No. CV-20-562

IN THE SUPREME COURT OF ARKANSAS

JOHN THURSTON, in his official capacity as Arkansas Secretary of State; and LESLIE RUTLEDGE, in her official capacity as Arkansas Attorney General,
Appellants,

v.

SAFE SURGERY ARKANSAS, a ballot question committee; and DR. LAURIE BARBER, individually and on behalf of SAFE SURGERY ARKANSAS,
Appellees.

On Appeal from the Pulaski County Circuit Court, Ninth Division
No. 60CV-20-4956 (Hon. Mary S. McGowan)

Appellants' Brief

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TABLE OF CONTENTS

POINTS ON APPEAL

This Court should reverse the circuit court's preliminary injunction of Ark. Code Ann. 7-9-601(b).

I. The circuit court lacked jurisdiction because there is no justiciable controversy.

II. The circuit court erred in granting a preliminary injunction.

A. The circuit court committed legal error, and Appellees are not likely to succeed on the merits.

B. Appellees failed to demonstrate irreparable harm.

C. At a minimum, the preliminary injunction is overbroad.

TABLE OF AUTHORITIES

Cases

Statutes & Rules

JURISDICTIONAL STATEMENT

This Court has jurisdiction because this appeal involves the interpretation or construction of Article 5, Section 1 of the Arkansas Constitution, as well as substantial questions of law concerning the validity, construction, or interpretation of Act 1219 of 2015 of the Arkansas General Assembly, codified in Ark. Code Ann. 7-9-601(b). Ark. Sup. Ct. R. 1-2(a)(1), (b)(6). This Court also has jurisdiction because this case presents an issue of first impression pertaining to elections and election procedures. Ark. Sup. Ct. R. 1-2(a)(4), (b)(4).

/s/ *Dylan L. Jacobs*
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STATEMENT OF THE CASE AND THE FACTS

This case is the latest in a series of challenges—including one Appellees lost before this Court just months ago—seeking to enjoin commonsense statutory provisions designed to prevent fraud in the initiative-and-referendum process. *See, e.g.*, *Miller v. Thurston*, 2020 Ark. 267, 605 S.W.3d 255 (holding petitioners, who were represented by Appellees' counsel, failed to comply with the background-check certification requirement); *Arkansans for Healthy Eyes v. Thurston*, 2020 Ark. 270, 606 S.W.3d 582 (holding Appellees failed to do the same); *Miller v. Thurston*, No. 5:20-CV-05163-TLB, 2020 WL 5535017, — F.Supp.3d. — (W.D. Ark. Sept. 15, 2020) (denying preliminary injunction and dismissing suit challenging the statutory scheme at issue here).

Collectively, the provisions at issue here prevent fraud in the initiative-and-referendum process by requiring sponsors to obtain background checks for any paid canvassers they employ. In particular, Ark. Code Ann. 7-9-601(b)(1) requires them to obtain, "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." Section 601(b)(3) requires sponsors to "certify to the Secretary of State that each paid canvasser in [its] employ has passed a criminal background check in accordance with this section." Ark. Code Ann. 7-9-601(b)(3). The circuit court twice enjoined those requirements, first via an *ex parte* TRO and

second by a preliminary injunction, both of which were stayed by this Court. The circuit court's preliminary injunction also enjoined Section 601(b)(2)'s requirement that "[t]he criminal record search shall be obtained within thirty (30) days before the date that the paid canvasser begins collecting signatures" and Section 601(b)(4), which states that "[a] willful violation of [Section 601(b)] by a sponsor or paid canvasser constitutes a Class A misdemeanor." Ark. Code Ann. 7-9-601(b)(2), (b)(4). This Court should reverse the circuit court's preliminary injunction.

