient?

A. I don't think that it would. Again, I would defer to the -- the FBI's going to make that ultimate decision. It's not going to be the state police's

decision. But in my understanding, one of the other requirements is that the fingerprints are returned to a government entity.

So I guess maybe if they were sent to the Secretary of State and that was put in the statute, that might fulfill the requirement but, again, that's speculation on my part.

Q. Okay. If a -- one of the things that has come up in this these proceedings is whether a paid canvasser can come to the state police and request his or her own fingerprints, that they be fingerprinted. Can they do that?

A. We fingerprint people for various reasons.

Q. And is there a fee associated with that?

A. I believe so, yes.

Q. Okay. If a paid canvasser came to the state police and got his or her fingerprints in the way we just talked about and took those fingerprints to the FBI, would you advise the regulatory division that they could then release a federal background check on that paid canvasser?

A. We could not.

Q. There's no way a sponsor of a statewide initiative or referendum can obtain, from the state police, a federal background check?

A. That's correct.
Q. Has the state police ever provided federal background checks for sponsors of statewide initiative or referenda?
A. No.
MR. OWSLEY: No more questions, Your Honor.
THE COURT: All right.
MR. CRASS: I'm sorry. Mr. Sullivan?
THE COURT: Mr. Sullivan?
MR. SULLIVAN: No questions, Your Honor.
THE COURT: All right.
Mr. Crass?

CROSS-EXAMINATION

BY MR. CRASS:
Q. Ms. McLaurin, my name is Kevin Crass. I'm a lawyer for the intervenors, Arkansans For Transparency. Unlike most of our witnesses, you've actually given prior testimony on this subject so we kind of know what to expect and you probably know what questions I'm getting ready to ask you. But I'm trying to move this along, so I just want to ask you some questions.
First of all, this ORI that you've talked about, has the state police ever asked for a

designation of an ORI to accomplish the statutory requirement?
A. No. That's not our role.
Q. So the answer is you have not?
A. No.
Q. Could you?
A. No.
Q. Why couldn't you?
A. That's between the Arkansas Crime Information Center and the FBI.
Q. Okay. So Mr. Owsley's asked you about a sponsor coming to the state police and obtaining a background -- federal background check. But the truth is an individual, whether a canvasser or not, can come to the state police, the Arkansas State Police, and you will assist them in obtaining an FBI federal background check, correct?
A. No, that's not correct.
Q. Are you familiar with the Arkansas State Police Form 122?
A. Yes.
Q. You've been asked about that in proceedings like this one?
A. Yes.
MR. CRASS: Okay. I'm going to mark

that, Your Honor, as Intervenors' 17.

Betsy asked me to -- Ms. Murray asked me to skip ahead so she could fill in. Every time I sit in these chairs, my back tightens up.

THE COURT: Does that look right, 17?

MR. CRASS: She asked me to skip a few to give her room.

THE COURT: But it's not one we've already got?

THE COURT REPORTER: It's not.

Q. Ms. McLaurin, I'm handing you what we've marked as Intervenors' 17. Is that the ASP Form 122?

A. Yes.

(Intervenors' Exhibit 17 offered into evidence.)

MR. CRASS: Your Honor, I'd move for its admission.

THE COURT: All right. Any objection, Owsley?

MR. OWSLEY: No objection.

THE COURT: Mr. Sullivan?

MR. SULLIVAN: No, Your Honor.

THE COURT: All right. It will be received as Intervenors' 17.

(Intervenors' Exhibit 17 received into evidence.)

MR. CRASS: Thank you, Your Honor.

Q. Ms. McLaurin, on this form, it instructs the applicant, which would be potentially a canvasser, on how to obtain a background check, correct?

A. From whom?

Q. Well, I didn't ask from whom. Just background check.

A. Well, that's what I --

Q. Does it allow them to request any sort of background check?

A. This form is used for state record checks.

Q. Right. I'm headed there.

A. Okay.

Q. I'm just asking, does it allow an applicant such as a canvasser to go -- come to the state police and obtain a background check?

A. Yes. This form could be used by an individual to obtain a state background check.

Q. Correct. And it -- if you turn to the second page, the state police, the agency you work for and give advice to, asks -- or advises the applicant that there are procedures for obtaining a copy of the federal FBI -- excuse me, FBI criminal history record,

and it references a set of the Code of Federal Regulations. You see that?
A. Yes.
Q. All right. And what if I were an applicant and I came to the state police and I filled out this form? You would -- you, the state police, would provide me an Arkansas background check?
A. I -- yes. A criminal records check of the Arkansas Crime Information Center.
Q. All right. And what if I said to you, "But I also need a federal background check"? Would you advise that applicant that, "You need to submit that to the FBI"?
A. I would never give legal advice --
Q. I'm not --
A. -- to the public.
Q. Excuse me. Would the state police provide notice to the applicant per this form that there are procedures for filing -- or for submit -- getting a FBI criminal history?
A. Yes. The form does advise --
Q. Right.
A. -- the applicant whom to contact if they want a federal background check.
Q. Right. And would you advise -- your agency

advise the applicant, maybe a canvasser, maybe not, that it would require their fingerprints?
A. We -- we're not going to give advice to members of the general public.
Q. I'm not asking whether you're giving them advice. I'm just asking how would you process their request for a federal background check?
A. We would not process their request for a federal background check.
Q. What if they came to you and said, "I need fingerprints," for whatever purpose? Is the state police in the business of helping obtain a person's fingerprints?
A. We will fingerprint people.
Q. And I think you said in your deposition, you do that all the time, right?
A. Yes.
Q. For various purposes, correct?
A. Yes.
Q. All right. So if I'm an applicant and I come to you and say, "I need a state and federal background check," this Form 122, Exhibit 17, allows me to get the state record?
A. Yes.
Q. The notice that you provide to that applicant in

your official form says here's how you would get a FBI criminal history record, right?
A. I don't agree with your phraseology.
Q. It references the Code of Federal Regulations, correct?
A. That's correct. It says if you want -- if you need a federal background check, go to the FBI.
Q. All right. Do you know whether your state police website offers advice to people that need background checks?
A. We have frequently asked questions. We tell people how to use our website.
Q. All right.
MR. CRASS: I'm going to mark as Intervenors' Exhibit 18, a printout of the Arkansas State Police website with what she just described as frequently asked questions.
Q. I've handed Intervenors' Exhibit 18 to you, Ms. McLaurin. Is that what you were referencing when you said your website has frequently asked questions?
A. Yes.
Q. Okay.
(Intervenors' Exhibit 18 offered into evidence.)

MR. CRASS: Your Honor, I'd move for the admission of 18.

THE COURT: Any objection, Mr. Owsley?

MR. OWSLEY: I'm not sure what purpose he's attempting to introduce this. If he's attempting to introduce it for the truth of these FAQs, I think we have a hearsay problem. So I think he needs to specify what he's referencing to.

MR. CRASS: Your Honor, I'm just trying to lay out for the Court's benefit all the processes available through the state police to get background checks, either state or federal. I think these FAQs go to that.

THE COURT: Mr. Sullivan, any objections?

MR. SULLIVAN: No objection.

THE COURT: All right. I'm going to receive it as Intervenors' Exhibit 18. I'm going to admit it for the fact that this is on the website and this is the information provided but not for the truth of the contents of it.

MR. OWSLEY: Thank you, Your Honor.

MR. CRASS: Thank you, Your Honor.

(Intervenors' Exhibit 18 received into evidence.)

MR. CRASS: I'm going to mark as Intervenors' Exhibit 19 a document entitled Online Criminal Background Check System from the Arkansas State Police.

Q. Ms. McLaurin, can you identify Exhibit 19?

A. This appears to be a screenshot from one of the avenues to check -- get a background check online from the website.

Q. Okay. So you could take Form 122, which is Exhibit 17, mail it in, take it out to State Police, Plaza Drive, and submit your request, or you can do it online, I take it?

A. Yes.

Q. And Exhibit 19 is a screenshot of the page that would allow you to do it online, correct?

A. Yes.

(Intervenors' Exhibit 19 offered into evidence.)

MR. CRASS: Your Honor, I'd move for the admission of 19.

THE COURT: Any objection to 19?

MR. OWSLEY: No objection, Your Honor.

MR. SULLIVAN: No objection.

THE COURT: All right. It will be received as Exhibit 19, Intervenors'.

(Intervenors' Exhibit 19 received into evidence.)

MR. CRASS: Thank you, Your Honor.

