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IN THE ARKANSAS SUPREME COURT

AN ORIGINAL ACTION

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

Vs. **No: CV-20-454**

JOHN THURSTON, in his capacity as
Arkansas Secretary of State **RESPONDENT**

ARKANSANS FOR TRANSPARENCY,
A BALLOT QUESTION COMMITTEE, and
JONELLE FULMER, Individually and on
Behalf of ARKANSANS FOR TRANSPARENCY **INTERVENORS**

MASTER'S REPORT AND FINDINGS OF FACT

By its Per Curiam Opinion delivered July 24, 2020, the Arkansas Supreme Court appointed the Honorable John Fogleman "as special master to resolve the factual disputes raised in the Amended Petition and Ordering the Special Master's Report to be filed no later than August 3, 2020.

The special master has reviewed the Intervenors' Motion to Strike and Dismiss Petitioners' Supplement to the Second Amended Original Action Complaint and Petitioners' Response to Intervenors' Motion to Strike and Dismiss. The Supreme Court, by its Per Curiam delivered July 24, 2020, appointed the special master to "resolve the factual disputes raised in the amended petition." On

July 27, 2020, Petitioners' filed their Second Amended Consolidated Original Action leading to the Supreme Court issuing a second order on July 28, 2020 expanding the special master's authority to issue findings on Count 2 of the Second Amended Complaint and extending the time for the Special Master to file his report until August 10, 2020. The issues raised by the Supplement to the Second Amended Original Action Complaint are legal issues and any factual disputes raised therein are beyond the scope of the Special Master's express authority.

In addition to the Order of the Supreme Court setting the scope of the special master's review and findings, Ark. Code Ann. Section 7-9-126 guides the special master in making factual findings related to the Respondent's initial review of any statewide initiative petition. Section 7-9-126 provides in part:

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

(b) A petition part and all signatures appearing on the petition part shall not be counted for any purpose by the official charged with verifying the signatures, including the initial count of signatures, if one (1) or more of the following is true:

(1) . . .

(2) . . .

(3) . . .

(4) (A) The canvasser is a paid canvasser whose name and the information required under § 7-9-601 were not submitted or updated by the sponsor to the Secretary of State before the petitioner signed the petition.

(B) A canvasser is a paid canvasser if he or she is paid money or anything of value for soliciting signatures before or after the signatures are obtained.

(5) The canvasser verification:(A) Is not notarized;

(B) Is notarized by more than one (1) notary;

(C) Lacks a notary signature or a notary seal; or

(D) Lacks a legible notary signature or a legible notary seal;

(6) The canvasser verification is dated earlier than the date on which a petitioner signed the petition;

(7) . . .

(8) The petition part has a material defect that, on its face, renders the petition part invalid.

(c) The following signatures shall not be counted for any purpose by the official charged with verifying the signatures, including the initial count of signatures:(1) A signature that is not an original signature;

(2) A signature that is obviously not that of the purported petitioner;
(3) A signature that is illegible;
(4) A signature that is not accompanied by personally identifying information;
(5) A signature for which the corresponding printed name, address, birth date, or date of signing is written by someone other than the signer except under circumstances of disability of the signer;
(6) A signature obtained before the filing of the original draft for circulation under § 7-9-107; and
(7) A signature that has any other material defect that, on its face, renders the signature invalid.

FINDINGS OF FACT:

GENERAL FINDINGS

INTRODUCTION: In making these Findings of Fact the Special Master has been guided by this Court's decision in the case of Little Rock School Dist. Of Pulaski County v. Celotex Corp. et al., 264 Ark. 757, 765, 574 S.W.2d 669, 673 (1978) which stated:

> (I)t is plain, if there is no conflict in the evidence and only one reasonable inference can be drawn from the evidence, intent and motive may become a question of law to be determined by the court.

It appears to the special master that the same reasoning would apply beyond the questions of intent and motive. If the evidence is not disputed and only one inference can be drawn from the evidence, then it appears the question would be one of law for the Supreme Court.

1. Arkansas Voters First (hereafter AVF) and Open Primaries Arkansas are ballot question committees registered with the Arkansas Ethics Commission; (Joint Ex 2, Joint Stipulations)
2. Arkansas Voters First is the sponsor of the proposed constitutional amendments at issue in this proceeding: the Arkansas Citizens' Redistricting Commission Amendment (hereafter Redistricting Petition) and a constitutional amendment requiring open primary elections and instant runoff general elections in Arkansas (hereafter Open Primaries Petition) (Joint Ex 2, Joint Stipulations);
3. John Thurston is the Arkansas Secretary of State and is the chair of the State Board of Election Commissioners (Joint Ex 2, Joint Stipulations);
4. AVF submitted two (2) initiative petitions for constitutional amendments on July 6, 2020, in support of AVF's proposed Citizen's Initiative for an Independent Redistricting Commission and a proposed constitutional amendment requiring open primary elections and instant runoff general elections in Arkansas (Petitioners' Ex. 3 & 4);
5. The two (2) initiative petitions at issue in this case were timely filed by AVF on July 6, 2020 (Tr. Vol. 1 pg 36, 39 & 142; Tr. Vol. 2 pg 383);
6. The petition intake process by Respondent is a two-step process. Step one is intake of the petition and step two is verification. (Tr. Vol. 1, pgs 45, 46)
7. Step one of the process (intake) involves taking the Petition Intake Procedure Checklist going through the list of requirements to see if there is a need to go further and verify signatures which is the second step in the petition intake process. (Tr. Vol. 1, pgs 45-76; Petitioners' Exhibit 2)
8. After completion of Step one and culling those petition parts Respondent thought should be culled, the Open Primaries Petition was deemed to have 528 signatures short of those required to move to Step two of the intake process involving verifying that signatures were from registered voters. The Redistricting Petition was deemed to have 1342 signatures more than that required for the second step of the Intake process. (Tr. Vol.1, pg 83)
9. Step two of the process is verification of signatures. At this step, the Respondent takes all petition parts that have not been culled for any of the facial reasons listed in Petitioners' Exhibit 2 and examine them to determine that the person signing is a registered voter. (Tr. Vol.1, pg 76)
10. All parties agreed that the special master was only dealing with Phase one of the Secretary of State's two step or two-phase process. As the hearing

was progressing the process of verifying signatures was on going. (Tr. Vol. 4 Pg 638-640)

11. The Respondent has established a "Petition Intake Procedure Checklist" for its internal use in making an initial facial determination whether a petition contains enough signatures to move to the determination of whether the petition was entitled to a "cure" period. (Petitioner's Exhibit 2, Tr Vol. 1, pgs 98-100)

12. The Respondent faces a daunting task in dealing with any initiative petition because of many factors including the time limits involved and the volume of pages that must be reviewed individually. The Respondent has capable individuals leading the review but must hire temporary workers to assist in the intake process. (Tr. Vol. 1 pg 51, 52)

13. All petition parts are not reviewed by the same employee of Respondent leading to some inconsistency in which petition parts are culled and which parts are accepted. (Tr. Vol. 1 pg 98-99, 131-132)

14. National Ballot Access is a petition circulation company that hires canvassers to collect signatures for the sponsors. They were the company hired to collect signatures on both the Open Primary Petition and the Redistricting Petition. (Tr. Vol. 1, pg 96)
15. On July 14, 2020, the Respondent sent a letter to a representative of the AVF declaring the Redistricting Petition insufficient because the Petitioner purportedly failure to comply with Ark Code Ann. Section 7-9-601(b)(3); (Petitioner's Exhibit 5) (Joint Exhibit 2; Joint Stipulations)
16. On July 14, 2020, the Respondent sent a letter to a representative of the AVF declaring the Petition related to the Open Primaries Petition insufficient because the Petitioner purportedly failure to comply with Ark Code Ann. Section 7-9-601(b)(3); (Petitioner's Exhibit 6) (Joint Exhibit 2; Joint Stipulations)
17. On July 21, 2020, the Respondent sent a second letter to a representative of the AVF declaring the Open Primaries Petition insufficient for additional reasons other than the purported failure to comply with Ark Code Ann. Section 7-9-601(b)(3). Those reasons were that an initial intake analysis had been performed that reflected that 10,208 signatures had been culled, leaving

a total of 88,623 signatures; (Petitioner's Exhibit 7) (Joint Exhibit 2; Joint Stipulations)