Appellees filed suit on September 4, 2020, in the Pulaski County Circuit Court and, in a letter to the circuit court on September 8, 2020—rather than a motion—requested a temporary restraining order. The circuit court granted an *ex parte* TRO less than three hours after receiving Appellees' letter. R. 162. At that time, Appellees had not filed a verified complaint or supporting affidavit as required by Rule 65. Ark. R. Civ. P. 65. Shockingly, the circuit court later admitted that—rather than following the rules of civil procedure governing TROs and preliminary injunctions—its practice is to "generally go ahead and issue an *ex parte* TRO[] just to hold stuff in place" until a preliminary-injunction hearing is scheduled. Supp. R. 79.

Appellants promptly appealed the *ex parte* TRO, and on Appellants' motion, this Court immediately stayed the circuit court's unlawful TRO. Order, *Thurston v.*

Safe Surgery Ark., No. CV-20-532 (Sept. 16, 2020) (per curiam). The circuit court nevertheless moved forward with a preliminary-injunction hearing two days later, and on September 24, 2020, it enjoined the entirety of Section 601(b). R. 162-68. It did so because it read the challenged provisions as requiring sponsors to obtain a federal background check from the Arkansas State Police and believed it was impossible for them to do so.

The circuit court asserted that Appellees were likely to succeed on their constitutional challenge to the antifraud requirements because it found that the requirements conflicted with Amendment 7's prohibition on laws that "interfere[] with the freedom of the people in procuring petitions." R. 165-67. The circuit court came to this conclusion despite recognizing that the Amendment authorized the General Assembly to enact laws "prohibiting and penalizing perjury, forgery, and all other felonies or other fraudulent practices, in the securing of signatures or filing of petitions." R. 165-66. The circuit court also found that the requirements interfered with Appellees' right to petition because compliance with the requirements is "impossible," despite Appellees' witness admitting at the hearing that they had successfully registered paid canvassers for a previous referendum by certifying that Appellees had complied with the antifraud requirements. R. 166-67; Supp. R. 29, 31. As to irreparable harm, the circuit court found that the requirements "prevent SSA from registering any paid canvassers" and concluded that "SSA cannot begin

the initiative process for the 2022 cycle." R. 168. Yet as Appellees' witness and counsel, and the circuit court all acknowledged at the hearing, any potential initiative is entirely hypothetical at this point. Supp. R. 34, 46-47.

Finally, in granting relief, the circuit court declined to consider Appellants' argument that even if the federal-background-check requirement were impossible to comply with, that would not warrant enjoining the entirety of Section 601(b). Indeed, as Appellants explained below, even assuming that provision were problematic, the circuit court could excise only the requirement that sponsors obtain federal background checks "from the ASP" and leave the rest of Section 601(b) intact. Supp. R. 68. But the district court declined to do so, opting instead for—what even on its own theory was—an injunction that went far beyond what was necessary. R. 167-68.

Appellants filed this appeal on September 24, 2020, and on October 8, 2020, this Court granted a stay of the preliminary injunction pending appeal.

ARGUMENT

The circuit court twice unlawfully enjoined Arkansas's commonsense anti-fraud requirements for paid canvassers, erroneously interpreting state law to require sponsors to obtain federal criminal background checks performed by the Arkansas State Police—a requirement that the circuit court found impossible to satisfy. As this Court recognized in staying both the TRO and the preliminary injunction issued below, the circuit court was wrong on all counts.

First, the circuit court should not even have entertained Appellees' request for a preliminary injunction because Appellees did not present a justiciable controversy—let alone the kind of immediate harm that might warrant a preliminary injunction. Instead, Appellees' claims rest entirely on the hypothetical possibility that they might sponsor a ballot initiative for the 2022 election cycle. Second, even if a justiciable controversy were present, reversal is required because the circuit court erroneously held that the challenged antifraud provisions were impossible to meet—despite compliance during prior election cycles by other ballot question committees. Third, even if the circuit court were correct that the federal-background-check requirement is impossible to comply with (and it is not), its injunction is grossly overbroad and cannot stand. This Court should reverse the circuit court's preliminary injunction.

