CV-20-562

In the Arkansas Supreme Court

John Thurston, in his official capacity as Arkansas Secretary of State; and Leslie Rutledge, in her official capacity as Arkansas Attorney General — Appellants

vs.

Safe Surgery Arkansas, a ballot question committee; and Laurie Barber, M.D., individually and on behalf of Safe Surgery Arkansas — Appellees

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Appellees' Brief

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Statement of the Case and the Facts

Safe Surgery Arkansas ("SSA") intends to sponsor an initiative in the 2022 election cycle opposing laws that allow surgical procedures to be performed by non-medical doctors. Supp. R. 20-23, 27. Before committing hundreds of thousands of dollars (Supp. R. 40) and countless volunteer time (Supp. R. 26) towards that effort, SSA seeks certainty in the Amendment 7 process regarding the requirements of Ark. Code Ann. § 7-9-601(b).

The issue in this case stems from a series of cases decided by the Arkansas Supreme Court in 2020 prior to this year's November 3 election. Those cases, and the arguments first advanced by the opposition ballot question committees in those cases, inform this matter and illustrate the necessity of the current lawsuit.

Arkansans for Healthy Eyes et al. v. Thurston

In 2019, SSA submitted a statewide referendum petition to the Secretary of State in connection with Act 579 of 2019. After the Secretary of State certified SSA's petition to appear on the November 2020 ballot, an opposing ballot question committee sued the Secretary alleging that the measure should not appear on the ballot for several reasons. Among

the many alleged infirmities, the opposing ballot question committee alleged that none of the signatures SSA submitted on its referendum petition should have been counted because SSA did not obtain federal background checks on their paid canvassers from the Arkansas State Police. Ark. Code Ann. § 7-9-601(b)(1) requires a sponsor to "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." (Emphases added.) Ark. Code Ann. § 7-9-601(b)(3) requires a sponsor to "certify to the Secretary of State that each paid canvasser in the sponsor's employ has passed a criminal background check in accordance with [Section 601]."

A representative from the Arkansas State Police testified under oath at the hearing before a special master that the State Police has never provided *federal* background checks to paid canvassers because they are not permitted to do so. Supp. R. 100. The witness testified that is impossible for sponsors to comply with the requirement that they obtain federal background checks on paid canvassers from State Police. Supp. R. 101. The special master agreed. Supp. R. 173-174.

On September 17, 2020, the Supreme Court ruled on the petition, declaring that it lacked a sufficient number of signatures to appear on the ballot. The impossibility of obtaining a federal background check as contemplated by Ark. Code Ann. § 7-9-601(b)(1) was raised in that case, but the Court did not reach it, considering it moot after its decision in *Miller v. Thurston*, 2020 Ark. 267.

Miller v. Thurston

The second case is very similar. A sponsor of two state-wide measures, Arkansas Voters First, sued the Secretary of State in an original action in the Supreme Court when the Secretary said both measures failed for want of initiation—they lacked total signatures required on the initial, facial count. During the proceedings before a special master, the opponents of the two state-wide measures claimed that none of the signatures should be counted because the sponsor did not obtain federal background checks on paid canvassers from the State Police. During the proceedings before that special master, the same representative from State Police testified that the State Police have never provided *federal* background checks to paid canvassers because they are not permitted to do so. Supp .R. 129-131, 135. The witness testified that

it is impossible for sponsors to comply with the requirement that they obtain federal background checks on paid canvassers from State Police. Supp. R. 134-135. The special master agreed. Supp. R. 194.

On August 27, 2020, the Arkansas Supreme Court decided that the sponsor's certification language did not comply with Ark. Code Ann. § 7-9-601(b)(3). *Miller v. Thurston*, 2020 Ark. 267, 605 S.W.3d 255. In its opinion, this Court held that argument related to the impossibility of complying with Ark. Code Ann. § 7-9-601(b)(1) was a "red herring" because even if "obtaining federal background checks from the Arkansas State Police, as contemplated by the statute" was impossible, the sponsor did not comply with the verification requirements as to *state* background checks. *Id.* at *8, 605 S.W.3d at 259. Thus, the Arkansas Supreme Court did not reach the constitutionality of Section 601(b), nor did it address the special masters' finding that it is impossible to obtain a federal background check on paid canvassers from State Police.