Q. I'm not going to go through all of it, Ms. McLaurin. It will be in the record, and we can highlight it to the Court. But in this online system, it looks to me as if it identifies a pricing mechanism whereby I could obtain a national FBI fingerprint-based check request. It says, "National FBI fingerprint-based background checks are available for persons with specific access authorization to the national FBI record checks under state or federal law."

What I understand you to say is that the sponsor couldn't obtain that for their canvassers because of all the reasons you've described, but wouldn't a canvasser be able to come in, either in person or online, and submit an FBI fingerprint check?

A. No.

Q. No? Tell me why.

A. For the same reason.

Q. Same reason?

A. There has to be a statutory authorization.

Q. All right. So how would I, as an individual in the state of Arkansas, whether I'm a resident or a visitor, obtain a federal background check? Would I have to come to -- one of the ways was to come to you and get fingerprints. Then how -- what would I do with the fingerprints?

A. I don't know.

Q. Okay.

MR. CRASS: Your Honor, I don't want to belabor this, but I've got in here that -- more of the state police website that I'm marking as Intervenors' Exhibit 20, pages that describe how the site works.

I don't intend to take a lot of time and belabor it, but I think it's important for the record to be complete as to what the state police makes available to its citizens and noncitizens like canvassers.

Q. Can you see, look at Exhibit 20 and identify that, Ms. McLaurin?

A. It appears to be from our website. I don't believe I've ever seen this particular printout before, and we -- our website -- a new website went live two -- last week, so I don't --

Q. I'll represent to you this got printed, what,

yesterday or -- yesterday.
A. Okay. So I -- if you want me to identify this as something that I can authenticate, I cannot, but it appears to be from our website.
Q. Okay.
(Intervenors' Exhibit 20 offered into evidence.)
MR. CRASS: Well, with that qualification, Your Honor, we would move for the admission of Exhibit 20.
THE COURT: Any objection?
MR. OWSLEY: Your Honor, I object to authenticity. The witness just said that she can't authenticate this document.
THE COURT: Mr. Sullivan?
MR. SULLIVAN: No objection, Your Honor.
Q. Ms. McLaurin, do you have any reason to --
THE COURT: Hang on. I haven't ruled yet.
MR. CRASS: I'm sorry. I was going to try to lay another foundation.
THE COURT: Well, lay some more foundation then.
Q. I mean, I understand that it's changed recently and you're not sure, but do you have any reason to

dispute that this is an accurate copy of the screen on the Arkansas State Police website?

A. I do not -- I have never seen this, these particular screens --

Q. Okay.

A. -- before. So if you're asking me to say this is what it normally says, I can't say that.

Q. Okay.

MR. CRASS: I still think we've established the foundation, Your Honor, to introduce it for our purposes. Because we've already admitted the first site -- I mean the first page. We've admitted the frequently asked questions and now this --

THE COURT: I'm going to cut you off, Mr. Crass. I'm going to admit it as Intervenors' Exhibit 20. It still says basically what the witness has said, that the service is limited to persons with signed written consent and specific access authorization under state or federal law, which is similar to what was on the other sheets. I'm going to admit it.

MR. CRASS: Thank you, Your Honor.

(Intervenors' Exhibit 20 received into

evidence.)
Q. Ms. McLaurin, this may be an area that you're not familiar with as well, but do you know whether the FBI has websites that would provide information to an Arkansan seeking a national -- or FBI background check?
A. I do not know.
Q. Have you ever even looked for something like that?
A. Nope.
Q. One other area, Ms. McLaurin. Did you have any conversations, or have you ever had any conversations with the sponsor of either of these initiated acts, referendums, about the language of the certification or the statute that we're talking about?
A. I don't know who the sponsors are.
Q. Yeah.
A. And the language of the certifications, I'm not familiar with what you're talking about.
Q. Have you ever had any conversations with David Couch about the statute that we're talking about?
A. Mm-hmm.
Q. What has been the gist of those conversations?
A. David Couch lives in my neighborhood. And so the last time that we had this -- a hearing on this, I

explained -- I told him the substance of my testimony, and he agreed that it -- the statute has never been sufficient to authorize the background check, and he laughed and --

Q. He laughed?

A. Mm-hmm.

Q. Okay. Is that funny?

A. Yes.

Q. Okay. Other than the laughing conversation in the neighborhood, what I was really getting at, did any of the sponsors or their representatives, Mr. Couch, Mr. Gray, anybody like that come to you and say, "Help us with this statute in obtaining a federal background check"?

A. I'd ask you to be a little bit more specific.

Q. What other conversations have you had with Mr. Couch other than the one you've just described --

A. I've had --

Q. -- about this subject?

A. None.

Q. Okay. That takes care of that. How about a woman named Heidi Gay?

A. I don't --

Q. Do you remember that name?

A. I don't know that person.

Q. Okay. How about Alex Gray? Do you know who Mr. Gray is?
A. Yes, I do.
Q. Have you talked to Mr. Gray about whether the state police can provide federal background checks?
A. I think it's come up in some of our conversations over the years.
Q. In just casual conversation in the neighborhood or in other contexts?
A. Casual conversation at the capitol and things like that.
Q. Are you friends with Mr. Gray?
A. I would consider --
MR. OWSLEY: Objection, Your Honor. Relevance.
THE COURT: Overruled.
THE WITNESS: Friendly acquaintances.
Q. All right. Did you give him any suggestions on the wording that should be put on submissions in support of these initiated acts or any of the previous ones he's worked on?
A. Never.
Q. Did he ever provide you a draft of language that was going to be part of the certification?
A. No. And I still don't know what the

1 certification is --
2 Q. Okay.
3 A. -- referring to.
4 Q. That's fair. If I wanted a job at the state
5 police, would I have to pass a state and federal
6 background check?
7 A. We don't do federal background checks.
8 Q. Would I have to -- would I have to pass a
9 federal background check to become an employee of the
10 state police?
11 A. I don't believe so.
12 Q. Okay.
13 A. But I don't work in HR.
14 Q. Okay. You didn't have to pass one, I take it?
15 A. I cannot recall. I've worked at state police
16 for over five years. I do not recall being
17 fingerprinted for my background.
18 Q. Who do you report to in the organization?
19 A. Greg Downs.
20 Q. And who does he report to?
21 A. The colonel.
22 Q. Have you ever talked to Mr. Downs or the Colonel
23 Bryant about the fact that your position is that the
24 state police can't provide what the statute requires
25 the sponsor to obtain?

A. Not in those words.

(Intervenors' Exhibit 21 offered into evidence.)

MR. CRASS: Your Honor, the only other thing I'd ask the Court to do from an evidentiary standpoint is in Exhibit 17, we made reference to the second page that refers the applicant to the sections of the CFR, the Code of Federal Regulation. I've got a copy of that, and we would ask that you take notice, judicial notice, of those CFRs.

I recognize that it's not evidence but actually a statement of law, but I think it would be helpful to have the actual CFR regs in the record, so I've marked those as Intervenors' Exhibit 21.

THE COURT: Mr. Sullivan?

MR. SULLIVAN: No objection.

THE COURT: Mr. Owsley?

MR. OWSLEY: If they are what he says they are, I don't have an objection to that.

THE COURT: All right.

MR. CRASS: All I can say is they are what's in my hand.

MR. OWSLEY: All right.
THE COURT: I'm going to accept them as part of the record.
MR. CRASS: That's all I have, Your Honor. Thank you.
THE COURT: All right.
Mr. Sullivan?
MR. SULLIVAN: No questions.
THE COURT: Owsley, redirect?
MR. OWSLEY: Yes, Your Honor.
THE COURT: Is that a 21?
MR. CRASS: I'm sorry. We should --
MR. OWSLEY: I'd have to cull that one, Your Honor.
THE COURT: I was thinking cull it.
(Intervenors' Exhibit 21 received into evidence.)

REDIRECT EXAMINATION

BY MR. OWSLEY:
Q. Ms. McLaurin, Mr. Crass was asking you about your communications with your boss and your boss' boss. Are they aware of this issue?
A. Peripherally. It's not -- not been a matter that really needed to go beyond the regulatory division.

Q. Because it hasn't come up until this year; isn't that right?
A. That's correct.
Q. So earlier when Mr. Crass was asking you about your conversations with David Couch, you said that you -- the two of you were talking about it and you laughed about it. And he asked you, is that funny? Why were you laughing?
A. Because it's -- it's a plain issue. It's -- the FBI will not do these background checks based on the writing of the statute. It has been -- these canvassers have gotten ballots approved year by year since the act was passed in 2015, and everyone has known from the beginning, as soon as the act was passed, that the FBI would not and did not approve an ORI for these checks.
MR. CRASS: Your Honor, I move to strike her answer where she says "everybody knows."
THE COURT: Sustained.
MR. CRASS: I don't know how she can testify to what everybody knows. Thank you.
THE WITNESS: The people that I --
MR. CRASS: Strike that, too.
Q. Let me ask it a different way. How long have you been in this role at the state police?