I. The circuit court lacked jurisdiction because there is no justiciable controversy.

"Without a sufficient factual record to show an actual, present controversy, [a] court cannot opine on the merits of . . . constitutional arguments raised in [a] declaratory-judgment suit." *Baptist Health Sys. v. Rutledge*, 2016 Ark. 121, at 5, 488 S.W.3d 507, 510. "On appeal, the question of whether there was a complete absence of a justiciable issue shall be reviewed de novo on the record of the circuit court." *Id* at 4, 510. Despite claiming that the antifraud requirements prevent them from pursuing a ballot initiative for the 2022 election, Appellees do not have any concrete plans to sponsor any initiative. The circuit court thus erred in reaching the merits of Appellees' constitutional claim because Appellees did not present a justiciable controversy. The circuit court should have dismissed the case for that reason alone.

That Appellees must comply with Section 601(b) if they choose to engage in the initiative-or-referendum process in the future was insufficient to show that they face a "present danger or dilemma" from the antifraud requirements. *See Baptist Health Sys.*, 2016 Ark. 121, at 4-5, 488 S.W.3d at 510 (finding no justiciable controversy in hospital's challenge to new peer-review process standards when its only alleged injury is that it must comply with the standards). The circuit court found that Appellees were "prevent[ed] . . . from registering any paid canvassers" and that they "cannot begin the initiative process for the 2022 cycle." R. 168. But

what it did not find was that Appellees had *actually been denied* when trying to register paid canvassers, or that they had otherwise tried to start the initiative process but were stopped mid-process as a result of the antifraud requirements. *Cf. Ark. Dep't of Human Servs. v. Ledgerwood*, 2017 Ark. 308, at 8-9, 530 S.W.3d 336, 342 (finding claims justiciable because circuit court found that Medicaid beneficiary plaintiffs had their benefits reduced as a result of Department of Human Services rule). Thus, Appellees' claim is merely "speculative and contingent" because it is entirely unknown whether Appellees would be denied when registering paid canvassers for a future initiative, or that a potential roadblock would arise in the 2022 initiative process which Appellees have not yet started. *Id*. at 8, 342. And that means there was no justiciable claim and the circuit court was required to dismiss this case.

Indeed, this Court has long held that "courts do not sit for the purpose of . . . laying down rules for future conduct." *Dodson v. Allstate Ins. Co.*, 365 Ark. 458, 462, 231 S.W.3d 711, 715 (2006); *see Dep't of Human Servs. v. Civitan Ctr.*, 2012 Ark. 40, at 10, 386 S.W.3d 432, 438 (holding that request for relief upon hypothetical future events amounted to seeking legal, advisory opinion instead of resolution of a present, actual controversy). Yet that is precisely what the circuit court's injunction does: It lays down a new rule should Appellees ever decide to actually sponsor another initiative or referendum. That alone requires reversal.

II. The circuit court erred in granting a preliminary injunction.

In determining whether to issue a preliminary injunction pursuant to Rule 65, a trial court must consider two things: (1) whether irreparable harm will result in the absence of an injunction or restraining order, and (2) whether the moving party has demonstrated a likelihood of success on the merits. *Three Sisters Petroleum, Inc. v. Langley*, 348 Ark. 167, 175, 72 S.W.3d 95, 100 (2002). This Court reviews the grant of a preliminary injunction, including the circuit court's conclusions on irreparable harm and likelihood of success on the merits for abuse of discretion. *Baptist Health v. Murphy*, 365 Ark. 115, 121, 226 S.W.3d 800, 806 (2006); *AJ & K Operating Co. v. Smith*, 355 Ark. 510, 518, 140 S.W.3d 475, 480-81 (2004). A circuit court abuses its discretion when it erroneously interprets the law. *Seeco, Inc. v. Hales*, 334 Ark. 134, 137, 969 S.W.2d 193, 195 (1998). And this Court reviews the circuit court's legal interpretation de novo. *Mississippi Cnty. v. City of Blytheville*, 2018 Ark. 50, at 10, 538 S.W.3d 822, 829. Factual findings by a circuit court that lead to conclusions of irreparable harm and likelihood of success on the merits will be set aside if they are clearly erroneous. *See Baptist Health*, 365 Ark. at 121, 226 S.W.3d at 806 (citing *Amalgamated Clothing & Textile Workers Int'l Union v. Earle Indus., Inc.*, 318 Ark. 524, 886 S.W.2d 594 (1994)). Applying that standard, this Court should reverse the preliminary injunction.