18. On July 23, 2020, the Respondent sent a second letter to a representative of the AVF related to the Redistricting Petition stating that the Respondent had completed the intake analysis procedure and that a total of 4,579 signatures had been culled leaving a total of 90,493 signatures on the face of the petition; (Petitioner's Exhibit 11) (Joint Exhibit 2; Joint Stipulations)
19. A total of 89,151 signatures are required on the face of either initiative petition in question to require additional analysis by the Respondent beyond a facial review of the petition; (Joint Exhibit 1 at pgs 2-4, 60)
20. Bonnie Miller is the chair of Arkansas Voters First and is an Arkansas resident, citizen and registered voter (Joint Stipulation, Exhibit 2);
21. Arkansans for Transparency is a ballot question committee duly registered with the Arkansas Ethics Commission (Joint Stipulation Ex. 2);
22. Jonelle Fulmer is an Arkansas citizen, resident and registered voter and the chair of Arkansans for Transparency (Joint Stipulation Ex. 2);
23. In support of the Open Primaries Petition AVF submitted more than 94,000 signatures; (Joint Stipulation Ex 2)
24. In support of the Redistricting Petition AVF submitted more than 93,000 signatures; (Joint Stipulation Ex 2)
25. On the initial intake of petitions to determine if the petition signatures need verification the Respondent will accept a petition part with the date of signing left blank and will not remove those petition parts from the initial count. (Testimony of Josh Bridges; Tr. Vol. 1, pgs 147, 148)
26. The Secretary of State sent "insufficiency" letters to AVF regarding the Redistricting Petition dated July 14, 2020 and July 23, 2020. (Petitioners' Exhibits 5 and 11, Joint Exhibit 2, Joint Stipulations with Handwritten Notes)
27. The Secretary of State indicated that after the intake analysis procedure, AVF was left with 90,493 facially valid signatures in support of the Redistricting Petition. Even though the petitions contained more facially valid signatures than the required 89,151 the Secretary of State found the petition insufficient for failure to comply with Ark. Code Ann. Section 7-9-610(b)(3). (Petitioners' Exhibit 11)
28. The Secretary of State sent "insufficiency letters to AVF regarding the Open Primaries Petition dated July 14, 2020 and July 21, 2020. (Petitioners' Exhibits 6 and 7, Joint Exhibit 2, Joint Stipulations with Handwritten Notes)

29. The Secretary of State indicated that after the intake analysis procedure, AVF was left with 88,623 facially valid signatures in support of the Open Primaries Petition which were less than the required 89,151 signatures and found the petition insufficient for this reason and failure to comply with Ark. Code Ann. Section 7-9-601(b)(3). (Petitioners' Exhibit 7)

CERTIFICATIONS MADE BY PETITIONER TO THE SECRETARY OF STATE IN REGARD TO BACKGROUND CHECKS OF CANVASSERS

Ark. Stat. Ann. Section 7-9-601(b)(1) provides:

> (1) To verify that there are no criminal offenses on record, a sponsor shall obtain, at the sponsor's cost, from the Division of Arkansas State Police, a current state and federal criminal record search on every paid canvasser to be registered with the Secretary of State.

Ark. Stat. Ann. Section 7-9-601(b)(3) provides:

> (2) Upon submission of the sponsor's list of paid canvassers to the Secretary of State, the sponsor **shall certify** to the Secretary of State that each paid canvasser in the sponsor's employ **has passed a criminal background check** in accordance with this section. (emphasis added)

Ark. Stat. Ann. Section 7-9-601(f) provides:

> (f) Signatures incorrectly obtained or submitted under this section shall not be counted by the Secretary of State for any purpose.

In regard to the "certification" in relation to a criminal background check the special master makes the following findings:

30. AVF submitted (on both initiative petitions) with each list of paid canvassers a certification as follows:

"On behalf of the sponsors, Arkansas Voters First, this statement and submission of names serves as certification that a statewide Arkansas State

Police background check, as well as, 50-state criminal background check have been timely acquired in the 30 days before the first day the Paid canvasser begins to collect signatures as required by Act 1104 of 2017." (Petitioners' Ex. 12; Tr. Vol. 1 pgs 60-65)

31. The issue raised by the Respondent and Intervenor contend the certification fails to comply with the statute because it states that a background check has been "acquired" rather than "passed" as stated in the statute. Intervenor raises a second issue contending the certification is inadequate for failure to obtain the required federal background check.

FEDERAL CRIMINAL RECORD SEARCH

A sub-issue under the requirement of the certification is the requirement in Ark. Code Ann. Section 7-9-601(b)(1) that the sponsor "shall obtain . . . from the Division of Arkansas State Police, a current . . . federal criminal record search on every paid canvasser. . ."

32. The requirement in Ark. Code Ann. Section 7-9-601(b)(1) that a sponsor obtain from the Division of the Arkansas State Police of a federal background check is a requirement that a sponsor cannot meet. The proof established clearly that the Arkansas State Police cannot obtain a federal background check for the purposes of the statute. (Tr. Vol. 3 pg 498-505)

33. National/FBI background checks are through the Division of the Arkansas State Police are only available to those with specific access authorization to National/FBI records checks under state or federal law. (Intervenors Exhibit 20)

34. The Arkansas State Police cannot provide federal background checks for sponsors of statewide initiative or referenda and has never done so. (Tr. Vol. 3 pg 504-505)

35. The Arkansas State Police can assist individuals with having their fingerprints taken. (Tr. Vol. 3 pg 510)

36. Judicial Notice (if appropriate under the authority given the special master) was taken of Exhibit 21, 28 C.F.R. Section 1630-1633.

37. National Ballot Access, a private company, provided canvassing services for Arkansas Voters First regarding the "Arkansas Citizens' Redistricting

Commission Amendment". National Ballot Access and Arkansas Voters First tried to comply with the requirement of obtaining a federal background check via a number of private companies, including BeenVerified and Sentrylink. (Tr. Vol. 3, Pg. 425-426; 436-441; 447-448)

38. If the Supreme Court concludes that there is only one reasonable interpretation that can be drawn from the undisputed facts in regard to the certification, then the question of the adequacy of the certification appears to be a question of law for the Court to decide. The facts are not in dispute, but the meaning of those facts is disputed. In the event the court finds that the application of the statute to the undisputed language of the certification is subject to more than one reasonable interpretation and is a question of fact, I find that the language of the certification does not certify that the canvasser has "passed" a background check and does not comply with Arkansas law. Neither petition in question has enough facially valid signatures to require verification of signatures if the certification given in this case is inadequate.

If the court concludes the certification language complies with Ark. Code Ann. Section 7-9-601(b)(7) further analysis is required and the special master makes the following findings:

OPEN PRIMARIES AND INSTANT RUN-OFF

39. The Secretary of State in finding the Open Primaries Petition "insufficient" found that only 88,623 signatures on this petition were facially valid while 89,151 facially valid signatures were required. The Open Primaries Petition needed an additional 528 signatures for it to move to the second phase of the process. (Petitioners' Ex. 7; Joint Ex. 1)
40. The Secretary of State in its letter to AVF regarding the Open Primaries Petition provided a number of specific reasons for removing (culling) 10,208 signatures obtained on the Open Primaries Petition. Those reasons included:
    - **a.** Some signatures solicited by a paid canvasser before the canvasser was registered;
    - **b.** Some petition parts were submitted for paid canvassers who were never registered;
    - **c.** Some signatures were solicited by paid canvassers, but the canvasser's signature card was never filed with Secretary of State;
    - **d.** Some petition parts were not notarized;

e. Some petition parts contained verifications before the date on which a petitioner signed the petition; and

f. Some petition parts did not conform to the original draft.