A. Five and a half years.
Q. In those five and a half years, have you ever been called to a deposition to talk about federal background checks in connection with paid canvassers?
A. No.
Q. Have you ever been called to testify in any proceedings with regard to paid canvassers, background checks, federal background checks?
A. I was deposed at one point regarding the background check for canvassers.
Q. And that was for *Safe Surgery Arkansas*?
A. Oh, wait. No. Previous. Before that.
Q. Before that?
A. Yes.
Q. How long ago was that?
A. Three years?
Q. I see you looking at Ms. Murray. Was she the one who deposed you?
A. Yeah. She may not recall but she's the one who deposed me.
Q. All right. Other than those two instances --
A. Right.
Q. -- this has not come up in your tenure at the state police?
A. That issue, when I was deposed, it was about

this statute, but it was not -- it was about background checks, but it was in an attempt to get records. It was really a subpoena duces tecum, and it did not have anything to do with the federal background checks.

Q. Okay. Just a couple more questions here. I'd like you to direct your attention to what's been marked as, I believe it's Intervenors' 17. It is ASP -- Form ASP-122. And if you'll go to the second page of that document. Mr. Crass was asking you some questions about the middle of the page there: Applicant record notice. Do you see that section?

A. Yes, I do.

Q. Where it says "obtaining a copy." "Procedures for obtaining a copy of the FBI criminal history record are set forth in," and it gives a CFR citation, "or the FBI website," and it gives the FBI website.

In your -- well, strike that.

Is this section directing people to the FBI?

A. If -- yes. If they want -- I mean, it's telling them -- it speaks for itself, I believe.

Q. Okay. But this section is not inviting people to submit their fingerprint cards to the state police to get FBI background checks?

A. No. This section is required by ACIC and the FBI so that we pass our audit.
Q. I'd like you to look at Intervenors' Number 19, which is this one-page document that has "Criminal Background Check System" at the top right. Do you see that?
A. Yes.
Q. Looks like a third, third line down, third sentence down, I'll just read that: National FBI -- national/FBI fingerprint-based background checks are available for persons with specific access authorization to national/FBI record checks under state or federal law.
Is that section referring to the ORI you've testified about earlier?
A. Yes.
Q. And there is no ORI with respect to paid canvassers for federal background checks; isn't that right?
A. That's correct.
Q. And what's been marked as Intervenors' Exhibit Number 1, which is the state Secretary of State's Initiative and Referenda Handbook, we -- on Page 47, they give the statutes here. I'm going to read just one segment here, which is really the whole reason why

you're here today and why this issue has been raised. Do you have it? Oh, yes, you have it there.

A. What page?

Q. Page 47. Now, Mr. Crass was asking you some questions. He said it's not really the sponsor who has to get the background check; it's the paid canvasser. Do you recall him asking you those questions?

A. Yes.

Q. Would you look at (b)(1) there? And I'll just read it. "To verify that there are no criminal offenses on record, a sponsor shall obtain, at its cost, from the department of Arkansas State Police, a current state and federal criminal record search on every paid canvasser to be registered with the Secretary of State."

Could a sponsor gather up all the fingerprint cards from its people and bring those fingerprint cards to the state police and obtain a federal background check that way.

A. Not under this statute.

MR. OWSLEY: No more questions, Your Honor.

MR. CRASS: I have a --

THE COURT: Any questions, Mr. Sullivan?

MR. SULLIVAN: No questions, Your Honor.
THE COURT: All right.
RECROSS-EXAMINATION
BY MR. CRASS:
Q. Ms. McLaurin, he asked you about Intervenors' 17, and he specifically mentioned the reference to the FBI website. I've marked as defendant -- or Intervenors' Exhibit 22 what I purport to be a screenshot of that or close to it, website. Would you look at Intervenors' Exhibit 22? And I realize that it might not be something you've ever looked at, but you did reference the Arkansas State Police form where it refers to the FBI website for background checks.
Does this look like it's the FBI's website on how an individual could obtain a federal criminal history record?
A. I have --
MR. BUTLER: Objection. Calls for speculation.
MR. CRASS: Well, if she does, she ought to say that. I don't need counsel to object to speculation.
Q. You're a lawyer. Can you look at that FBI screenshot and tell me whether you think that's the

FBI's website advising a citizen of the United States as to how to obtain a federal background check?

A. I've never seen this before.

Q. Look at it while we're here and see if you can develop a view as to whether that's the FBI website.

A. I -- if you'll let me finish.

Q. Yes.

A. At the bottom of this page that you've provided, it does say "www.FBI.gov." I don't have any reason to believe that this is not something that was not printed off from the FBI.

I have never heard of an Identity History Summary Check. So in my experience, criminal history record information, which is what we deal in with federal background checks from the FBI, this doesn't have anything to do with what I -- we deal with.

Q. Well, let's see if that's true. Look down to the third paragraph, where the regular type starts: "For a fee, the FBI can provide individuals with an identity history summary -- often referred to as a criminal history record, or a rap sheet -- listing certain information taken from fingerprint submissions kept by the FBI and related to arrests and, in some instances, federal employment, naturalization, or

military service.

Do you still contend that the identity history summary is not the same thing as a federal background check?

THE COURT: Mr. Owsley?

MR. OWSLEY: Your Honor, several objections. Mr. Crass is arguing with the witness about what this document is; she's already stated she can't identify it; and number three, the website information at the bottom left corner does not match the website information in Form ASP-122, which is the reason Mr. Crass was trying to get into this.

THE COURT: All right.

MR. CRASS: Close enough, Your Honor. But I think that --

THE COURT: You're back playing baseball. The objection will be sustained. Let's move on.

(Intervenors' Exhibit 22 offered into evidence.)

MR. CRASS: Your Honor, we would proffer Intervenors' Exhibit 22 for the record.

THE COURT: All right.

MR. CRASS: I understand the Court's ruling.

THE COURT: It will be proffered for identification for the record.

(Intervenors' Exhibit 22 received as proffered.)

Q. So what you're saying, Ms. McLaurin, is you can't really say whether I can go to the FBI, pay a fee, submit my fingerprints, and get a federal background check? You're just, you're not in a position to say whether I can do that or not?

A. That's correct.

Q. Okay. Who in the state police could tell me that?

A. We don't -- nobody in the state police can speak for the FBI, sir.

Q. I'm not asking you to speak for the FBI. If I, a citizen of the state, went to Colonel Bryant and said, "Colonel Bryant, I need a federal background check. Can the state police help me obtain one?" What do you think the department would tell me? "You're on your own"?

MR. OWSLEY: Objection. Speculation.

A. We do not help individual citizens obtain federal background checks for their own purposes, and

that is --
Q. Let me back up then.
A. -- ASP's position on it.
Q. Excuse me. Let me back up. If I came to you and said I've determined from looking at the FBI website that "I need my fingerprints to obtain a federal background check," can the state police help me obtain my fingerprints?
A. Yes, we do fingerprint people.
Q. Okay. So in that regard, you would be assisting me in obtaining a federal background check, whether you knew that was the purpose or not?
MR. OWSLEY: Objection, Your Honor.
MR. CRASS: I'll withdraw it.
That's all.
THE COURT: Anything else, Mr. Owsley?
MR. OWSLEY: Nothing further, Your Honor.
THE COURT: All right. Thank you.
You're excused and free to go.
THE WITNESS: Thank you, Your Honor.
MR. CRASS: Nothing like cross-examining lawyers.
THE COURT: Actually, I thought for a lawyer, she did very well. Usually they are

the worst witnesses.

MR. OWSLEY: Take a recess while we contact Ms. Gay?

THE COURT: We're going to take a -- how much time do we need before we bring Ms. Gay back?

MS. MURRAY: I think if you can give us 25 minutes to look through these, they are the records -- we will be ready to go.

THE COURT: I'll give you 20.

(Recess from 2:13 p.m. to 2:44 p.m.)

THE COURT: All right. Let's proceed.

HEIDI GAY (cont'd),

having been first duly sworn, testified as follows:

CROSS-EXAMINATION (cont'd)

BY MS. MURRAY:

Q. Ms. Gay, are you back with us?

A. Yes.

Q. We were looking -- before we recessed my cross-examination of you, we were looking at Shaqwetta Lee. Do you recall that?