A. The circuit court committed legal error, and Appellees are not likely to succeed on the merits.

The antifraud requirements serve important interests, and sponsors have complied with them for years without issue. The circuit court's novel interpretation of Section 601(b) as requiring sponsors to perform an impossible task is wrong and should be reversed.

Amendment 7 *requires*—not merely authorizes—the General Assembly to enact laws "prohibiting and penalizing perjury, forgery, and all other felonies or other fraudulent practices, in the securing of signatures or filing of petitions." Ark. Const. Art. 5, Sec. 1. The legislative findings accompanying what eventually became Section 601(b) show that initiative and referendum sponsors and paid canvassers "may have incentive to knowingly submit forged or otherwise invalid signatures," and that the General Assembly determined that "passage of the Act would make sponsors and canvassers more accountable to the people, facilitate the initiative process, conserve state resources, and help restore confidence and trust in the initiative process." *McDaniel v. Spencer*, 2015 Ark. 94, at 2, 457 S.W.3d 641, 646. This Court has recognized the State's interest in ensuring that paid canvassers "do not have a criminal history that calls into question their ability to interact with the public." *Id.* at 6, 648. And rather than hindering the initiative-and-referendum process, the antifraud requirements "aid in the proper use of the rights granted to

the people of this state." *Id.* The antifraud requirements are thus well within the General Assembly's authority under Amendment 7.

Compliance with the antifraud requirements can be accomplished in myriad ways. Indeed, far from finding Section 601(b) impossible to comply with, this Court's reasonable, straightforward reading from *Miller v. Thurston* is one of many permissible interpretations that are in agreement with the requirements' purpose and present no constitutional concerns. *See Zook v. Martin*, 2018 Ark. 306, at 3, 558 S.W.3d 385, 389 (noting that it is for this Court to decide the meaning of a statute). This Court explained that, "[t]he standard for having 'passed' a criminal background check appears to be having no criminal conviction for a felony offense or a violation of the election laws, fraud, forgery, or identification theft as stated in section 7-9-601(d)(3)." *Miller*, 2020 Ark. at 8 n.4, 605 S.W.3d at 259 n.4. A certification to that effect is certainly not impossible for sponsors to provide and would satisfy the antifraud requirements.

The testimony and evidence below support additional avenues to compliance. For example, to "obtain" the necessary background checks from the ASP, sponsors may *make a request* to the ASP for federal and state background checks on their canvassers. *See* Supp. R. 233-34 (ASP "Form 122," titled "Individual Record Check Request Form"). The form that the ASP provides to background-check applicants and testimony from ASP staff attorney Mary Claire McLaurin

support that permissible interpretation of the antifraud requirement. *Id*. 33, 232-34. Background-check applicants are given a form that contains information on how to get criminal-history records from the Federal Bureau of Investigation. *Id*. The form also states that "[a] fingerprint card is NOT required to be submitted if only the Arkansas background check is requested." *Id*. 233. The wording on the form alerts those seeking background checks from the ASP that, if they also want a federal background check, they will need a fingerprint card. At the hearing, Appellants explained, and Appellees' witness acknowledged, that the ASP will fingerprint background-check applicants so that they can submit their prints for federal background checks. *Id*. 33. Thus, the ASP plays a critical role in obtaining a federal background check—a role sufficient to satisfy Section 601(b). At very least, that is a plausible interpretation of what the statute requires, given that Section 601(b) does not specify the role that the ASP must play.

Other courts that have considered the constitutionality of Section 601(b)—albeit without directly ruling on that issue—have also given examples of how the antifraud requirements can be complied with. These courts have explained that initiative sponsors could certify that "the background checks conducted by [Appellees] showed that none of the paid canvassers used by [Appellees] had been convicted of a felony." *Miller*, 2020 WL 5535017, at *7 (internal quotation marks omitted). Or that "the paid canvassers have 'no criminal offenses on record,' using

the language from the first clause of 601(b)(1)." *Id*. Either of these options satisfy Section 601(b), and compliance is thus not impossible.