(Petitioners' Exhibit 7)

41. If a single signature on a petition part was found lacking pursuant to Ark. Code Ann. Section 7-9-126 then the entire petition part (and all signatures contained on it) are culled and are not counted for determining facial validity. (Ark. Code Ann. Section 7-9-126; Tr. Vol. 1 pg 51-53)
42. Some of the "culls" (removal of petition parts from the facial validity count) have been acknowledged by the Secretary of State to have been in error. They are as follows:
    a. Canvasser Whitney Tullgren—33 signatures should not have been culled and should be counted to determine facial validity;
    b. Canvasser Carolyn Brinnon—2 signatures should not have been culled and should be counted to determine facial validity;
    c. Canvasser Ronae Walton—48 signatures should not have been culled and should be counted to determine facial validity;
    d. Canvasser Jorge Argeta—1 signature should not have been culled and should be counted to determine facial validity;

    The signatures obtained by the above canvassers that it is admitted should not have been culled total **84**. (Tr. Vol. 4 pgs 598-600)

43. Ark Code Annotated 7-9-126 (b)(6) provides in part:

    (a) . . .

    (b) A petition part and all signatures appearing on the petition part shall not be counted for any purpose by the official charged with verifying the signatures, including the initial count of signatures, if one (1) or more of the following is true:

    (1) . . .

    (6) The canvasser verification is dated earlier than the date on which a petitioner signed the petition;

    The following petition parts were culled by the Secretary of State and this was the only reason given. On the following petition parts, the date listed as having been signed, is a date the petition could not possibly have been signed. The testimony established that all petition parts were filed with the

Secretary of State **July 6, 2020**. (Tr. Vol. 1 pgs 42, 73-74; Vol. 2 pgs 361, 365, 382) It was also established that the Secretary of State would not cull a petition at this stage if the date of signing was left blank because he could not state it was signed after the verification date. (Tr. Vol. 1 pgs 147-148, 150, 159). It is found as a fact that the date the petition was actually signed on the following petition parts is undetermined and therefor there is no evidence that it was signed after the verification day.

a. Petition Number—**45570**—The verification day is July 5, 2020. The date of birth is shown as 7-5-20. Date of signing is shown as 5-25-88. Impossible to have been signed that date. The petition was not a figment of anyone's imagination in 1988. It is a fact that the actual date of signing is undetermined. (Petitioners' Ex 16 pg 5, 6; Tr. Vol. 1 pg 113-114) (10 signatures excluded from facial count)

b. Petition Number—**35670**— The petition was culled because verification date is before date petitioner "signed" on lines 2 and 7. The verification date is listed as July 1, 2020. The date of signing is listed on line 2 as 27/1/20 and line 7 as 7/12/20 There is no month known as the 27th month. It is a fact that the actual date of signing is undetermined. (Petitioners' Ex 16 pg 6, 7; Tr. Vol. 1, pg 114) (7 signatures excluded from initial count)

c. Petition Number **32082**— The petition was culled because verification day is "before date petitioners signed (only reason provided). The verification day was 7/6/20. Line 1 shows a date of signing of 7/7/2020, a date for which it was impossible to have been signed. The petition was exclusively in the hands of the SOS since the petition was filed on 7/6/20. It is a fact that the actual date of signing is undetermined. (1 signature excluded from initial count) (Petitioners' Ex 16 pg 9, 10; Tr. Vol. 1, pgs 147, 148)

d. Petition Number **32659**—This petition was culled because verification day is "before date petitioners signed (only reason provided). The verification day was 7/5/20. Line 5 shows a date of signing of 7/30/2020, a date for which it was impossible to have been signed. It is found as a fact that petition was signed on an undetermined date. (Petitioners' Ex

16 pg 23, 24; Tr. Vol. 1 pg 119) (5 signatures excluded from initial count)

e. Petition Number **33090**—This petition was culled because verification day is "before date petitioners signed (only reason provided). The verification day was 7/3/20. Line 1 shows a date of signing of 7/22/2020, a date for which it was impossible to have been signed. It is found to be a fact that the petition was signed on an undetermined date and there is no evidence that it was signed after the verification day (Petitioners' Ex 16 pg 35, 36; Tr. Vol. 1 pg (1 signature excluded from initial count)

f. Petition Number **32087**—This petition was culled because verification day is "before date petitioners signed (only reason provided). The verification day was 7/5/20. Line 2 shows a date of signing of 8/12/2020, a date for which it was impossible to have been signed. The petition was exclusively in the hands of the SOS since the petition was filed on 7/6/20. It is found to be a fact that the petition was signed on an undetermined date and there is no evidence that it was signed after the verification day. (Petitioners' Ex 16 pg 27, 28; Tr. Vol. 1 pg 120) (2 signatures excluded from initial count)

g. Petition Number **31867**—This petition was culled because verification day is "before date petitioners signed (only reason provided). The verification day was 6/11/20. Line 1 shows a date of signing of what appears to be 10/6/2020, a date for which it was impossible to have been signed. It is found to be a fact that the petition was signed on an undetermined date and there is no evidence that it was signed after the verification day. (Petitioners' Ex 16 pg 39, 40) (1 signature excluded from initial count)

h. Petition Number **31243**—This petition was culled because the verification day is "before date petitioners signed" (only reason provided). The verification day was 6/29/20. Line 7 shows a date of signing of 7/27/2020, a date for which it was impossible to have been signed. Every other date shown for date signed on page is 6/27/20. It is found to be a fact that the petition was signed on an undetermined date and there is no

evidence that it was signed after the verification day (Petitioners' Ex 16 pg 31, 32; Tr. Vol. 1 pg 121) (10 signatures excluded from initial count)

i. Petition Number **30133**—This petition was culled because verification day is "before date petitioners signed (only reason provided). The verification day was 6/15/20. Line 1 shows a date of signing of 9/6/2020, a date for which it was impossible to have been signed. It is found to be a fact that the petition was signed on an undetermined date and there is no evidence that it was signed after the verification day. (Petitioners' Ex 16 pg 47, 48; Tr. Vol. 1 pg 122, 123) (9 signatures excluded from initial count)

j. Petition Number **30255**—This petition was culled because verification day is "before date petitioners signed (only reason provided). The verification day was 6/18/20. Line 2 shows a date of signing of either 6/17/2020 or 8/17/20, a date for which it was impossible to have been signed. It is found to be a fact that the petition was signed on an undetermined date and there is no evidence that it was signed after the verification day. (Petitioners' Ex 16 pg 51, 52; Tr. Vol. 1 pg 123) (5 signatures excluded from initial count)

k. Petition Number **30475**—This petition was culled because verification day is "before date petitioners signed (only reason provided). The verification day was 6/15/20. Line 1 & 2 show a date of signing of 7/19/20, a date for which it was impossible to have been signed. It is found to be a fact that the petition was signed on an undetermined date and there is no evidence that it was signed after the verification day. (Petitioners' Ex 16 pg 53, 54) (2 signatures excluded from initial count)

l. Petition Number **30578**—This petition was culled because verification day is "before date petitioners signed" on lines 2 and 3 (only reason provided). The verification day was 7/5/20. Line 2 shows a date of signing of what appears to be 7/4/199? And line 3 shows a date of signing Respondent testified was 7/11/20, both dates for which it was impossible to have been signed. It is found to be a fact that the petition was signed on an undetermined date and there is no evidence that it was

signed after the verification day. (Petitioners' Ex 16 pg 57, 58; Tr. Vol. 1 pg 128) (6 signatures excluded from initial count)

m. Petition Number **44261**—This petition was culled because verification day is "before date petitioners signed" (only reason provided). The verification day was 7/5/20. Line 1 shows a date of signing of 7/8/2020, a date for which it was impossible to have been signed. It is found to be a fact that the petition was signed on an undetermined date and there is no evidence that it was signed after the verification day. (Petitioners' Ex 16 pg 63, 64; Tr. Vol. 1 pg 130) (10 signatures excluded from initial count)

n. Petition Number **45646**—This petition was culled because verification day is "before date petitioners signed" (only reason provided). The verification day was 7/5/20. Line 5 shows a date of signing of 7/20/2020, a date for which it was impossible to have been signed. It is found to be a fact that the petition was signed on an undetermined date and there is no evidence that it was signed after the verification day. (Petitioners' Exhibit 16 pg 69, 70; Tr. Vol. 1, pg 133) (8 signatures excluded from initial count)

o. Petition Number **44889**—This petition was culled because verification day is "before date petitioners signed" (only reason provided). The verification day was 7/3/20. Line 9 shows a date of signing of 7/31/2020, a date for which it was impossible to have been signed. It is found to be a fact that the petition was signed on an undetermined date and there is no evidence that it was signed after the verification day. (Petitioners' Exhibit 16 pg 73, 74; Tr. Vol. 1 pg 134) (9 signatures excluded from initial count)

p. Petition Number **43544**—This petition was culled because date of signing on line 4 is after verification date. The verification day was 6/18/20. The date of signing is ambiguous. The listed date is 6/81/20 when other dates on sheet are 6/18. 6/81/20 is a date that does not exist, and it was impossible to have signed on that date. Respondent representative testified in regard to dates that do not relate to our calendar and stated, "we do cull them because we don't know for sure when they signed them"