A. Yes.

Q. And do you now have -- have you had a chance to review her file?

A. Yes.

Q. And did you find a BeenVerified report like the ones we have?
A. Yes.
Q. And did you find information concerning her felonies?
A. I -- yes, I do have information regarding the things that appear on that report.
Q. And did you confirm that there was a felony conviction in the information you had in your report?
A. No, we did not.
Q. You did not?
A. No.
Q. We'll come back to that after we get these in, all right?

(Intervenors' Exhibit 10 offered into evidence.)

MS. MURRAY: We have your BeenVerified report for Shaqwetta Lee as Intervenors' Exhibit 10, Your Honor. We would offer that into evidence.

THE COURT: All right.

Any objection?

MR. BUTLER: No objection.

MR. SULLIVAN: No objection.

THE COURT: All right. It will be

received as Intervenors' Exhibit 10.

(Intervenors' Exhibit 10 received into evidence.)

Q. All right. And did you also -- when I was looking at the file that we just received copies of within this past half-hour, it appeared that you had obtained some records from Broward County?

A. Yes.

Q. Including a letter as late as 2011 of felony letter 30 days past due?

A. I'm sorry. Are you -- which page are you referring to?

THE COURT: What exhibit?

MS. MURRAY: Well, first of all, they are not numbered, of course.

THE COURT: Okay.

Q. So I am looking at the fourth page from the end of your file.

A. Okay.

Q. All right. And do you see that, convicted by plea?

A. On -- I see it also says "adjudication withheld," and David Couch reviewed that.

Q. I don't want you to tell me what David Couch told you.

A. What? I'm sorry.
Q. I don't want you to tell us what David Couch told you. This was in your file, correct?
A. Yes.
Q. Okay. And that was information that you had requested from Broward County, just as we had, correct?
A. I am not 100 percent sure if it was something that National Ballot Access requested or if David Couch sent it to us.

(Intervenors' Exhibit 11 offered into evidence.)

MS. MURRAY: Your Honor, we would offer Intervenors' Exhibit that was our information from the State of Florida that was not yet -- I think we talked about it was not certified, and we'll match it up when we argue with you about what is found in connection with what was in their file, all right, to move on.

MR. BUTLER: We would renew our objection with regard to the lack of it not being a certified conviction, it being hearsay.

MS. MURRAY: And we'll probably be able

to do it by their files, Your Honor, what they collected before --

THE COURT: I'm going to show it for identification purposes as 11. Until certified, it will remain out. But I'll show it as a proffered.

(Intervenors' Exhibit 11 received into evidence.)

(Intervenors' Exhibit 12 offered into evidence.)

MS. MURRAY: Well, yes. As a proffer, Your Honor, also not only as evidence of a conviction but confirming what they already had in their files, what National Ballot Access and the sponsors had in their files. That's what we were doing with their file, which I will offer now as Exhibit 12. This is delivered to us today, Shaqwetta Lee.

And, Your Honor, this file still has confidential information like Social Security numbers. So what we will do is redact that information and we will submit it to the Court. We would offer it now --

THE COURT: Okay.

MS. MURRAY: -- as Intervenors' Exhibit

Number 12.

THE COURT: Mr. Sullivan?

MR. SULLIVAN: No objection.

MR. BUTLER: No objection.

THE COURT: Okay. I'm assuming --

MR. OWSLEY: Yeah, I just want to be clear about what is being offered.

MS. MURRAY: It is Shaqwetta Lee National Ballot Access canvasser file.

MR. OWSLEY: Her entire file?

MS. MURRAY: Yes.

MR. OWSLEY: What's the purpose of offering the entire file?

MS. MURRAY: To show the information they had from BeenVerified and that they then later investigated because of her felony.

MR. OWSLEY: So, Your Honor, in this file, at least the one I have here, looks like it has the same BeenVerified stuff. So we would make the same objection with regard to the hearsay. I understand they are working on a certified copy, but we want to make sure to not waive that.

MS. MURRAY: Well, no. Mr. Owsley, also

they obtained --

THE COURT: Y'all talk to me.

MS. MURRAY: I'm sorry. As I noted earlier, this file also contains files from the Broward County clerk that the sponsor themselves obtained.

MR. OWSLEY: Your Honor, in order for it to not be hearsay, they need a certified copy of convictions to prove that they have had a conviction.

THE COURT: All right. I'm accepting Exhibit 12, and the information in there is information that is within the records of the witness' company; and whether the information is true or not, this -- it can't be offered for the truth of the matter simply because it's in their file. It is established that it was in her file.

MS. MURRAY: And that is -- that the information contained therein was information they obtained and relied on.

THE COURT: Well, that may be what the witness testifies to, which I expect they would.

MS. MURRAY: Okay.

Q. Ms. Gay?
A. Yes.
Q. In connection with Ms. Lee, you and the sponsor investigated, correct?
A. Yes.
Q. And concerning her Broward County and her charges, correct?
A. Yes.
Q. And you relied on the information that is contained in your file in proceeding to register her or to continue -- having her registration continue with you on these two constitutional amendments proposed in Arkansas, correct?
A. That is the information in our file.
Q. And that you relied on once you knew there was a question about some felonies, right?
A. We relied on David Couch's, whether he made a phone call or -- I can't speak to his way of interpreting the --
Q. I want you to testify on your personal knowledge, please.
MR. BUTLER: I'd ask that she be allowed to. She was trying to answer the question.
THE COURT: Well, I do want the witness to rely on their personal knowledge and not

what David Couch may have told her.
Q. Did you hear the judge on that part?
THE COURT: Probably not.
Q. I'm sorry. I'm not --
A. Yes. He said I should rely on my personal knowledge and not what David Couch told me.
Q. Right. And the personal -- and NBA's information and your personal knowledge is contained in your canvasser file on Shaqwetta Lee, correct?
A. The information in our file is the information that we are -- we have available to us, yes.
Q. All right.
MS. MURRAY: Your Honor, we would offer 12 for the information contained in their file.
THE COURT: That's what I think I've already accepted it as, over the objection of the petitioner.
Q. Next, if we can return --
MR. OWSLEY: Hang on.
MS. MURRAY: I'm sorry.
MR. OWSLEY: Just so I can be clear on the ruling, we have no objection with regard to what -- they are relying on the information, but they are admitting it to

the truth of the conviction. I just want to be clear on what the ruling is.

THE COURT: Well, they can offer it for whatever purpose they want to. I'm admitting it not for the truth of the record but for the fact that they obtained this, that they relied on it. That's the information they had in their file.

MR. OWSLEY: Thank you, Your Honor.

(Intervenors' Exhibit 12 received into evidence.)

MS. MURRAY: Your Honor, we would move next to what will become Intervenors' 13, and this relates to Tyler Dale Merkle, who we spoke about earlier.

And, Your Honor, once again, we have not removed Social Security numbers from the pages of this since we just got it, and we will before it is, other than I do need to use this to confirm his date of birth of 9/3/1994.

Q. Do you have that in front of you and can you confirm that for the birth date?

A. I didn't print out his ID --

Q. All right.

A. -- in my office, so I'm just looking quickly. Tyler Merkle. It is 9/3/94.
Q. And can you confirm that your BeenVerified report was obtained 6/26 of 2020?
A. 6/26 of 2020, yes.
Q. And did you conduct any investigation after receiving this report concerning the felony fugitive from out-of-state charges?
A. Yes.
Q. And where is that investigation documented in his file?
A. It is not documented. Further, our further investigation is not documented in the file. It was our conversation with David Couch.
Q. All right. Next we --

(Intervenors' Exhibit 13 offered into evidence.)

MS. MURRAY: And, Your Honor, at this time we would offer Intervenors' Exhibit 13, and that is the National Ballot Access file maintained on canvasser Tyler Dale Merkle, M-e-r-k-l-e.

THE COURT: I'm going to treat it on the same basis. It's going to be treated as a continuing objection from the Petitioners of

it is what it is; it's in their file. Whether the information is true or not, although I'm not sure exactly -- I don't know what "fugitive from out of state" means in Florida. I know what it means here.

MS. MURRAY: We just got that one.

THE COURT: Right. I understand.

(Intervenors' Exhibit 13 received into evidence.)

MR. BUTLER: Your Honor, I just want to tell the Court I tried to get them everything I had as soon as I could. I mean, we're all working in, like, two-day time frames.

THE COURT: Yeah. Just, it's fine.

Q. Next we have what will be marked as Intervenors' 14 and that is the National -- a copy of the National Ballot Access file for Demetriuse Martin, who I believe we looked at his information earlier, and that was D-e-m -- let me get my list.