The Current Case

Given the impossibility of compliance with Section 601(b)(1) (the federal background check from State Police) and Section 601(b)(3) (certifying that the federal background check was obtained from State

Police), SSA determined that it cannot register any canvassers with the Secretary of State. On September 4, 2020, SSA filed suit in the Pulaski County Circuit Court seeking a declaratory judgment on section 601(b)'s constitutionality and an injunction on its enforcement.

Appellants' counsel erroneously and unnecessarily takes the circuit court to task for its procedure related to the temporary restraining order. App. Brief pp. 7-9. Despite actual notice of the lawsuit through communications between counsel and acceptance of service by the Secretary of State, neither Appellant entered an appearance or otherwise alerted the circuit court of opposition to the temporary restraining order requested in the complaint. *See* SSA's Response to Stay Request, Case No. CV-20-532, at pp. 2-3, 12-15. The circuit court issued a temporary restraining order on September 8, 2020, and immediately scheduled a preliminary injunction hearing for September 18, 2020. On September 24, 2020, the circuit court issued an order granting SSA's request for a preliminary injunction and enjoining the enforcement of Ark. Code Ann. § 7-9-601(b) in its entirety. This appeal followed.

Argument

The circuit court correctly granted the preliminary injunction requested by SSA and enjoined Ark. Code Ann. § 7-9-601(b) in its entirety.

I. There is a justiciable controversy.

Standard of Review. Appellants correctly recite the *de novo* standard of review.

Background and Case Law. Instead of asking the Court to provide clarity and certainty on the Amendment 7 process for the benefit of all Arkansans, Appellants' lead argument urges this Court to decline to rule on the merits of this dispute because SSA's claims "rest entirely on the hypothetical possibility that they might sponsor a ballot initiative for the 2022 election cycle." App. Brief p. 11. While correctly citing the legal standard from *Baptist Health Sys. v. Rutledge*, 2016 Ark. 121, 488 S.W.3d 507, Appellants ignore the realities of this situation which are distinguishable from *Baptist Health*, as well as the procedural posture of past cases decided by this Court in the Amendment 7 context.

The decision in *Baptist Health* was based on a lack of "sufficient factual record" showing "an actual, present controversy," including a

present danger, dilemma, or threat of imminent enforcement of the statute at issue in that matter. *Id.* at *4-*5, 488 S.W.3d at 510. As stated in the majority opinion, the only evidence in the record was an affidavit in support of the State defendants' motion for summary judgment and a portion of the hospitals' responses to requests for admissions which showed the hospitals had not previously been sued by any "physician, qualified medical provider, person or entity" for an alleged violation of the statute at issue. *Id.* at *5, 488 S.W.3d at 510.

This case is more properly guided by *Jegley v. Picado*, 349 Ark. 600, 80 S.W.3d 332 (2002) and *Magruder v. Arkansas Game and Fish Com'n*, 287 Ark. 343, 698 S.W.2d 299 (1985). In *Jegley*, this Court held that an intent to engage in behavior that is violative of the law against penalty of prosecution satisfied the justiciable controversy requirement even where there was no specific threat of prosecution. 349 Ark. at 611-622, 80 S.W.3d at 336-343. In *Macgruder*, the Supreme Court found a justiciable controversy where a Lake Maumelle fisherman challenged an Arkansas Game and Fish Commission prohibition on taking a black bass under fifteen inches. 287 Ark. at 344, 80 S.W.2d at 300. Finding that enforcement of the regulation would have an effect on the fisherman as

well as any other persons who wished to fish Lake Maumelle, this Court held "[o]ne whose rights are thus affected by a statute has standing to challenge it on constitutional grounds." *Id.* at 344, 80 S.W.2d at 300. SSA further notes that this case is procedurally similar to *McDaniel v. Spencer*, 2015 Ark. 94, 457 S.W.3d 641 where the plaintiffs challenged the constitutionality of Act 1413 of 2013 prospectively for the 2014 election cycle.