(Tr. Vol. 1 pgs 135-136) —The same witness later testified "If the date of signing is blank, we won't cull it for that reason. If the date of signing is simply just completely illegible, we won't cull it for that reason" Found to be a fact that the petition was signed on an undetermined date and there is no evidence that it was signed after the verification day. (Petitioners' Ex 16 pg 79, 80) (Tr. Vol. 1 pg 135-136) (6 signatures excluded from facial count)

q. Petition Number **46129**—This petition was culled because verification day is "before date petitioners signed" (only reason provided). The verification day was 7/3/20. Line 3 shows a date of signing that the Secretary of State read to be 7/3/27, a date for which it was impossible to have been signed and a date that will not come for seven (7) years. It is found to be a fact that the petition was signed on an undetermined date and there is no evidence that it was signed after the verification day. (Petitioners' Exhibit 16 pgs 87, 88, Tr. Vol. 1 pg 136-137) (3 signatures excluded from initial count)

r. Petition Number **45494**—This petition was culled because verification day is "before date petitioners signed" (only reason provided). The verification day was 7/5/20. Line 10 shows a date of signing of 7/30/2020, a date for which it was impossible to have been signed. It is found to be a fact that the petition was signed on an undetermined date and there is no evidence that it was signed after the verification day. (Petitioners' Exhibit 16 pgs 91, 92, Tr. Vol. 1 pg 139) (10 signatures excluded from initial count)

s. Petition Number **45695**—This petition was culled because of line 2. The representative of the Secretary of State testified that the petitioner placed the date of signing as either 6/27/1927 or 6/27/2027 and that the petition was culled because "it does not fall within the date range" (Tr. Vol. 1 pg 140) (only reason provided). The verification day was 7/5/20. Line 2 shows a date of signing of 6/27/27, a date for which it was impossible to have been signed. On the face of the petition, the petitioner was not alive in 1927 and the year 2027 has not arrived. It is found to be a fact that the petition was signed on an

undetermined date and there is no evidence that it was signed after the verification day (Petitioners' Exhibit 16 pg 101, 102, Tr. Vol. 1, pg 140) (2 signatures excluded from initial count)

t. Petition Number **39519**—This petition was culled because of date of signing on line 1 is after verification date. The Secretary of State believes the date to be 10/29/20, a date for which it was impossible to have been signed (a date in the future). The verification day was 6/29/20. It is found to be a fact that the petition was signed on an undetermined date and there is no evidence that it was signed after the verification day. (Petitioners' Exhibit 16 pg 109, 110, Tr. Vol. 1, pg 141) (10 signatures excluded from initial count)

u. Petition Number **39570**—This petition was culled because of lines 4-7 date of signing is after the verification date (only reason provided). Lines 4, 5, 6 and 7 are all dated 7/7/20, date for which it was impossible to have been signed. The petition was exclusively in the hands of the SOS since the petition was filed on 7/6/20. It is found to be a fact that the petition was signed on an undetermined date and there is no evidence that it was signed after the verification day. (Petitioners' Exhibit 16 pgs 111, 112, Tr. Vol. 1, pg 141-143) (9 signatures excluded from initial count)

v. Petition Number **39576**—This petition was culled because verification day is "before date petitioners signed" on Line 1 (only reason provided). The verification day was 7/6/20. Line 1 shows a date of signing that the Secretary of State determined to be 7/7/2020, a date for which it was impossible to have been signed. It is found to be a fact that the petition was signed on an undetermined date and there is no evidence that it was signed after the verification day. (Petitioners' Exhibit 16 pg 113, 114, Tr. Vol. 1, pg 143)— (10 signatures excluded from facial count)

w. Petition Number **40479**—This petition was culled because verification day is "before date petitioners signed" (only reason provided). The verification day was 7/3/20. Line 6 shows a date of signing that might be 7/13/2020, a date for which it was impossible to have been signed. In this case line 3 was left

blank and the Secretary of State had no problem with this signature. It is found as a fact that the date the petition was actually signed is undetermined and therefor there is no evidence that it was signed after the verification day. (Petitioners' Exhibit 16 pg 119, 120, Tr. Vol. 1, pg 144) (10 signatures excluded from facial count)

x. Petition Number **37696**—This petition was culled because verification day is "before date petitioners signed" (only reason provided) The verification day was 6/18/20. Line 1 shows a date of signing that is probably 7/17/2020, a date for which it was impossible to have been signed. It is found as a fact that the date the petition was actually signed is undetermined and therefor there is no evidence that it was signed after the verification day. (Petitioners' Exhibit 16 pg 115, 116) (1 signature excluded from facial count)

y. Petition Number **40465**—This petition was culled because of line 1 verification day is before date petitioner signed. The verification date is 7/3/20 and "date of signing listed is 7/30/20 which is an impossibility since the petition was filed July 6. It is found as a fact that the date the petition was actually signed is undetermined and therefor there is no evidence that it was signed after the verification day (Petitioners' Exhibit 16 pg 123, 124, Tr. Vol. 1, pg 144) (7 signatures excluded from initial count)

z. Petition Number **40496**—This petition was culled because of lines 3 and 4, "date of signing is after verification date" (only reason provided). The verification day is 7/3/20. Lines 3 and 4 are dated 7/20/20, dates for which it was impossible to have been signed. It is found to be a fact that the petition was signed on an undetermined date and there is no evidence that it was signed after the verification day. (Petitioners' Exhibit 16 pg 127, 128, Tr. Vol. 1, pg 145) (8 signatures excluded from initial count)

aa. Petition Number **42354**—This petition was culled because of line 3 date of signing is after verification date (only reason provided). The verification day is 7/6/20. Line 3 is dated 7/7/20, a date for which it was impossible to have been signed.

The petition was exclusively in the hands of the SOS since the petition was filed on 7/6/20. In this case line 4 was left blank but that was not a reason for the cull. It is found to be a fact that the petition was signed on an undetermined date and there is no evidence that it was signed after the verification day. (Petitioners' Exhibit 16 pg 143, 144, Tr. Vol. 1, pg 147-149) (8 signatures excluded from initial count)

bb. Petition Number **31470**—This petition was culled because the canvasser verification day is before "date petitioners signed" on line 2. The verification day was 7/5/20. The date of signing on line 2 is shown as 7/15/20. It was not possible for the petition to have been signed on 7/15/20. It is found to be a fact that the petition was signed on an undetermined date and there is no evidence that it was signed after the verification day. (Petitioners' Exhibit 16 pg 147, 148, Tr. Vol. 1, pg 149) (2 signatures excluded from initial count)

cc. Petition Number **34138**—This petition was culled because the verification day is "before date petitioners signed" on line 8. The date signed on line 8 is shown to be 7/30/20 which could not possibly be correct. The verification date is 7/5/20. It is found to be a fact that the petition was signed on an undetermined date and there is no evidence that it was signed after the verification day. (Petitioners' Exhibit 16 pg 151, 152, Tr. Vol. 1, pg 149-150) (8 signatures excluded from initial count)