THE COURT: That would be 14?

MS. MURRAY: Yes, Your Honor.

Demetriuse, D-e-m-e-t-r-i-u-s-e.

And if we turn to the BeenVerified report which they are relying on for doing a

50-state report, Your Honor, it is about halfway back and has "BeenVerified" at the top. It was conducted on July 1 of 2020. And unfortunately, they did not do a check on the canvasser; they did it on a Deneterise A. Martin. Wrong person. But this will be 14.

Q. Can you confirm that for us, Ms. Gay?

MR. BUTLER: What was the question?

MS. MURRAY: He is registered as a canvasser as Demetriuse.

MR. BUTLER: Right.

MS. MURRAY: And --

MR. BUTLER: What were you asking her?

MS. MURRAY: If she can verify that the report they received is for a different name.

A. We don't believe it is, no.

Q. All right. Did you supply -- what kind of search did you do with BeenVerified, what type of information do you supply to them? Birth date, Social Security number?

A. We provide the name, and depending on the particular search. It doesn't unfortunately -- it doesn't retain keystrokes. But you can see on the

report that was printed and put in the file that the names under "Aliases" match the person's ID and age.

I know that this report says 11 of '86 and his ID says 11 of '85; however, this is the same person.

Q. How do we know that the criminal history is the same?

A. I -- this is the information in our file.

Q. All right. And the picture ID that was supplied by Mr. Martin is under the name Demetriuse A. Martin, Jr., correct?

A. Yes.

Q. All right.

(Intervenors' Exhibit 14 offered into evidence.)

MS. MURRAY: Your Honor, we would offer 14.

THE COURT: All right. Court will receive it on the same basis as 13 and 12.

And for the record, I will note that within the -- the personal overview sheet does show birth date of November of '86. The -- when it gets down to the actual -- these misdemeanor convictions, it lists the date of birth November 1985.

MS. MURRAY: Your Honor, also I believe when this has been compared to our BeenVerified report, we have about 14 pages more of criminal charges.

THE COURT: All right.

MS. MURRAY: The information. So we would offer this into evidence --

THE COURT: I received that.

MS. MURRAY: -- as the National Ballot Access file on Demetriuse Alonzo Martin, Jr.

THE COURT: And it has been received.

(Intervenors' Exhibit 14 received into evidence provisionally.)

Q. And the first page of your file is the request they make -- they provide to you for an Arkansas state police individual record check, the request form; is that correct?

A. Yes.

Q. And National Ballot Access has no ability, to your knowledge under any law in Arkansas, to obtain a report on the individual record of an individual without that consent form, correct?

A. I'm --

Q. You have to have a consent form.

A. Yes. We get the authorization form first.

Q. All right. So there's no statute that allows you to get Arkansas report without -- an Arkansas report without actually your canvasser applying for the report, correct?
A. Authorizing the receipt of the report through the committee.
THE COURT: Mr. Owsley?
MR. OWSLEY: Thank you, Your Honor. Just make an objection to asking for legal opinions, legal conclusions from the witness.
THE COURT: Go on asking for a legal opinion.
MS. MURRAY: I will.
Q. Were you able to obtain from the state police any of the background checks without an application and consent form signed by your canvasser?
A. No.
Q. And on the application form, when it was submitted, who submitted the application form signed by the canvasser to the state police?
A. They don't submit the physical application. They enter the information from the application into the circles.
Q. But you have a written consent form in your

1 files to authorize that?
2 A. Yes.
3 Q. And the report is released to Arkansas Voters
4 First, correct?
5 A. Yes.
6 Q. And that's why the state police is because your
7 canvassers, such as Mr. Martin, asked them for his
8 report and tells them to send it to Arkansas Voters
9 First, correct?
10 A. Yes.
11 Q. All right.
12 MS. MURRAY: Your Honor, Intervenors'
13 Number 15 will be the National Ballot Access
14 file relating to Anthony Newkirk.
15 And, Mr. Newkirk, Your Honor, in the
16 last three pages regarding the criminal
17 history, it was the record of the carrying a
18 concealed firearm and also the -- also, I
19 believe there was a cannabis possession, and
20 he was convicted by plea on both of those.
21 Q. You did not investigate that felony involving
22 the concealed weapon, did you?
23 A. We did.
24 Q. And you have no documentation regarding that in
25 the further investigation in your canvasser file; is

that correct?
A. Outside of this report, there's nothing in the file.
(Intervenors' Exhibit 15 offered into evidence.)
MS. MURRAY: Your Honor, we would offer Intervenors' 15.
THE COURT: All right. I'm going to admit it on the same basis over the objection of the Petitioners as are the other exhibits.
(Intervenors' Exhibit 15 received into evidence provisionally.)
Q. Ms. Gay, I want to speak with you about a different subject that I know we're both glad to move on to. You had a canvasser on these two proposals in Arkansas registered, and his name was Josef Bautista, J-o-s-e-f; Bautista is B-a-u-t-i-s-t-a. Do you know him?
A. Yes.
Q. Have you known him a long time?
A. Yes.
Q. Has he worked for you on several other campaigns?
A. Yes.

Q. And do you know where he -- where he's from?
A. Oregon. Currently, Oregon.
Q. Is he still here in Arkansas working on the collection of signatures?
A. Yes.
Q. He is? And still staying here in Arkansas?
A. Yes, I believe so.
Q. And are you in contact with him if he is still turning in on a regular basis?
A. Yes. I -- the last I know, he is here.
Q. And so he would be available to come and testify here in Little Rock in court, correct?
A. I can't speak to his availability.
Q. Well, he's still working for you as an independent contractor; is that correct?
A. Yes.
MS. MURRAY: And, Your Honor, for the record, his name is found in Respondent's Exhibit Number 1, which was the alphabetical list pertaining to canvassers for the Open Primary that was introduced into evidence yesterday, and I understand that Mr. Sullivan has a similar alphabetical list that he's going to offer today that he's already delivered to everyone and is going

to be, I guess, Respondent's Number --

MR. SULLIVAN: 2.

MS. MURRAY: 2.

(Respondent's Exhibit 2 offered into evidence.)

MR. SULLIVAN: Your Honor, Mr. Owsley and Ms. Murray have indicated to me they have no objection to Respondent's 2 being admitted. So could I move to enter that now since they have questions on it?

MS. MURRAY: And way, I'll just be able to confirm that he was a canvasser on both of these proposals.

MR. OWSLEY: No objection.

THE COURT: All right. Respondent's Exhibit 2 will be received without objection.

(Respondent's Exhibit 2 received into evidence.)

MR. SULLIVAN: And I have an electronic copy that is redacted that I'll submit later today --

THE COURT: Okay.

MR. SULLIVAN: -- to the -- to everybody.

Q. And working with Respondent's Exhibit 1 for the information we're looking at, I believe that Mr. -- is it Bautista, Bautista? How is that pronounced, Ms. Gay?
A. Bautista.
Q. Bautista? And I believe he is in, on the first page under 6/2/2020, it appears all of his information was acquired and submitted on that date.
Do you have your file in front of you for Mr. Bautista?
A. I can.
Q. And his mailing address is 900 -- or 9009 SE, meaning southeast, Adams Street, Number 1144 -- is that correct -- in Clackamas, Oregon?
A. Yes.
Q. And to your knowledge, is that where his permanent domicile is, to your personal knowledge?
A. I can't assign personal knowledge to his permanent domicile because I've never visited.
Q. Have you ever had reason to do any investigation as to what he is listing as, on his sworn paid canvasser's statement, which is Page 4 of your files?
A. This is -- the paid canvasser statement is completed by the petition circulator, not by our providing them the explanation of it.

Q. But you do inform your circulators, your canvassers, that Arkansas does not allow a post office box to be used as a current or permanent address?
A. Absolutely.
(Intervenors' Exhibit 16 offered into evidence.)
MS. MURRAY: Your Honor, I would like to move at this time for introduction of Mr. Bautista's National Ballot Access file as Exhibit -- Intervenors' Exhibit 16.
THE COURT: It will be admitted on the same basis as the other similar files.
(Intervenors' Exhibit 16 received into evidence provisionally.)
MS. MURRAY: Your Honor, we are not looking at his criminal background at all. This is on a different subject.
THE COURT: Okay.
MS. MURRAY: Uh-oh. We're --
MR. KELLY: Proffered it. It didn't come in.
MS. MURRAY: This will be -- the next will be for identification purposes Intervenors' Exhibit 23.
(Intervenors' Exhibit 23 offered into

evidence.)