Evidence of Actual, Present Controversy. Like the fisherman in *Macgruder* who presented a justiciable controversy by showing a desire to catch and keep a black bass under 15 inches in length from Lake Maumelle, SSA presented ample evidence to the circuit court that it desires and intends to sponsor an initiative in the 2022 election cycle. That intent is reflected on SSA's Statement of Organization filed on September 1, 2020. R. 24 (". . . [SSA] will support an initiative for the November 2022 ballot to ensure that surgical procedures are only performed by medical doctors"). The circuit court heard testimony regarding SSA's intent for the 2022 election (Supp. R. 20-23, 27) and considered an affidavit from Dr. Laurie Barber, chair of SSA, recounting SSA's intent for 2022. Supp. R. 222.

And like the plaintiffs in *Jegley*, SSA does not have to wait for prosecution or some other type of adverse action to challenge Section 601(b)'s constitutionality. As the law currently exists, SSA contends that it is impossible to even begin the signature-gathering process because it cannot legally obtain federal background checks *from* Arkansas State Police as required by Ark. Code Ann. § 7-9-601(b). Thus the "actual and present controversy" already exists and is ongoing until SSA receives a ruling on this issue.

Furthermore, the threatened enforcement of Section 601(b) is not "hypothetical" at all. SSA had to defend against this exact argument in the 2020 election cycle in *Arkansans for Healthy Eyes v. Thurston*, as did Arkansas Voters First in *Miller v. Thurston*. Both were advanced by opposition ballot question committees which sought to invalidate every petition part for failure to obtain federal background checks in compliance with Ark. Code Ann. § 7-9-601(b)(1).

As it stands, the language of Ark. Code Ann. § 7-9-601(b) completely blocks SSA from exercising its Amendment 7 rights and this case presents a justiciable controversy.

II. The circuit court correctly granted a preliminary injunction.

Standard of Review. Appellants correctly state the standard of review on the circuit court's preliminary injunction but do not accurately apply those standards to the case. The grant of a preliminary injunction is subject to an abuse-of-discretion standard. *Baptist Health v. Murphy*, 365 Ark. 115, 121, 226 S.W.3d 800, 806 (2006). Factual findings leading to the circuit court's conclusions on irreparable harm and likelihood of success on the merits are subject to a clearly erroneous standard. *Id.* A finding is clearly erroneous when the appellate court is left with a definite and firm conviction that a mistake has been committed. *Dep't of Arkansas State Police v. Keech Law Firm, P.A.*, 2017 Ark. 143, *3, 516 S.W.3d 265, 268 (2017).

This Court reviews issues of statutory interpretation *de novo* because it is for the Supreme Court to determine the meaning of a statute. *Arkansans for Healthy Eyes v. Thurston*, 2020 Ark. 270, *6, 606 S.W.3d 582, 586. "The first rule of statutory construction is to construe the statute just as it reads, giving the words their ordinary and usually accepted meaning in common language." *Id.* When a statute is clear, legislative intent should not be considered, and the plain language must be utilized to determine intent. *Id.* Before declaring a statute

unconstitutional, the incompatibility between it and the Constitution must be clear. *Mendoza v. WIS International, Inc.*, 2016 Ark. 157, *3, 490 S.W.3d 298, 300.

Like the opposition ballot question committees in *Healthy Eyes* and *Miller*, Appellants' defense of Section 601(b) is a mix of questions of fact and questions of law. Whether it *is possible* to obtain federal background checks *from* the Arkansas State Police is a question of fact subject to the clearly erroneous standard. Whether obtaining federal background checks from some source other than the Arkansas State Police satisfies the requirements of Section 601(b)(1) is a question of law subject to *de novo* review.

Under either standard, the circuit court properly granted the preliminary injunction and should be affirmed.