dd. Petition Number **36787**—This petition was culled because verification day is "before date petitioners signed" on line 1 which is dated 7/27/20. The petition was filed 7/6/20. The verification day is 6/29/20. It was impossible for petition to have been signed on 7/27/20. It is found to be a fact that the petition was signed on an undetermined date and there is no evidence that it was signed after the verification day. (Petitioners' Exhibit 16 pg 159, 160, Tr. Vol. 1, pg 151) (5 signatures excluded from initial count)

ee. Petition Number **37195**—This petition was culled because the verification day is "before date petitioners signed" on line 2. The verification date was 6/11/20. The date for signing is

shown as 8/03/20 which was an impossible date for the petition to have been signed because this petition part was in the exclusive possession of the SOS since July 6, 2020. It is found to be a fact that the petition was signed on an undetermined date and there is no evidence that it was signed after the verification day—(Petitioners' Ex 16 pg 189, 190; Tr. Vol. 1 pg 155) (2 signatures excluded from initial count)

ff. Petition Number **33752**—This petition was culled because verification day is "before date petitioners signed (only reason provided). The verification day was 6/22/20. Line 1 shows a date of signing of 9/20/2020, a date for which it was impossible to have been signed. It is found to be a fact that the petition was signed on an undetermined date and there is no evidence that it was signed after the verification day—(Petitioners' Exhibit 16 pg 193, 194, Tr. Vol. 1, pg 156) (2 signatures excluded from initial count)

gg. Petition Number **34966**—This petition was culled because verification day is "before date petitioners signed (only reason provided). The verification day was 7/5/20. Line 2 shows a date of signing of 7/7/2020, a date for which it was impossible to have been signed. It is found to be a fact that the petition was signed on an undetermined date and there is no evidence that it was signed after the verification day. (Petitioners' Exhibit 16 pg 199, 200, Tr. Vol. 1, pg 157) (2 signatures excluded from initial count)

hh. Petition Number **35351**—This petition was culled because verification day is "before date petitioners signed (only reason provided). The verification day was 7/6/20. Line 1 shows a date of signing of 7/7/2020, a date for which it was impossible to have been signed. It is found to be a fact that the petition was signed on an undetermined date and there is no evidence that it was signed after the verification day. (Petitioners' Exhibit 16 pg 209, 210) (1 signature excluded from initial count)

ii. Petition Number **35349**—This petition was culled because verification day is "before date petitioners signed (only reason provided). The verification day was 7/6/20. Line 2 shows a

date of signing of 7/7/2020, a date for which it was impossible to have been signed. It is found to be a fact that the petition was signed on an undetermined date and there is no evidence that it was signed after the verification day. (Petitioners' Exhibit 16 pg 211, 212) (1 signature excluded from initial count)

jj. Petition Number **35339**—This petition was culled because verification day is "before date petitioners signed (only reason provided). The verification day was 7/6/20. Line 1 and 2 show a date of signing of 7/7/2020, a date for which it was impossible to have been signed. It is found to be a fact that the petition was signed on an undetermined date and there is no evidence that it was signed after the verification day. (Petitioners' Exhibit 16 pg 213, 214) (2 signatures excluded from initial count)

kk. Petition Number **35622**—This petition was culled because verification day is "before date petitioners signed (only reason provided). The verification day was 7/1/20. Line 2 shows a date of signing of 7/24/2020, a date for which it was impossible to have been signed. It is found to be a fact that the petition was signed on an undetermined date and there is no evidence that it was signed after the verification day. (Petitioners' Exhibit 16 pg 215, 216, Tr. Vol. 1 pgs 160-161) (2 signatures excluded from initial count)

ll. Petition Number **34410**—This petition was culled because verification day is "before date petitioners signed" on line 1 (only reason provided). The verification day was 6/29/20, Line 1 shows a date of signing of 7/23/2020, a date for which it was impossible to have been signed. It is found to be a fact that the petition was signed on an undetermined date and there is no evidence that it was signed after the verification day. (Petitioners' Exhibit 16 pg 219, 220; Tr. Vol. 1 pg 161) (3 signatures excluded from initial count)

mm. Petition Number **46469**—This petition was culled because verification day is "before date petitioners signed (only reason provided). The verification day was 6/29/20. Line 1 shows a date of signing of 7/28/2020, a date for which it was

impossible to have been signed. It is found to be a fact that the petition was signed on an undetermined date and there is no evidence that it was signed after the verification day. (Petitioners' Exhibit 16 pg 223, 224, Tr. Vol 1 pg 161) (10 signatures excluded from initial count)

nn. Petition Number **46491**—This petition was culled because verification day is "before date petitioners signed (only reason provided). The verification day was 6/29/20. On the cull form the stated reason for the cull is line 1 but in testimony line 3 was added. Line 1 shows a date of signing of 7/27/2020 and line 3 shows a date of signing of 7/29/20, dates for which it was impossible to have been signed. It is found to be a fact that the petition was signed on an undetermined date and there is no evidence that it was signed after the verification day. (Petitioners' Exhibit 16 pg 229, 230, Tr. Vol. 1 pg 163) (9 signatures excluded from initial count)

oo. Petition Number **40655**—This petition was culled because verification day is "before date petitioners signed on lines 2 and 3 (reality lines 1 and 4 have same issue) and this was the only reason provided. The verification day was 6/22/20. Lines 1-4 show dates of signing in October 2020, dates for which it was impossible to have been signed. It is found to be a fact that the petition was signed on an undetermined date and there is no evidence that it was signed after the verification day. (Petitioners' Exhibit 16 pg 233, 234, Tr. Vol. 1 pgs 164, 165) (10 signatures excluded from initial count)

pp. Petition Number **39648**—This petition was culled because verification day is "before date petitioners signed (only reason provided). The verification day was 6/22/20. Line 1 shows a date of signing of 7/7/2020, a date for which it was impossible to have been signed. It is found to be a fact that the petition was signed on an undetermined date and there is no evidence that it was signed after the verification day. (Petitioners' Exhibit 16 pg 235, 236, Tr. Vol. 1 pg 164) (7 signatures excluded from initial count)

qq. Petition Number **40164**—This petition was culled because verification day is "before date petitioners signed (only reason

provided). The verification day was 7/5/20. Line 9 shows a date of signing of 7/11/2020, a date for which it was impossible to have been signed. It is found to be a fact that the petition was signed on an undetermined date and there is no evidence that it was signed after the verification day. (Petitioners' Exhibit 16 pg 239, 240, Tr. Vol. 1, pg 164) (10 signatures excluded from initial count)

rr. Petition Number **37843**—This petition was culled because verification day is "before date petitioners signed (only reason provided). The verification day was 7/3/20. Line 7 shows a date of signing of 7/31/2020, a date for which it was impossible to have been signed. It is found to be a fact that the petition was signed on an undetermined date and there is no evidence that it was signed after the verification day. (Petitioners' Ex 16 pg 241, 242; Tr. Vol. 1 pg 164) (8 signatures excluded from initial count)

ss. Petition Number **39609**—This petition was culled because verification day is "before date petitioners signed (only reason provided). The verification day was 7/6/20 (the date the petitions were filed). Lines 6-10 show a date of signing of 7/7/2020, a date for which it was impossible to have been signed. It is found to be a fact that the petition was signed on an undetermined date and there is no evidence that it was signed after the verification day. (Petitioners' Exhibit 16 pg 261, 262; Tr. Vol. 1 pg 170) (10 signatures excluded from initial count)

tt. Petition Number **44451**—This petition was culled because verification day is "before date petitioners signed" (only reason provided). The verification day was 6/22/20. Line 1 shows a date of signing of 7/21/2020, a date for which it was impossible to have been signed. It is found to be a fact that the petition was signed on an undetermined date and there is no evidence that it was signed after the verification day. (Petitioners' Exhibit 16 pg 263, 264, Tr. Vol. 1 pg 170) (6 signatures excluded from initial count)

uu. Petition Number **44655**—This petition was culled because verification day is "before date petitioners signed" on line 8