MS. MURRAY: And, Your Honor, I would like to offer this into evidence. It is a series of Google Maps and photos for 9009 Southeast Adams Street, which was given by Mr. Bautista as his permanent address for purposes of his registration here in Arkansas. It is, as you can see on the first one, a building; and on the second one, you can see that the building is the U.S. Post Office of Clackamas, Oregon.

Page 3 of this exhibit is an image from October of 2019, 9009 Southeast Adams Street, United States Post Office; and the last one is simply a close-up of the prior image of someone coming through the door, and you can see that it is the post office.

MR. KELLY: And it has a number, the address number. The street address number right there.

MS. MURRAY: Yes. The street address number.

THE COURT: Mr. Owsley?

MR. OWSLEY: Your Honor, lack of foundation, authenticity, and hearsay.

MS. MURRAY: Your Honor, I think this evidence, if you want to put the Google map and all these photos of the building and including one with the number on it, I think that pretty much shows what the building is. It is not a residential address. It is not a domicile address because you don't live at your post office box. And I think you can take the note -- judicial notice of the federal post office street address.

And if that is incorrect, and since Mr. Bautista is here in Arkansas circulating, I suppose they can bring him in to testify tomorrow and answer questions about why a post office box is listed. It is his mailing address. It appears throughout their files. It was already introduced.

THE COURT: Mr. Owsley?

MR. OWSLEY: It's not our burden to call in Mr. Bautista to rebut this document or to try and show that there actually is no foundation for the document or his P.O. box.

MS. MURRAY: Well --

THE COURT: I'm going to admit it for

whatever it's worth.

(Intervenors' Exhibit 23 received into evidence.)

THE COURT: How is -- for our purposes for this hearing, how is it relevant with the issue being either facial validity or the certification?

MS. MURRAY: Well, under the statute, he's not allowed to use this and his petitions are out.

THE COURT: Well, you may be right. But does that go to facial validity or does that come later?

MS. MURRAY: It should go to the valid -- to the registration. He's got to be validly registered.

THE COURT: But to determine he's validly registered, don't you have to go beyond the information provided beyond a facial examination?

MS. MURRAY: No. Not at the initial count phase. They have brought the initial count and its validity into question. We don't have to wait until it might make it to the ballot, Your Honor. The *Stephens* case

and all of those were later.

THE COURT: There is a second step beyond facial validity where these things are examined.

MS. MURRAY: Where is -- Your Honor, I'm not sure I understand where you believe that is.

MR. KELLY: That's signature sufficiency of the voters. That's not where we are. We're at the first step, which is --

MS. MURRAY: We're before that, and we are allowed to exclude. Just as they are trying to rehabilitate culled files, we are showing that their representations to the Secretary of State as to this man -- for example, his permanent domicile -- as false.

THE COURT: Mr. Owsley?

MR. OWSLEY: If this were clear on the face of the record, which is why we're here today, then there is no reason why we would need this document.

MS. MURRAY: Well, their proposal is that the intervenors, who also happen to be at least citizens of this state, have a right to be here and to oppose this measure,

and their view of it is that's too bad; you don't get to do that until we make it to the end. And we've used Mr. Bautista and everyone else to get here; and even though we used him to get to initial count and we used him on that, you can't do anything about it under Arkansas law, even though we're attacking this initial count and have opened the door to it?

All the other cases you are speaking about except for Arkansas Hotels, all of the other cases were not even under this 126 that we're operating under, but also, they were after certification to a ballot.

THE COURT: Okay. Well --

MS. MURRAY: So I think we are allowed to --

THE COURT: I've said I'm admitting it.

MS. MURRAY: But that's where it is, Your Honor.

THE COURT: All right.

MS. MURRAY: They have opened the door by doing this.

THE COURT: Well --

MS. MURRAY: If they didn't challenge

the initial count, we wouldn't be here. They --

THE COURT: Let's proceed.

(Intervenors' Exhibit 24 offered into evidence.)

MS. MURRAY: I'd like to mark as Exhibit 24 Intervenors' -- do we have a sticker? Do you still have them? And that is Mr. Bautista's file stamp with the Secretary of State, his sworn statement regarding his personal information. And we would submit that and offer it into evidence as Exhibit -- Intervenors' Exhibit 24.

THE COURT: And on the same basis, I'm going to admit it over Petitioner's objection.

MR. OWSLEY: I have no objection to the sworn statement.

MS. MURRAY: Okay.

THE COURT: All right. Admitted without objection.

(Intervenors' Exhibit 24 received into evidence.)

MR. SULLIVAN: Wasn't there a stipulation that all file-marked documents

come in?

MR. OWSLEY: (Nods head up and down.)

MR. CRASS: They were authentic. I don't think we stipulated as to admissibility.

MS. MURRAY: No, we didn't as to admissibility.

Your Honor, and the next exhibit is along the lines of the photograph. It will be Intervenors' 25. I'll put you a sticker so you know which ones are Intervenors'.

(Intervenors' Exhibit 25 offered into evidence.)

MS. MURRAY: Your Honor, we would offer that also into evidence. That is the Google with the address of the -- from the U.S. postal site as to the address of their post office in Clackamas, Oregon.

THE COURT: I'm going to admit it for what it's worth, that it's something taken off the Internet Google search. Intervenors' Exhibit 25 over the objection of Petitioners.

MS. MURRAY: It's the post office website, Your Honor, not just a Google

search of the address. That's from the U.S. Postal Service website. I think you can take judicial notice of that.

(Intervenors' Exhibit 25 received into evidence.)

MS. MURRAY: Your Honor, I think -- let me look. I think we're finished with Ms. Gay, and we pass the witness.

THE COURT: All right.

Mr. Butler?

MR. BUTLER: Yes, Your Honor. Thank you.

REDIRECT EXAMINATION

BY MR. BUTLER:

Q. Ms. Gay, have you had an opportunity to go back and take a look at your files with regard to the different canvassers that have been in question today?

A. Yes.

Q. And I want to ask you some specific questions about each of these and then we can -- and then I want to ask you about your -- kind of your process when something like this pops up. But did you have an opportunity to review the file of Tyler Merkle?

A. Yes.

Q. Okay. And when you -- I want to direct your

attention to Page 7 of his -- of your file, of Tyler Merkle.
A. Yes.
Q. Is there anything on that page that sticks out to you or that is notable to you on your --
A. Could you give me the heading on the top of the page, like what the first words are so that I can make sure I'm looking at the same thing?
Q. Yes. Hold on one second. The heading has a -- there are numbered -- there are numbered paragraphs. The first one at the top says -- has a number 2 criminal record, number 3 criminal record.
A. Yes.
Q. Is there anything on that page that is not typewritten?
A. That is not typed? Yes. We had circled the disposition of suspended.
Q. Why did you do that?
MS. MURRAY: Your Honor, could I object?
THE WITNESS: I'm sorry?
MS. MURRAY: May I object? She is using the "we," which many of us do in business; but I'd like for her to, if it is on her -- if she personally did that circling, if this is her personal knowledge.

MR. BUTLER: I think that she can -- even if it's not --

THE COURT: What difference -- I mean, the document speaks for itself. You know, whether it is a conviction or not probably is a question of either Florida, or whatever state it's from, law; and what those forms mean --

MR. BUTLER: The reason I'm asking that, Your Honor, is there has been some talk about her process of what happens when they find someone who -- or when something pops up of this nature. And I'm trying to -- I'm trying to lay the foundation to start going --

THE COURT: But what difference does it make? What process?

MR. BUTLER: Because of what I anticipate what her testimony to be with regard to what they found during that process.

THE COURT: What somebody told her?

MR. BUTLER: What somebody told her about how to proceed? I'll move along.

THE COURT: Okay.

Q. Ms. Gay, what -- when something pops up on some of these checks, what is your process when that happens? And when I say "yours," I mean what does National Ballot do?
A. We -- in this case of these, these two petition drives, we called David Couch.
Q. What do you do -- let me ask it a different way. I'm sorry. Do you submit anybody as a canvasser who you believe at the time of submission is not eligible because of the criminal conviction?
A. No, we don't.
Q. And you have processes to satisfy yourself that you're doing that?
A. Yes, we do. I believe we do.
Q. And why is that?
A. I'm sorry?
Q. Is it to avoid criminal culpability and to -- I mean, why do you --
A. Well, our interest is in complying with the law, and not everyone passes a background check. And certainly one from participating in this, in the ballot initiative process who is qualified. That's why if we have a question, we call David.
Q. There was a question earlier on cross-examination about, in these various files when

there are handwritten notations, who makes -- who would have written in some of your files? Is that something you do or somebody else does?

