IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
FAYETTEVILLE DIVISION

BONNIE HEATHER MILLER, and THE LEAGUE OF WOMEN VOTERS OF ARKANSAS — **PLAINTIFFS**

v. — **No. 5:20CV05163 TLB**

JOHN THURSTON, in his official capacity as Secretary of State of Arkansas, — **DEFENDANT**

DECLARATION OF MARY CLAIRE McLAURIN

I, Mary Claire McLaurin, am competent to testify and have personal knowledge regarding the statements contained in this declaration, and do hereby state and verify the following:

1. I am employed by the Arkansas State Police as an attorney in the regulatory division and as the legislative liaison. My responsibilities include providing legal counsel to the Arkansas State Police concerning background checks that are performed under the Automated Fingerprint Identification System and the Criminal Background Check System. These responsibilities include advising the regulatory division concerning its obligations under Arkansas law with respect to background checks.

2. I have reviewed the declaration of John M. Brooks, Jr. submitted in the above-entitled case as Document 4-2. Mr. Brooks's declaration purports to give his opinions concerning the operation of the Criminal Background Check System.

3. Mr. Brooks is not now and has never been employed by the Arkansas State Police, and his declaration contains several errors and inaccuracies.

4. Mr. Brooks's paragraph 6a states, in part, "If an individual is arrested for a criminal offense, that individual is fingerprinted, and their fingerprint card is transmitted to

ACIC for inclusion in any criminal record search." That is incorrect. The arresting agency transmits the fingerprint card to the Arkansas State Police Automated Fingerprint Identification System. The Arkansas State Police does not transmit fingerprint cards to the Arkansas Crime Information Center for inclusion in criminal record searches. Rather, the Arkansas State Police transmits both the fingerprint cards and the individual's arrest information to the Federal Bureau of Investigation. The Arkansas State police transmits only the individual's arrest information to the Arkansas Crime Information Center.

5. Mr. Brooks's paragraph 6b contains many inaccuracies. It states:

> Offenses in which law enforcement officials do not obtain fingerprints, like civil traffic citations and violations of election laws, are excluded from the data sent to ACIC and Arkansas State Police Criminal Background Check System. Therefore, the state background check cannot identify whether an "individual pled guilty or nolo contendere to violations of election laws, fraud, forgery, or identification theft throughout the United States" as required by Ark. Code Ann. § 7-9-601(d)(3).

6. The Arkansas State Police Criminal Background System contains information about offenses that are Class A violations and above. Violations of election laws are at least Class A misdemeanors. *See, e.g.*, Ark. Code Ann. § 7-9-103(b), (c) (forgery of petition signature); *id.* § 7-9-109 (canvasser's knowing false statement on a petition form); *id.* § 7-9-601(b)(4) (willful violation of paid canvasser laws). Fingerprints are obtained for such offenses, and the system can identify whether a person has a criminal history that includes them.

7. Mr. Brooks's paragraph 7 is misleading. It states:

> The Arkansas State Police Criminal Background Check System and ACIC do not assign a "passing" or "failing" grade. Therefore, an individual cannot "pass" or "fail" a background check obtained through the Arkansas State Police, as required by Ark. Code Ann. § 7-9-601(b)(3).

8. The Arkansas State Police has no responsibility to declare whether a paid canvasser has "passed" or "failed" a criminal background check. *See* Ark. Code Ann. § 7-9-601(b)(1), (3). Determinations of whether a person has "passed" or "failed" a background check are generally within the

purview of the requesting entity and are based on statutory standards applicable to that entity, not to the Arkansas State Police.

9. Mr. Brooks's paragraphs 8 and 9 address the Arkansas State Police's role in a person's obtaining a federal background check. These paragraphs provide incomplete information. Because it is a state agency and lacks proper authority, the Arkansas State Police cannot process a federal background check for a paid canvasser. But one who approaches the Arkansas State Police to obtain state and federal background checks will be provided with ASP Form 122. A true and correct copy of ASP Form 122, for which I am a custodian, is attached as Exhibit A. This form sets out Arkansas State Police activities and is used in the regular course of business.