(only reason provided). The verification day was 6/18/20. Line 8 shows what might be a date of signing of 8/17/2020, a date for which it was impossible to have been signed. In testimony representative of the Secretary of State also pointed to lines 5 and 7 which bear the same date. The petition was exclusively in the hands of the SOS since the petition was filed on 7/6/20. It is found to be a fact that the petition was signed on an undetermined date and there is no evidence that it was signed after the verification day. (Petitioners' Exhibit 16 pg 265, 266; Tr. Vol. 1 pg 170, 171) (10 signatures excluded from initial count)

vv. Petition Number **40356**—This was petition was culled because verification day is "before date petitioners signed (only reason provided). The verification day was 7/3/20. Lines 3 and 4 show a date of signing of 7/30/2020, a date for which it was impossible to have been signed. It is found to be a fact that the petition was signed on an undetermined date and there is no evidence that it was signed after the verification day. (Petitioner's Exhibit 16 pg 269, 270; Tr. Vol. 1 pg 171) (10 signatures excluded from initial count)

ww. Petition Number **40924**—petition was culled because verification day is "before date petitioners signed (only reason provided). The verification day was 6/18/20. The representative of the Secretary of State's office testified that line 6 was the reason for the cull and that it showed a date of signing of 6/16/2030. This is a date for which it was impossible to have been signed. It is found to be a fact that the petition was signed on an undetermined date and there is no evidence that it was signed after the verification day. (Petitioners' Exhibit 16 pg 271, 272; Tr. Vol. 1 pg 171, 172) (10 signatures excluded from initial count)

xx. Petition Number **40515**—This petition was culled because verification day is "before date petitioners signed (only reason provided). The verification day was 7/3/20. Line 4 shows a date of signing of 7/20/2020, a date for which it was impossible to have been signed. It is found to be a fact that the petition was signed on an undetermined date and there is no

evidence that it was signed after the verification day. (Petitioner's Exhibit 16 pg 275, 276; Tr. Vol. 1 pg 172) (10 signatures excluded from initial count)

yy. Petition Number **40534**—This petition was culled because verification day is "before date petitioners signed" on line 3 (only reason provided). The verification day was 7/3/20. Line 3 shows a date that appears to be 12/2/20, a date for which it was impossible to have been signed. It is found to be a fact that the petition was signed on an undetermined date and there is no evidence that it was signed after the verification day. (Petitioner's Exhibit 16 pg 277, 278; Tr. Vol. 1 pg 173) (8 signatures excluded from initial count)

zz. Petition Number **40540**—This petition was culled because verification day is "before date petitioners signed (only reason provided). The verification day was 6/22/20. Line 1 shows a date of signing of 9/20/2020, a date for which it was impossible to have been signed. It is found to be a fact that the petition was signed on an undetermined date and there is no evidence that it was signed after the verification day. (Petitioner's Exhibit 16 pg 279, 280) (1 signature excluded from initial count)

aaa. Petition Number **40559**—This petition was culled because verification day is "before date petitioners signed" (only reason provided). The verification day was 7/3/20. Line 8 shows a date of signing of 7/14/2020, a date for which it was impossible to have been signed. It is found to be a fact that the petition was signed on an undetermined date and there is no evidence that it was signed after the verification day. (Petitioner's Exhibit 16 pg 281, 282; Tr. Vol. 1 pg 173) (9 signatures excluded from initial count)

bbb. Petition Number **39424**—This petition was culled because verification day is "before date petitioners signed" (only reason provided). The verification day was 7/1/20. Line 10 shows a date of signing that representative of the Secretary of State acknowledges could be read as 7/1/20 but chose instead to read it as 7/11/20, a date for which it was impossible to have been signed, It is found to be a fact that the petition was signed on

an undetermined date and there is no evidence that it was signed after the verification day. (Petitioner's Exhibit 16 pg 283, 284; Tr. Vol. 1 pg 173-174) (9 signatures excluded from initial count)

ccc. Petition Number **39478**—This petition was culled because verification day is "before date petitioners signed" (only reason provided). The verification day was 6/29/20. Line 1 shows a date of signing of 7/29/2020, a date for which it was impossible to have been signed. It is found to be a fact that the petition was signed on an undetermined date and there is no evidence that it was signed after the verification day. (Petitioner's Exhibit 16 pg 285, 286; Tr. Vol. 1 pg 174) (7 signatures excluded from initial count)

ddd. Petition Number **42655**—This petition was culled because verification day is "before date petitioners signed" (only reason provided). The verification day was 6/29/20. Line 1 shows a date of signing of 7/26/2020, a date for which it was impossible to have been signed. It is found to be a fact that the petition was signed on an undetermined date and there is no evidence that it was signed after the verification day. (Petitioner's Exhibit 16 pg 293, 294; Tr. Vol. 2 pg 189) (1 signature excluded from initial count)

eee. Petition Number **42853**—This petition was culled because verification day is "before date petitioners signed" (only reason provided). The verification day was 7/5/20. Line 9 shows a date of signing of 7/15/2020, a date for which it was impossible to have been signed. It is found to be a fact that the petition was signed on an undetermined date and there is no evidence that it was signed after the verification day. (Petitioner's Exhibit 16 pg 297, 298; Tr. Vol. 2 pg 190) (9 signatures excluded from initial count)

fff. Petition Number **42883**—This petition was culled because verification day is "before date petitioners signed" (only reason provided). The verification day was 7/3/20. Line 6 shows a date of signing of 7/20/2020, a date for which it was impossible to have been signed. It is found to be a fact that the petition was signed on an undetermined date and there is no

evidence that it was signed after the verification day. (Petitioner's Exhibit 16 pg 299, 300; Tr. Vol. 2 pg 191) (7 signatures excluded from initial count)

ggg. Petition Number **42997**—This petition was culled because verification day is "before date petitioners signed" (lines 5 and 7 are the only reason provided). The verification day was 7/6/20. Line 5 shows a date of signing that appears to be 7-26 and line 7 just has scribbles in blank. The representative of the Secretary of State testified that the date was March 1945. The date on line 5 is a date for which it was impossible to have been signed. Regarding line 7, the numbers in this blank are indecipherable and the Secretary of State knows as a fact that the petition was not signed in 1945 as the petition did not exist at that time. It is found to be a fact that the petition was signed on an undetermined date and there is no evidence that it was signed after the verification day. (Petitioner's Exhibit 16 pg 301, 302; Tr. Vol. 2 pg 191) (8 signatures excluded from initial count)

hhh. Petition Number **43021**—This petition was culled because verification day is "before date petitioners signed" (only reason provided). The verification day was 7/6/20. Lines 2 and 3 show a date of signing of 7/7/2020, dates for which it was impossible to have been signed is dated a date for which it would be impossible to have been signed. It is found to be a fact that the petition was signed on an undetermined date and there is no evidence that it was signed after the verification day. (Petitioner's Exhibit 16 pg 303, 304; Tr. Vol. 2 pg 192) (4 signatures excluded from initial count)

iii. Petition Number **45468**—This petition was culled because the verification day is "before date petitioners signed" (only reason provided). The verification day was 7/5/20. Lines 1 and 2 show dates of signing as 7/7/20, dates for which the petitions could not possibly have been signed. It is found to be a fact that the petition was signed on an undetermined date and there is no evidence that it was signed after the verification day. (Petitioners' Ex 16 pgs 93, 94) (**2 signatures** excluded from initial count)

jjj. Petition Number **39788**—This petition was culled because the verification day is "before date petitioners signed" on lines 1 and 2 which are dated 7/25/20, dates which cannot possibly be correct. The verification day was 7/5/20. It is found to be a fact that the petition was signed on an undetermined date and there is no evidence that it was signed after the verification day. (Exhibit 16 pgs 153, 154, Tr. Vol. 1, pg 150) (**9 signatures** excluded from initial count)

kkk. Petition Number **38102**—This petition was culled because the verification day is "before date petitioners signed" on line 1. The verification day is 6/18/20. The date of signing on line 1 is shown as 7/27/20, a date for which the petition could not possibly have been signed. It is found to be a fact that the petition was signed on an undetermined date and there is no evidence that it was signed after the verification day. (Exhibit 16 pg 161, 162, Tr. Vol. 1, pg 151) (**10 signatures** excluded from initial count)

lll. Petition Number **38180**—This petition was culled because the verification day is "before date petitioners signed" on line 5. The date on line 5 could be 9-27 or 7-27 (dates for which it was impossible for the petition to have been signed. The verification day is 6/27/20. It is found to be a fact that the petition was signed on an undetermined date and there is no evidence that it was signed after the verification day. (Petitioners' Exhibit 16 pgs 165, 166; Tr. Vol. 1, pg 152) (**10 signatures** excluded from initial count)

44. The total number of signatures that were culled where the date listed as the date signed was a date for which it was not possible to have been signed is **404** and these signatures should not have been culled. (See above list of specific petition parts).