In addition to the text, history also shows that compliance is not merely theoretical. Since Section 601(b)'s enactment in 2015, initiative sponsors—*including Appellees themselves*—have successfully registered paid canvassers. For instance, in July 2019, Appellees certified that they had, in fact, "obtain[ed] a criminal background check for each paid canvasser in compliance with § 7-9-601" for a previous referendum. Supp. R. 235; *see Healthy Eyes*, 2020 Ark. 270, at 2, 606 S.W.3d at 584 (noting Appellees' certification that "the canvassers listed below have each passed a criminal background check from the Arkansas State Police within 30 days of canvassing"). That certification was sufficient to meet the statutory requirement, and the signatures collected by canvassers covered by that certification were accepted and counted. *Healthy Eyes*, 2020 Ark. 270, at 2-3, 606 S.W.3d at 584. For unknown reasons, Appellees changed the wording of their certification for later-registered canvassers, and this Court went on to hold those altered certifications to be unsatisfactory. *See id*. at 5-9, 585-87 (holding Appellees' certification that they had only *acquired* background checks for *later* canvassers but not that those canvassers had *passed* a background check failed to comply with statutory requirements).

Sponsors of other initiatives have also complied with the challenged provisions. For example, the sponsors of both the 2016 medical-marijuana amendment and the 2018 minimum-wage-increase initiative certified that they complied with Arkansas's antifraud requirements, and both initiatives appeared on the ballot and passed. *Cf., e.g.*, Vol. 2 of 3, Pet'r Opening Br., Abstract, & Addendum, *Benca v. Martin*, CV-16-785 (Ark. Oct. 5, 2016), ADD143 ("All have been cleared with a background check from the Arkansas State Police."). And in light of that history of compliance, other courts have rejected claims like Appellees' claims here and declined to preliminarily enjoin Arkansas's antifraud provisions. *See Miller*, 2020 WL 5535017, at *8 (concluding that plaintiffs' claim that it is impossible to comply with the antifraud requirements was not plausible in light of their prior successful compliance).

Further, equally unpersuasive is the circuit court's contention that the antifraud requirements are unconstitutional because Appellees are forced to choose between "committing a crime" or "hav[ing] their entire petition set aside." Far from a realistic possibility, the circuit court's assertion conflicts with both the fact that Section 601(b)'s punitive provision has never been enforced and the concession of Appellees' own witness that she was not charged with a crime for certifying that her paid canvassers had passed federal and state background checks. Supp. R. 32.

And unsurprisingly, given the history of compliance, courts have explicitly "disagree[d]" with the circuit court's unsupported suggestion that the challenged anti-fraud provisions leave sponsors "only with the 'Hobson's choice' to make no certification or to make a false statement." *Miller*, 2020 WL 5535017, at *7 (criticizing same claim as circuit court below considered).

Ultimately, because Section 601(b) may be interpreted in any number of ways in which compliance is possible, it must be upheld. Every act of the General Assembly "carries a strong presumption of constitutionality." *Tsann Kuen Enters. Co. v. Campbell*, 355 Ark. 110, 116, 129 S.W.3d 822, 825 (2003). Under that standard, a court must resolve "all doubts . . . in favor of the statute's constitutionality," striking legislation as unconstitutional only "when there is a clear incompatibility between the act and the constitution." *Id*. at 116, 826. And applying that standard, the circuit court was not entitled to adopt the most nonsensical construction of the challenged provisions in order to justify its injunction. Instead, it was required to adopt the commonsensical constructions discussed above (and employed by other courts in response to similar challenges), and if it had done so, it could not possibly have concluded that compliance is impossible. Its failure to do so requires reversal.