A. Alita does it. Alita or Mary Beth or Edee, whoever is in management and on the ground.

Q. Did you investigate -- each one of the folks that we've talked about here today, did you investigate -- did you do follow-up investigations after getting criminal histories on them to assure you that you felt comfortable in submitting them?

A. Yes.

Q. Has Josef Bautista, do you have any personal knowledge about his current, as of today, domicile, where he intends to live and remain? Do you have any personal knowledge of that right now, as of today?

A. Well, his permanent domicile is, I believe -- he's homeless, so he's going to have to use whatever domicile address he has accessible to him. So whether that's a friend that he considers to be his permanent domicile, or apparently in this case it's an actual post office, which we did not know but, I mean, I don't know that his car has an address that he can use.

Q. Do you --

A. I just know he travels as a circulator, and I

1 don't know that he has a home.
2 Q. Have you -- do you have homeless people in
3 addition to Mr. Bautista who sometimes serves as
4 canvassers for you?
5 MS. MURRAY: Your Honor, I object to the
6 question. She is not here to testify about
7 someone's homeless status, and that's not
8 relevant. They have a domicile, and it's
9 the sponsor's responsibility to get the
10 address of that domicile.
11 THE COURT: Well, where is a domicile of
12 a homeless person?
13 MS. MURRAY: Well, I don't know that
14 he's homeless. I know they are testifying
15 to that, but I haven't seen any evidence of
16 that or anything. He has W-9s. He has a
17 company. He has all this in here and I'm,
18 you know --
19 MR. BUTLER: Your Honor, there has been
20 evidence. The witness testified that she
21 knows him and that based on her personal
22 knowledge, he's homeless.
23 THE COURT: Proceed.
24 Q. Do you have homeless folks who sometimes serve
25 as canvassers for you, including Mr. Bautista?

A. Yes.
Q. And are there -- how do they list their addresses?
A. One individual comes to mind where I know when she's done petitioning on the road, I know she goes to her stepbrother's sister's house and so she uses that as a permanent domicile.
I know that on some occasions, people -- my business partner will take them, people, back home to her house with them --
Q. Okay. I'm going to move --
A. -- and so that becomes their permanent domicile.
Q. Okay. You've answered my question.
A. It just depends on who they know and what their familial or friendship relationships are.
Q. Are there times when you're going through this process and someone pops up with a criminal conviction and then, later on through your process, it is determined that they do not have a felony conviction because, for whatever reason, it has been withheld or it has not gone through to a full conviction?
A. There has been probably one or two occasions of that, but it has not been this particular cycle. I know we had an instance of that in 2018.
MR. BUTLER: Pass the witness.

THE COURT: All right. Mr. Sullivan?
MR. SULLIVAN: No questions, Your Honor.
THE COURT: Ms. Murray?
MS. MURRAY: Yes, Your Honor.

RECROSS-EXAMINATION

BY MS. MURRAY:
Q. Would you pull up Mr. Bautista's W-9, please, for the Court? And that is found in Exhibit 16, about midway through in the wages report. Do you have that before you?
A. Yes.
Q. Mr. Bautista, is he homeless in his C corporation of Global Political Strategies, Inc., which also lists its address as the post office box that was on his sworn statement as a domicile, on everything else we have as a domicile? Is that a homeless business also?
A. I can't speak to how he's incorporated or anything except for that is the information that he provided us.
Q. So you don't know him well enough to speak to what he puts on his W-9 and a corporation that he owns, correct?
A. I certainly do know that he has a corporation. He travels as a petitioner. So it's not unlikely that

this is where his business is registered.

MS. MURRAY: I move to strike that as nonresponsive and lack of knowledge on her part where she says, "It's likely."

THE COURT: Sustained.

Q. Also, just to make sure we understand the relationship. In the *Benca*, I believe it's *Benca v. Martin* case, do you recall that case?

A. I'm sorry. I didn't hear the first part.

Q. Benca, B-e-n-c-a, do you remember testifying as an expert in that case?

A. Yes.

Q. Or serving as an expert?

A. Yes, I do.

Q. And you were serving as an expert for Mr. Couch, who was cocounsel with Patrick Benca?

A. Yes.

Q. And in that case, did you collect for Mr. Couch situations where a post office box had been used as a domicile for a canvasser?

A. Yes, there was.

Q. Or a business address was used as the domicile for a canvasser?

A. Yes, they listed -- it was listed as a current residence address.

Q. And you showed it to be -- at that time, to be a business address or a post office box, correct, depending on the client?
A. It was the addresses that were listed as the current residence address on the petition, were in some cases post office boxes and business addresses, yes.
Q. And your testimony was to the effect that that was not allowed under the canvasser registration law, correct?
A. I don't believe that I drew conclusions to that, only that they existed on the petitions as such.
Q. Also, within the Bautista file, did he sign an independent contractor agreement with you?
A. I'm sure he did.
Q. Well, let's look at it. It's down about Page 1 -- well, it's about two pages, three pages after his California ID that you relied on with the post office box in San José, California, on his ID.
A. I'm looking at the page.
Q. Okay. And that independent contractor agreement you have was entered into with his corporation, Global Political Strategies, Inc.; is that correct?
A. Yes.
Q. And does Mr. Bautista, does he hire crews of

1 people to help him in these petition gatherings?
2 A. No. Not in Arkansas.
3 Q. Not in Arkansas? But in other states, he will
4 head up a crew of canvassers; is that correct?
5 A. Not when he works for us, no.
6 Q. All right. But you're familiar with that
7 practice of his in working for others?
8 A. I am not familiar with his practice when he
9 works for other people.
10 Q. Are you familiar with Global Political
11 Strategies, Inc.?
12 A. In the sense that it is -- it's PJ. We call him
13 PJ, Josef Bautista.
14 Q. And in your independent contractor agreement,
15 you tell the -- well, you instruct your canvassers
16 that they need to give their permanent domicile and
17 their current residence address and not use post
18 office, correct?
19 A. That is correct.
20 Q. And you're telling the same thing on voters who
21 are signing petitions -- or signers of petitions,
22 correct?
23 A. I'm sorry. Say that again?
24 Q. It's the same thing you tell them to tell the
25 signer of a petition: Don't put down your post office

box as an address, correct?
A. We always clarify, since people can register to vote from a P.O. box, especially on rural routes and such. So unless there is an exception, in practice, don't get a P.O. box.
Q. That was not -- not invoked any exception on Mr. Bautista, have you?
A. I have not invoked anything on Mr. Bautista.
MS. MURRAY: Your Honor, that's all the questions I have. I'm through with the witness. Thank you.
THE COURT: Mr. Sullivan?
MR. SULLIVAN: Nothing, Your Honor.
THE COURT: Mr. Butler, you through?
MR. BUTLER: Yes, Your Honor.
THE COURT: All right. Thank you, ma'am. You can log off or stay with us, whatever you choose.
THE WITNESS: Thanks.
MS. MURRAY: Bye, Heidi.
THE COURT: All right. Call your next.
MR. BUTLER: Your Honor, may I have one moment?
THE COURT: Mm-hmm.
MR. BUTLER: Your Honor, there were just

a few evidentiary issues that I needed to at least raise for the Court's attention to kind of let you know where we are. Otherwise, I think we'll probably be in a position to not call anymore witnesses, but I don't want to do that until I've addressed some of these things.

Mr. Sullivan and I have agreed to -- or he's going to stipulate to, and I don't know that there are any other objections, to the introduction of Arkansas Voters First Redistricting's signature cards and sworn statements that we attempted to admit yesterday, that we received from the Secretary of State.

THE COURT: Did I direct the Secretary of State to go over them?

MR. BUTLER: Yes, and they have. And what they did is they provided us with a digital copy. I've not had the opportunity to look at them yet because we've been here today and I just got them. But what I'd like to do is just confirm that there's no error with the technology; otherwise, I think those can be admitted.

THE COURT: Apparently, Mr. Sullivan?

MR. SULLIVAN: There's no objection to the entry of the flash drive that I provided to Mr. Butler.

THE COURT: And as an officer of the court, does it contain all of the signature cards and sworn statements of Arkansas Voters First on the Redistricting petition?

MR. SULLIVAN: I am told that that's the exact same file that Mr. Peyton testified in court to yesterday, and he just put it on this flash drive that I brought today.

THE COURT: Ms. Murray, do you have an objection?

MS. MURRAY: No, Your Honor. No objection.