BLANK OR ILLEGIBLE DATES OF SIGNING

45. The representative of the Secretary of State testified in regard to dates that do not relate to our calendar and stated, "we do cull them because we don't

know for sure when they signed them" (Tr. Vol. 1 pgs 135-136). The same witness later testified "If the date of signing is blank, we won't cull it for that reason. If the date of signing is simply just completely illegible, we won't cull it for that reason" (Tr. Vol. 1 pg 137-138). Later the same witness testified in regard to a blank date of signing "(F)or this particular review, we don't have evidence on line 2 that that individual signed the petition, number one, before the canvasser was registered; or number two, the individual signed the petition after that petition page was notarized. There's no evidence to support either claim. So, when it's blank, we would skip that." (Tr. Vol. 1 pgs 147-148)

46. It is found that the following petition parts were culled and should not have been because the date of signing was illegible, the date of signing was undetermined and there was insufficient evidence that the petition was signed after the verification date.

    a. Petition Number **32780**—This petition was culled because of the date of signing on line 6. The Secretary of State contends the date was 6/18. The verification date was 6/15/20. An ambiguity exists what the date is, whether it is 6/14, 6/18 or some other date. The Secretary of State accepted the date on line 1 which could be 6/19, 6/14 or other date. It is found to be a fact that the petition was signed on an undetermined date and there is no evidence that it was signed after the verification day. (Petitioners' Ex 16 pg 15, 16; Tr. Vol. 1 pg 116, 117) (**10 signatures** excluded from facial count)

    b. Petition Number **30206**—This petition was culled because the signature on line 2 was dated after the verification date which was June 15, 2020. The date of signing on line 2 is ambiguous. It is not clear whether the date is 5/25 or 6/25 or 6/15 or some other date. It is found to be a fact that the petition was signed on an undetermined date and there is insufficient evidence that it was signed after the verification day. (Petitioners' Ex 16 pg 49, 50; Tr. Vol. 1 pg 123) (**9 signatures** excluded from facial count)

    c. Petition Number **45855**—This petition was culled because the date of signing on line 9 is after verification date. The verification date is June

8, 2020. The date of signing is ambiguous. The print is very small and could also be read as 6/4 or 6/14 or 6/11. The signatures before and after this signature are all dated 6/4/20. It is found to be a fact that the petition was signed on an undetermined date and there is insufficient evidence that it was signed after the verification day. (Tr. Vol. 1 pg 133; Petitioners' Exhibit 16 pg 67, 68) (**10 signatures** excluded from facial count)

d. Petition Number **45080**—This petition was culled because the date of signing on line 2 is after verification date (only reason given). The verification day was 6/25/20. The date of signing is ambiguous. The date of signing might be 6/27 but could also be 6/23 or 6/24. The signature on line one is dated 6/23/20 and the signature on line 3 is dated 6/24/20. It is found to be a fact that the petition was signed on an undetermined date and there is insufficient evidence that it was signed after the verification day. (Petitioners' Ex 16 pg 75, 76; Tr. Vol. 1 pg 134-135) (**8 signatures** excluded from facial count)

e. Petition Number **45883**—This petition was culled because the date of signing on line 10 is after verification date. The verification day was 6/15/20. The date of signing is ambiguous. The Secretary of State believed the date of signing to be 6/17/20. The date could also be read to be 6/15/20. It is found to be a fact that the petition was signed on an undetermined date and there is insufficient evidence that it was signed after the verification day. (Ex 16 pg 89, 90; Tr. Vol. 1 pg 138) (**10 signatures** excluded from facial count)

f. Petition Number **41249**—This petition culled because the verification date is before petitioner signed on line 1. The verification date is June 11, 2020. The court finds the date on line 1 is 6/9/20. The only other date it could be would be 8/9/20 which was an impossibility since the petition was filed July 6, 2020. It is found to be a fact that the petition was signed on an undetermined date and there is insufficient evidence that it was signed after the verification day. (Petitioners' Exhibit 16 pg 131, 132; Tr. Vol. 1, pg 145) (**10 signatures** excluded from initial count)

g. Petition Number **42350**—This petition was culled because the canvasser verification day is "before date petitioners signed." The verification day was 7/6/20. Line 2 reflects a scrawled date that could be 8/6/20 (which is after this petition was in hands of SOS) or 7/6/20

or some undeterminable date. It is found to be a fact that the petition was signed on an undetermined date and there is no evidence that it was signed after the verification day. (Petitioners' Exhibit 16 pg 145,146; Tr. Vol. 1, pg 149) (**3 signatures** excluded from initial count)

h. Petition Number **38046**—This petition was culled because the verification day is "before date petitioners signed" on line 1. The verification day was 6/18/20. The date on line 1 of signing is listed as "6-20-02 **(2002**) There is no proof this petition was even a figment of anyone's imagination in 2002. It is found that it is more probably true than not that the petitioner signed the petition on June 2, 2020, well before 6/18/20—SOS culled petition because verification day is before date of signing which is not correct. If the date is read the way most people write dates, the date of signing would be 6/20/2002 which is well before verification. It is found to be a fact that the petition was signed on an undetermined date. (Petitioners' Ex 16 pg 181, 182) (**5 signatures** excluded from initial count)

i. Petition Number **4395**1—This petition was culled because the verification day is "before date petitioners signed" (only reason provided). The verification day was 6/15/20. The reason stated was that the signature on Line 10 was signed after the verification date. The representative of the Secretary of State testified that he believed the date to be 6/16/20 and that on many of the dates it was a judgment call and said if you looked at original it might be clearer. The original petition parts were never offered to support the Respondent's cull of the petition despite the challenge. The special master cannot tell what the date is. The date is so poorly written it could be read to be any number of dates but when blown up looks most like 6/14/20. It is found to be a fact that the petition was signed on an undetermined date and there is insufficient evidence that it was signed after the verification day. (Petitioners' Exhibit 16 pg 253, 254; Tr. Vol. 1 pg 167, 168) (**9 signatures** excluded from initial count)

j. Petition Number **41378**—This petition was culled because the verification day is "before date petitioners signed" on line 2 (only reason provided). The verification day was 6/9/20. Line 2 has an ambiguity in date. It could be read as 6/7 which would be proper. It is not clear what date SOS thought it was signed. If the Secretary of State believed it to be 7/7/20 it would be a date for which it was impossible

to have been signed. The petition was exclusively in the hands of the Secretary of State since the petition was filed on 7/6/20. It is found to be a fact that the petition was signed on an undetermined date and there is no evidence that it was signed after the verification day. (Petitioner's Exhibit 16 pg 289, 290; Tr. Vol. 2 pg 188) (**10 signatures** excluded from initial count)

k. The above Petition numbers all involve situations where Respondent culled Petition parts because it said they were signed after the verification day. Where the dates have been found to be ambiguous and where it is found that the petitions were signed on an undetermined date and there was insufficient evidence that the petition part was signed after the verification day, the Respondent should not have culled these petition parts. The above petition parts a-j include **84** total signatures that should not have been culled.