B. Appellees failed to demonstrate irreparable harm.

The circuit court wrongly concluded that the challenged antifraud provisions "prevent [Appellees] from registering any paid canvassers" and that absent an injunction "[Appellees] cannot begin the initiative process for the 2022 cycle." R. 168. But contrary to that unsupported assertion, Appellees *can* register paid canvassers and begin the initiative process.

First, Appellees can register paid canvassers even if it is impossible for them to obtain a federal background check from the ASP. Appellees (and others) have previously registered paid canvassers and collected signatures, Supp. R. 29, 31, 235, and they offered no evidence that the antifraud provisions have ever prevented them from registering canvassers and collecting signatures. To the contrary, Appellees provided no reason why they could not follow the same process that they (and other) sponsors have followed in registering paid canvassers or that, if they did, they would be denied registration for the 2022 election cycle. *See League of Women Voters of Ark. v. Thurston*, No. 5:20-CV-05174-PKH, 2020 WL 6269598, at *2-*4 (W.D. Ark. Oct. 26, 2020) (denying preliminary-injunction motion based on plaintiff absentee voters' failure to show that their absentee ballots would likely be rejected in a future election, because they did not allege their ballots or a sufficient number of other voters' ballots were rejected in a past election). While it is possible that Appellees' certification could be deemed insufficient (for any number

of reasons), that result is unlikely, and that hypothetical outcome cannot justify a preliminary injunction. *See id*. at *2-*4.

Second, the circuit court's finding that Appellees cannot begin the initiative process if the antifraud requirements aren't enjoined was clearly erroneous for several reasons. Appellees can take the very first step in the initiative process—filing a draft proposal of their initiative—without having to worry about compliance with Section 601(b). *See* Ark. Code Ann. 7-9-107 ("Before any initiative petition or referendum petition . . . shall be circulated for obtaining signatures of petitioners, the sponsors shall file the original draft with the Secretary of State."). But as Appellees conceded below, they have not done so. Nor have they taken any steps to find paid canvassers. *See* Supp. R. 47 ("We're asking the Court to enjoin the Secretary of State . . . as we look ahead to finding paid canvassers."). And consequently, they have not yet reached the point at which Section 601(b) would even be relevant.

Indeed, Appellees could submit a proposal today and begin the petition-circulation process by enlisting the help of volunteer canvassers. *See* Ark. Code Ann. 7-9-601 (regulating the hiring and training of *paid* canvassers only). And underscoring the point, Appellees' witness conceded below that they might use volunteer canvassers and that, as a result, they "wouldn't even have to do the certifica-

tion about paid canvassers." Supp. R. 38; *see* Supp. R. 46 (circuit court's acknowledgement that Appellees "ha[ve] not begun to try to obtain signatures"). Thus, Appellees' irreparable-harm claim is entirely speculative and cannot justify a preliminary injunction, and the circuit court's conclusion to the contrary must be reversed.

C. At a minimum, the preliminary injunction is overbroad.

While no injunction was warranted because Appellees failed to demonstrate a likelihood of success on the merits and irreparable harm, the circuit court's injunction here is at a minimum grossly overbroad. Indeed, even on the circuit court's view, at most, it might have enjoined the requirement that sponsors obtain a federal background check from the ASP. But there is no justification for enjoining the requirement that sponsors obtain state background checks from the ASP or the remainder of the challenged antifraud provisions.

It is well settled that where a statute is unconstitutional in part, "when the unconstitutional portion is deleted, the remainder of the act or section is complete in itself and capable of being executed according to the legislative intent," it must be sustained. *Borchert v. Scott*, 248 Ark. 1041, 1050-B, 460 S.W.2d 28, 34 (1970); *see Jansen v. Blissenbach*, 214 Ark. 755, 760, 217 S.W.2d 849, 852 (1949). "If a statute attempts to accomplish two or more objects, and is void as to one, it may still be in every respect complete and valid as to the other." *Ex parte Levy*, 204 Ark. 657, 163 S.W.2d 529, 531 (1942).

