JOHN THURSTON

ARKANSAS SECRETARY OF STATE

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

via electronic mail to arhog@me.com

July 14, 2020

Re: Declaration of Insufficiency
Petition Sponsor: Arkansas Voters First
Petition: A Constitutional Amendment Establishing Top Four Open Primary Elections and Majority Winner General Elections with Instant Runoff if Necessary

Dear Mr. Couch:

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

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

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

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

State Capitol • Suite 256 • 500 Woodlane Street • Little Rock, Arkansas 72201-1094
501-682-1010 • Fax 501-682-3510
e-mail: arsos@sos.arkansas.gov • www.sos.arkansas.gov

Exhibit 6

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

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

Sincerely,

John Thurston

John Thurston
Secretary of State