47. Petition Numbers 46322, 32492, 32971, 34741 and 37117—Jessica Martin (a paid canvasser) had all her petition parts (those listed) culled by the Secretary of State because her name was not on the paid canvasser list. It is found that Jessica Martin was on the canvasser list but through a scrivener's error it appeared as Jessica Martinez. These **14 signatures** should not have been culled and should be included in the initial count. (Tr. Vol. 2 pg 226, 305-310, 340-346, 358-360)
48. In summary it is found that the Secretary of State **improperly culled 586 signatures** for the Open Primary Petition as follows:
    a. **84**—the Secretary of State stipulated to at the end of the hearing at Tr. Vol. 4 pg 598-600.
    b. **404**—the number of signatures culled where the Respondent found them to have been signed after the verification day, but it has been found that the dates listed were dates when the petition could not possibly have been signed.
    c. **84**—the number of signatures culled where the Respondent found them to be signed after the verification day but it was found that the dates were ambiguous or illegible and were found to have been signed on an undetermined date.
    d. **14**—Paid Canvasser Jessica Martin's 14 signatures that were excluded because the Secretary of State mistakenly thought she was not registered as a paid canvasser.

e. **TOTAL—586**

49. It is found that 586 signatures were culled by the Secretary of State that should have been included for purposes of the initial count.
50. There were others that were culled for the stated reason that they were signed after verification that at first look appeared to have been culled in error but on closer examination a proper reason for the cull other than as stated existed, for example:
    a. Petition Number 37060—This petition was culled because verification day is "before date petitioners signed" on line 9 (only reason provided). The verification day was 7/5/20. Line 9 shows a date of signing of 7/15/2020, a date for which it was impossible to have been signed. The representative of the Secretary of State testified that due to some dates being in May they would have checked the canvasser list to be certain canvasser was registered on that date. It is found that the signatures were culled was not because of the registration date but because of the date on line 9. The special master reviewed Respondent's Exhibit (the canvasser registration list) and find that the canvasser was not registered until 6/28/20 and therefor the signatures were properly culled.
    b. Petition Number 33001—It originally appeared that the Secretary had culled this petition in error. This petition page was culled for the purported reason that the canvasser verification was before the signature date on line 3. The verification date was July 5, 2020. The form itself shows all signatures before the verification date. The earliest date shown was 6/25/20. However, on an examination of the registered canvasser list it appears the canvasser was not registered until 6/28/20. (Petitioners' Exhibit 16 pg 25, 26; Tr. Vol. 1 pg 119, 120; Respondent's Exhibit 1) (8 Signatures excluded from initial count)

    c. All petition parts submitted by a paid canvasser named Molly Cason were culled because no signature card was submitted to the Secretary of State with the Open Primary Petition. The signature card was submitted but it was erroneously submitted with the Redistricting Petition. The Petition parts submitted by Molly Cason bore petition numbers 38700, 38698, 38699, 44516, 36685, 36686, 46203 and

45746 and have total signatures of 26, all of which were excluded. I do not find that the Secretary of State acted unreasonably in culling these petitions. In making an initial count of signatures, it is reasonable to expect the Secretary of State to review the paid canvasser registration list, the paid canvasser statement, the canvasser signature card and the petition parts submitted on a particular petition. It does not seem reasonable for the Secretary of State to be required to scour other petitions to fill missing holes. (Intervenors' Exhibits 1 & 2; Tr. Vol. 2 pg 366-368)

BEYOND FACIAL VALIDITY

Intervenors challenge the qualifications of some of the paid canvassers. Ark. Code Ann. Section 7-9-126 (b) provides a list of requirements that a petitioner must meet for any signatures on a petition part to be counted toward determining the facial validity of a petition. The challenges made by Intervenors require the special master to consider testimony and evidence that would not be available to the Secretary of State in determining the facial validity of a petition. In the event the Supreme Court concludes that it is appropriate for the special master to examine the qualifications of the canvassers, the special master makes the following findings:

51. Paid Canvasser Anthony Newkirk—Intervenors submitted some documents, including documents from criminal background check conducted by the sponsor reflecting that Anthony Newkirk might have a felony conviction. No certified copy of a conviction was offered at the hearing. Mr. Newkirk collected 209 signatures for the Open Primary Petition and 300 signatures for the Redistricting Petition. (Intervenors' Exhibits 3, 4, 30 & 31)
52. Paid Canvasser Tyler Merkle—Intervenors submitted some documents, including documents from criminal background check conducted by the sponsor reflecting that Tyler Merkle might have a felony conviction. No certified copy of a conviction was offered at the hearing. Mr. Merkle collected 20 signatures for the Open Primaries Petition. (Intervenors' Exhibits 5, 6, & 36)
53. Paid Canvasser Demetriuse A. Martin—Intervenors submitted some documents, including documents from criminal background checks conducted by the sponsor reflecting that Demetriuse A. Martin might have a

felony conviction. At the close of the hearing Intervenors introduced Exhibits 26 and 27 which are certified copies of the Court of Common Pleas of York County Pennsylvania. Exhibit 26 appears to be a conviction of for a misdemeanor called Theft by Deception/False Impression. Exhibit 27 is another misdemeanor conviction of Mr. Martin for the same type of crime. Mr. Martin collected 96 signatures for the Open Primaries Petition and 72 signatures for the Redistricting Petition. (Intervenors' Exhibits 7, 8, 9, 26, 27, 32 & 33)

54. Paid Canvasser Shaquetta S. Lee—Intervenors submitted some documents, including documents from the criminal background check conducted by the sponsor reflecting that Shaquetta S. Lee might have a felony conviction. No certified copy of a conviction was offered at the hearing. Ms. Lee collected 115 signatures for the Open Primaries Petition and 69 for the Redistricting Petition. (Intervenors' Exhibits 10, 12, 34 & 35)
55. Paid Canvasser Josef Bautista—Intervenors challenges the petition parts collected by Mr. Bautista. Josef Bautista was a paid canvasser for both petitions. Mr. Bautista has worked on signature drives for NBA for a long time. (Tr. Vol. 3 pg 551) His fees for signature collection are paid to his corporation Global Political Strategies. (Tr. Vol. 3 pg 570)
56. Mr. Bautista's permanent domicile address on Respondent's Exhibits 1 and 2 is listed as 9009 S.E. Adams Street, #1144, Clackamus, Oregon. His sworn canvasser statement lists that same address as his permanent domicile. (Respondent's Exhibit 1 & 2; Intervenors' Exhibit 24)
57. NBA's canvasser file lists the same address for Mr. Bautista's Company Global Political Strategies, Inc. on the W-9. (Tr. Vol. 3 pg 570)
58. The special master takes judicial notice (if appropriate under his authority granted by the Court) that 9009 S.E. Adams Street, Clackamus, Oregon is the address of a United States Post Office in Clackamus, Oregon.
59. Mr. Bautista is homeless. (Tr. Vol. 3 pg 567-570)
60. Mr. Bautista collected 2294 signatures for the Redistricting Petition and 1787 signatures for the Open Primaries Petition. (Intervenors' Exhibits 28 & 29)
61. If the question of entitlement to a cure is a question of fact, the special master is unable to make a finding this regard. The Respondent was verifying whether signatures were of registered voters while the hearing was being conducted and no results of that review were ever reported to the master or introduced in evidence. (Tr. Vol. 1 pg 76-80; Vol. 2 pg 195-197)

In summary I find that in the event the court finds that the application of Ark. Code Ann. Section 7-9-601(b)(3) to the undisputed language of the certification is subject to more than one reasonable interpretation and is a question of fact, I find that the language of the certification does not certify that the canvasser has "passed" a background check and does not comply with Arkansas law. I further find that if the certification is inadequate, as I have found, then neither petition has enough facially valid signatures to require the Secretary of State to move to the second phase of his review in verifying signatures to determine if the petitions qualify for a "cure."

In the event the Court determines that the "certification" language complies with Ark. Code Ann. Section 7-9-601(b)(3) then I also find that the Secretary of State erroneously culled 586 signatures on the Open Primaries Petition. As a result, I find that both petitions (if the Court finds the "certification" language complies with Ark. Code Ann. Section 7-9-601(b)(3)) have a sufficient number of facially valid signatures for the Secretary to verify those signatures to determine if either petition is entitled to a cure period.

Respectfully submitted to the Arkansas Supreme Court on this 10th day of August 2020.

John N. Fogleman, Special Master