Applying that principle, the circuit court's injunction here cannot stand. To start, even if the federal-background-check requirement is invalid, Section 601(b)(1)'s requirement that sponsors obtain state background checks is unproblematic and should not have been enjoined. Indeed, to remedy the purported constitutional violation, the circuit court could have enjoined "and federal" and left "a sponsor shall obtain . . . from the Division of Arkansas State Police, a current state . . . criminal record search." Or it could have stricken "from the Division of Arkansas State Police" from the statute and left "a sponsor shall obtain . . . a current state and federal criminal record search." In fact, in *Ex parte Levy*, this Court similarly excised only a few words in a statute that it found unconstitutional and held that the remainder was constitutional. *See* 204 Ark. 657, 163 S.W.2d at 531 (striking the words "The Supreme Court" from a list of courts granted original jurisdiction when the grant to this Court exceeded constitutional limitations, and sustaining the constitutionality of the act as it related to other courts and to its general purposes).

Moreover, each of the other remaining portions of the Section, 601(b)(2)-(4), are not so mutually connected with and dependent on the federal-background-check requirement in 601(b)(1) that they constitute "conditions, considerations, or compensations" and thereby suggest that the General Assembly would not have

adopted those provisions absent the federal-background-check provision. *Id.* Section 601(b)(2), which provides a deadline for when sponsors must obtain criminal records for their paid canvassers, can function as a deadline solely for state background checks or non-ASP federal background checks. The invalidation of the federal-background-check requirement would also not affect whether sponsors could make certifications under Section 601(b)(3) that their paid canvassers passed state background checks or non-ASP federal background checks. And an individual can violate Section 601(b)(4), the punitive provision, only by failing to obtain or certify that their paid canvassers had passed state background checks or non-ASP federal background checks.

Indeed, Section 601(b)'s remaining provisions are undoubtedly "capable of carrying out the purpose of the legislature" on their own. *Berry v. Gordon*, 237 Ark. 865, 866, 376 S.W.2d 279, 288 (1964) ("If the part which remains after the defective portion is severed is capable of carrying out the purpose of the legislature, the courts will have little difficulty in finding the legislative intent to make separable, even if no separability clause has been included."). It is clear that the General Assembly would have wanted state background checks, non-ASP federal background checks, certifications, deadlines for obtaining background checks, and punishments for failure to obtain and certify background checks *even if* ASP federal background checks are impossible to obtain.

In *Ex parte Levy*, for instance, this Court found a law authorizing all state judges to issue warrants—including judges on this Court who lack jurisdiction to enforce criminal laws—to be otherwise constitutional because the General Assembly's intent was to ensure that courts charged with enforcing criminal law do so. 204 Ark. 657, 163 S.W.2d at 531. This Court should likewise find that, at a minimum, the legislature's intent in enacting Section 601(b) was to ensure that paid canvassers "were never convicted of certain disqualifying crimes," R. 166, and that the remainder of Section 601(b) is constitutional. *Borchert*, 248 Ark. at 1050-B, 460 S.W.2d at 34 ("We are not authorized to declare an entire act, or even an entire section thereof, invalid because a part of the act or section is unconstitutional, unless all of the provisions of the act, or the section, are so dependent on each other that it cannot be presumed that the legislature would have passed one without the other."). Because the remainder of the Section could have existed separately to serve its legislative purpose had only the federal-background-check requirement been enjoined, this Court should at a minimum find that the circuit court's injunction is overbroad and vacate the injunction.

REQUEST FOR RELIEF

For these reasons, this Court should reverse the circuit court's order granting a preliminary injunction of Ark. Code Ann. 7-9-601(b).

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I certify that this brief complies with Administrative Order No. 19 and that it conforms to the word-count limitations contained in Rule 4-2(d) of this Court's pilot rules on electronic filings. The jurisdictional statement, the statement of the case and the facts, and the argument sections altogether contain 4,638 words.

/s/ *Dylan L. Jacobs*
Dylan L. Jacobs

CERTIFICATE OF SERVICE

I certify that on November 17, 2020, I electronically filed this document with the Clerk of Court using the eFlex electronic-filing system, which will serve all counsel of record.

/s/ *Dylan L. Jacobs*
Dylan L. Jacobs