MR. BUTLER: And then the only other thing, there was some -- I think the Court was holding off to decide which of the National Ballot files that we had would be admitted. I believe we had asked that they all be admitted. Intervenors had asked that only those that were in question be admitted, and I was just looking to get a ruling on that.

THE COURT: Okay. Why did you want me to have all of them?

MR. BUTLER: Well, because I think it goes to show what National Ballot does on all of these, and it shows the level of compliance with everything that they are supposed to do rather than just put three or four forward out of hundreds that they argue that have not proven have issues.

MS. MURRAY: Your Honor, may I be heard on that?

THE COURT: Briefly.

MS. MURRAY: We object in any part because there's 250 or 300 canvassers. Those files have not been redacted at all, for all the personal information and all the many several times it appears in that -- in those exhibits for 200 -- let's say 250 people.

There's 15 pages and personal information, whether it's date of birth or Social Security number. I bet, especially in the BeenVerified, it shows up under, like, every criminal offense. It will have the birth date usually included. And having

that redacted --

THE COURT: I'm going to save you some time. Unless they have been called into question, I'm not going to accept them.

MR. BUTLER: Okay. Thank you, Your Honor.

THE COURT: Mr. Owsley?

MR. OWSLEY: Thank you, Your Honor. We are working, as we talked about I believe maybe on the record, I'm not sure, but we talked about coming up with summaries and Petitioners circulating those summaries of certain culled signatures for certification page.

We now have that and I'm prepared to circulate that to the other parties for their review and they can compare that with their own numbers.

We have no more witnesses to call, but I would like, if for some reason we're not able to come to an agreement on that, then I would like to be able to call Josh Bridges back and go through it again. But I think we have -- we have the numbers and we'll supply to them. And if our numbers don't

match theirs, maybe they can come back with what their numbers are so we can come back to the Court with a joint stipulated set of numbers.

THE COURT: I would love that. I'm not -- how long do you -- of course, I don't guess you submitted it to them yet.

MR. OWSLEY: It's a two-page Excel document that has multiple different charts.

THE COURT: So the answer is you haven't submitted it to them yet?

MR. OWSLEY: That's correct.

MS. MURRAY: And is that on both submissions?

MR. OWSLEY: This is -- well, it's going through the stuff that Alex did.

THE COURT: Is this Open Primary?

MR. OWSLEY: Yes, Your Honor.

THE COURT: Okay.

MS. MURRAY: And there's multiple categories?

MR. OWSLEY: Yes. It's all the stuff. Each column is listed. I'll send it to you.

MS. MURRAY: You put the petition number on it?

MR. OWSLEY: We put the Bates number of the petition pages. And most of them --

MS. MURRAY: Good.

MR. OWSLEY: And to try to speed this along, we put the PDF page numbers of what we received as exhibits, so you can just go directly to that filename.

MS. MURRAY: I will have to have some people do it. Do you know how many petitions are involved?

MR. OWSLEY: I mean, I could tell you.

THE COURT: While you are looking at that, Mr. Sullivan, do you anticipate calling any witnesses?

MR. SULLIVAN: I do not.

THE COURT: Okay.

Ms. Murray?

MS. MURRAY: Your Honor, we will also have some charts and summaries that we have prepared pursuant to Rule 1006 of the rules of evidence, for them to look at. We hope to have those done this evening and will send them to them.

And we will attempt this evening to review, to have personnel try to review

that.

THE COURT: Okay. So I'm going to be spending the night here again tonight, which is fine.

MS. MURRAY: Yeah.

THE COURT: Which is fine.

MS. MURRAY: Yes.

THE COURT: Okay.

MS. MURRAY: We might call Mr. Peyton Murphy back, but it would be very brief.

MR. BUTLER: I just -- I have the proposed exhibit.

THE COURT: Okay. Since I'm going to be coming back tomorrow, I think Ms. -- everybody ought to have a chance to see them so they will -- to verify whatever needs to be verified about it. Because you wanted to look at it, and then the information from Mr. Owsley to Ms. Murray to verify.

So I'm -- other than me getting some -- a little bit of legal instructions from y'all before we leave today, is there anything else we need to do today?

MS. MURRAY: No, Your Honor, I don't believe so. And we have a bench brief I

meant to give you yesterday on some of the issues, and we will also probably have another --

THE COURT: I want to -- our little interchange earlier about facially valid, how do you square what your position is with *Stephens versus Martin*?

MS. MURRAY: Well, the portions of 126 that tells you what not to include in the initial count includes many things that are not a facially valid question, per se if you're saying on the face of the petition.

It can only be done by reference to other documents, and that is the procedure today that is used. It is not just a, look at a raw signature on a petition and you can't look behind it. You can look behind it under 7-9-126.

And if either of these proposals had already been certified to the ballot because they had the 89,151 signatures, whether through a cure or on their first turn-in, all of that would come into play.

THE COURT: So what I think you're saying is even though *Stephens* says that if

you have to go beyond the face of it that that's not appropriate in a facial challenge. You're saying the law has changed since *Stephens* to --

MS. MURRAY: 126 went into effect since *Stephens* was decided.

THE COURT: And you're saying that that makes it different?

MS. MURRAY: Makes a big difference. That was the statute that was enjoined, parts of 1413 on the "do not count for any purpose." That was in Act 1413, Your Honor. And that was not in effect when *Stephens* was -- that's the first difference.

The second difference is when *Stephens* was decided, they were attacking the initial count, but *Stephens* has been certified to the ballot already. And just as in the minimum wage case, they have indicated that you can't -- if I'm sitting there and I'm on the ballot, then all comers have to get rid of that certified number.

They can't go back under the Supreme Court in the minimum wage case and say, "Well, you never should have been on the

ballot because you didn't make it the cure, legitimately." And I respectfully disagree with their holding in that but I recognize that's what they have said.

But if you show a canvasser their -- and I think, Your Honor, that the -- particularly the Open Primary, they did not make the initial count.

THE COURT: Okay. Well, I'm looking at 126 right now.

MS. MURRAY: Right.

THE COURT: And I'm trying to see those things that are not to be counted for any purpose, and it looks like -- and, again, I scanned them quickly, and I may have missed it. Y'all are -- I will concede y'all are much more familiar with 126 than I am.

But I am -- every one I'm looking at is something that, either from the face of the petition or the documents that are required to be submitted with the petition, you can look at those and see whether or not that information is there or not. So help me out.

MR. BUTLER: And I think that's correct,

Your Honor, and I think that's what the Court said in the case subsequent to *Stephens*, which was *Zook*. They took up the same kind of argument and came up with the same kind of result.

MR. OWSLEY: Your Honor, I would note in that regard. I anticipated this would be the argument with respect to *Stephens versus Martin*, but it was decided before these additional amendments were made, which is why we referenced in the bench brief the *Zook versus Martin* case, the 2018 case. And in that case, six members of the Arkansas Supreme -- well, all seven, per the argument that Ms. Murray's making here, that the law has changed. Justice Wood agreed and wrote a concurrence to that effect. The other six members disagreed and said that on facial count and on the initial count, the law is as we've described in the bench brief.

THE COURT: Tell you what. Of course, I don't decide the law. My findings will be my findings and then I'll let the Supreme Court deal with that, so we'll see. If your bench brief doesn't deal with that, you can

have one of your associates write one tonight.

MS. MURRAY: I will. I will. We'll --

THE COURT: All right. I guess unless there's something else for me, we're going to end today's session. Just make sure before you leave, everybody's got whatever it is they are supposed to go through to verify and see where we stand, and I will see y'all in the morning at 9:00.

(Proceedings recessed for the day at 3:58 p.m.)

COURT REPORTER CERTIFICATION.

We, Dana Hayden and Tammie L. Foreman, Certified Court Reporters in and for the State of Arkansas, Certified Realtime Reporters, do hereby certify that the foregoing is a true and correct transcript of the stenographically reported proceedings held in the above-entitled matter.

Dated this 30th of July, 2020

TAMMIE L. FOREMAN ARKANSAS SUPREME COURT No. 305 CERTIFIED COURT REPORTER

Tammie L Foreman

TAMMIE L. FOREMAN, CCR, RPR, CRR
LS Certificate #305, State of Arkansas
Arkansas Realtime Reporting
Tammie@ArkansasRealtimeReporting.com

DANA HAYDEN
CERTIFIED COURT REPORTER
ARKANSAS SUPREME COURT
LS NO. 714

Dana Hayden

DANA HAYDEN, CCR, RMR, CRR, CRC
LS Certificate #714, State of Arkansas
Arkansas Realtime Reporting
Dana@ArkansasRealtimeReporting.com