A. The circuit court did not err in finding SSA is likely to succeed on the merits.

Background. Amendment 7 to the Arkansas Constitution provides that the rights to initiative and referendum ("I&R") are of paramount importance, as the first and second powers "reserved by the people." These rights are "a cornerstone of our state's democratic government." *Parker v. Priest*, 326 Ark. 123, 133, 930 S.W.2d 322, 328

(1996). Amendment 7, codified at article 5, section 1 of the Arkansas Constitution, creates two structural provisions regarding the legislature's authority in the I&R area. First, the Constitution removes from the legislature the power to enact legislation that has the effect of interfering with Arkansans' I&R rights: "[n]o law shall be passed to prohibit any person … from giving or receiving compensation for circulating petitions, nor to prohibit the circulation of petitions, *nor in any manner interfering with the freedom of the people in procuring petitions*." Ark. Const., art. 5, § 1 ("Unwarranted Restrictions Prohibited") (emphasis added). Second, the Constitution specifically requires the legislature to enact legislation that protects the I&R process by enacting laws that prevent fraud in the I&R process: "but laws shall be enacted prohibiting and penalizing perjury, forgery, and all other felonies or other fraudulent practices, in the securing of signatures or filing of petitions." *Id*.

In 2013, the General Assembly enacted sweeping legislation regulating the I&R process. One requirement was that paid canvassers execute a statement swearing they were never convicted of certain disqualifying crimes. The sworn-statement requirement, and certain

other provisions of Act 1413 of 2013, did not go into effect until early 2015 because they had been enjoined. *McDaniel v. Spencer*, 2015 Ark. 94. While Act 1413 was enjoined and still under judicial review, the legislature added additional, related requirements in Section 7-9-601(b) that sponsors pay for state and federal criminal background checks from State Police and certify to the Secretary of State that all its paid canvassers are free of the crimes listed in the sworn-statement requirement. Act 1219 of 2015, § 4 (now codified in Ark. Code Ann. 7-9-601(b)).

State of the Law. Under Arkansas law, 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. Code Ann. § 7-9-601(b)(1) (emphasis added). Upon submission of a 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 [Section 601(b)]." Ark. Code Ann. § 7-9-601(b)(3) (emphasis added). Willful violation of Section 601(b) is a Class A misdemeanor. Ark. Code Ann. § 7-9-601(b)(4).

In addition to the threat of criminal prosecution, since 2016 this Court has applied a **strict compliance standard** and held a sponsor's failure to strictly comply with Section 601(b) triggers the do-not-count provision of Ark. Code Ann. § 7-9-126(b). *Arkansans for Healthy Eyes v. Thurston*, 2020 Ark. 270, at *8, 606 S.W.3d 582, 586-87 (*citing Miller v. Thurston*, 2020 Ark. 270, 605 S.W.3d 255; *Zook v. Martin*, 2018 Ark. 306, at *4-*5, 558 S.W.3d 385, 390; *Benca v. Martin*, 2016 Ark. 359, at *10-*13, 500 S.W.3d 742, 749-750)). In *Miller*, this Court said the following:

> "Today, we have simply interpreted the laws enacted by our General Assembly—'shall' means 'shall' and the Sponsor did not comply with the statutes." *Benca*, 2016 Ark. at 16, 500 S.W.3d at 752. Similarly, in *Zook* [], this court excluded several sets of signatures for failure to comply with the statutory requirements regarding paid canvassers. Here, we cannot ignore the mandatory statutory language requiring certification that the paid canvassers passed criminal background checks, nor can we disregard section 7-9-601(f)'s prohibition on the Secretary of State counting incorrectly obtained signatures "for any purpose."

2020 Ark. 267, 9, 605 S.W.3d 255, 259–60 (2020).

Impossibility of Compliance-Fact Question. Because the evidence before the circuit court fully supported the finding that it is impossible for sponsors to obtain federal background checks *from* State Police, the circuit court did not clearly err.

The circuit court received and considered the following unrebutted evidence obtained during the *Healthy Eyes* and *Miller* proceedings:

- the State Police have never provided federal background checks for paid canvassers because, according to State Police, the relevant statute does not meet the FBI's criteria to authorize such a check. Supp. R. 100; Supp. 129-131;

- no sponsor of a statewide measure has ever obtained a federal background check on paid canvassers under section 601(b)(1). Supp. R. 101-102; Supp. R. 134-135; and

- there is no way a sponsor of statewide measure can obtain, from the State Police, a federal background check on paid canvassers. Supp. R. 134-135.