10. The ASP Form 122 has an "Applicant Record Notice" that includes a citation to the FBI's regulations concerning the procedures to be followed to request a copy of one's federal background criminal history record, Exhibit A at 2 (citing 28 C.F.R. 16.30 to 16.33), as well as the FBI website that explains how to submit a request for a federal background check. The Arkansas State Police will help one obtain fingerprints to submit for the federal background check.

I swear, under the penalty of perjury, that the foregoing statements are true.

Executed September 10, 2020.

Mary Claire McLaurin

ARKANSAS STATE POLICE

ASP 122
(Rev. 02/19/2019)

Identification Bureau
Individual Record Check Request Form

INSTRUCTIONS

If you are mandated by law to have the background check performed, please contact the licensing agency/entity that requires the background check for the proper request form.

1. When **an Arkansas background check** is requested, include a properly completed ***ASP 122*** request form and a check or money order in the amount of **$25.00 (DO NOT SEND CASH)**, made payable to the Arkansas State Police. A fingerprint card is NOT required to be submitted if only the Arkansas background check is requested. The results of the Arkansas background check will be sent to the person/entity as specified on this form.

2. The subject of the criminal records search may challenge the completeness or accuracy of the criminal history information by using the procedures as outlined in Title 28, Code of Federal Regulation (CFR) Section 16.34 and/or Arkansas Code §12-12-1013.

3. If the request is made by mail, an envelope properly addressed to the person/entity to whom the background check will be released, as specified on the ASP 122 form, with sufficient return postage must be included.

4. When the properly completed ***ASP 122*** form is submitted, other than in person at the ASP ID Bureau in Little Rock by the subject of the record check, this request form must be notarized.

5. Send properly completed request form, envelope, and proper payment to:

Arkansas State Police
Identification Bureau
1 State Police Plaza Drive
Little Rock, AR 72209

To contact the Arkansas State Police ID Bureau, you may call **501-618-8500**.

SEE OTHER SIDE FOR REQUEST FORM

ARKANSAS STATE POLICE

ASP 122
(Rev. 02/19/2019)

Identification Bureau
Individual Record Check Request Form

Last Name _____ First Name _____ Middle Name _____ Jr./Sr./III _____

List **ALL** other names ever used (married, maiden, shortened, etc.) _____ Daytime Phone #: _____

Date of Birth: _____ (Month/Day/Year) State of Birth: _____ Race: _____ Sex: _____

Social Security #: _____ Driver's License #: _____ State _____

Mailing Address: _____
Street/P.O. Box

City _____ State _____ Zip Code _____

APPLICANT RECORD NOTICE

Obtaining Copy: Procedures for obtaining a copy of the FBI criminal history record are set forth in Title 28, Code of Federal Regulations (CFR) Section 16.30 through 16.33 or the FBI website at http://www.fbi.gov/about-us/cjis/background-checks.

Change, Correction, or Updating: Procedures for obtaining a change, correction, or updating of an FBI criminal history record are set forth in Title 28, Code of Federal Regulations (CFR), Section 16.34.

I give my consent for the Arkansas State Police to conduct a criminal record search on myself and release any results to the following person or entity:

Signature: _____ (First/MI/Last Name) Date: _____ (Month/Day/Year)

Release to: _____
(First/MI/Last Name) **OR** Full Name of Agency

Mailing Address: _____
Street/P.O. Box

City _____ State _____ Zip Code _____

WHEN THIS PROPERLY COMPLETED REQUEST FORM IS SUBMITTED {OTHER THAN IN PERSON BY THE SUBJECT OF THE CHECK} THIS REQUEST FORM MUST BE NOTARIZED

STATE OF _____

COUNTY OF _____

Subscribed and sworn before me, a Notary Public, in and for the county and state aforesaid, this is the

_____ day of , 20 _____.

_____
Notary Public

BELOW FOR OFFICE USE ONLY

☐ 82005 State Record Check

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