Appellants did not present any evidence that sponsors could obtain federal background checks on paid canvassers *from* the State Police. Rather, Appellants argue that sponsors can satisfy the requirements of Section 601(b)(1) by obtaining such records directly from the FBI. Whether that satisfies the requirements of Section 601 is a legal question addressed below.

Since the only evidence before the circuit court was that it is impossible for SSA to obtain federal backgrounds from State Police, the circuit court's findings are not clearly erroneous and should be upheld.

Impossibility of Compliance-Legal Question. It is an ancient legal maxim that the law does not require an impossibility. Sponsors,

such as Safe Surgery, cannot be compelled to do the impossible. *See Burbridge v. Arkansas Lumber Co.*, 118 Ark. 94, 178 S.W. 304, 309 (1915) ("The impossible is not required by law, nor expected to be performed."); *Cowling v. Muldrow* 71 Ark. 488, 76 S.W. 424 (1903) ("The law is reasonable, and does not require an absurd or impossible thing."); *Kight v. Arkansas Dept. of Human Servs.*, 94 Ark. App. 400, 411, 231 S.W.3d 103, 112 (2006) ("[I]t is a familiar maxim of the law that *lex non cogit ad impossibilia*.").

Compelling sponsors to do the impossible violates Amendment 7, rendering the statute unconstitutional. Article 5, section 1 of the Arkansas Constitution carefully articulates the scope of the legislature's authority in the initiative and referenda ("I&R") area. The Constitution removes from the legislature the power to enact legislation that has the effect of interfering with the peoples' I&R rights "[n]o law shall be passed to prohibit any person … from giving or receiving compensation for circulating petitions, nor to prohibit the circulation of petitions, *nor in any manner interfering with the freedom of the people in procuring petitions*." Ark. Const., art. 5, § 1 ("Unwarranted Restrictions Prohibited") (emphasis added). Nor may the legislature enact any

legislation that restricts, hampers, or impairs citizens I&R rights: "No legislation shall be enacted to restrict, hamper or impair the exercise of the rights herein reserved to the people." Ark. Const., art. 5, § 1 ("Self-Executing").

As noted by the circuit court, it is difficult to imagine a more textbook example of a statute that restricts, hampers, or impairs Arkansans I&R rights than one like the federal-background check requirement, with which compliance is impossible. The statute is clear that federal background checks are to be obtained "from the Division of Arkansas State Police" and giving "the words their ordinary and usually accepted meaning in common language" renders Section 601(b) unconstitutional. That is not a "nonsensical" reading as suggested by Appellants (App. Brief, p. 20), that is the *only* reading giving all the words of the statute their plain meaning and effect. Thus, there is a "clear incompatibility" between Section 601(b) and the requirements of Article 1, Section 5 of our Constitution which prohibits legislation that "restricts, hampers, or impairs" Arkansans' I&R rights.

Appellants' argument in response to the clear impossibility of complying with the plain language of Section 601(b)(1) boils down to

shall does not mean shall and **strict compliance does not mean strict compliance.** Effectively conceding that it is impossible for SSA to obtain a federal background check *from* the Arkansas State Police, Appellants argue there are "additional avenues" for SSA to comply. App. Brief p. 16. Appellants argue that SSA can obtain the federal check "from the Division of the Arkansas State Police" because State Police will help anyone have their fingerprints taken and sponsors can obtain their canvassers' fingerprints from State Police then take those fingerprints to the FBI to obtain a federal background check from the FBI. *Id.* at pp. 16-17.

That procedure does not satisfy Section 601(b) because the check and the results would not be "from the Division of the Arkansas State Police," rather from the FBI. Apparently recognizing this, Appellants state that "Section 601(b) does not specify the role that the ASP must play" (App. Brief, p. 17) despite clear language in the statute clearly delineating what sponsors must obtain *from* the ASP. Stated otherwise, Appellants urge this Court not to interpret the statute "just as it reads" or give the words "their ordinary and usually accepted meaning in

common language." *See Arkansans for Healthy Eyes*, 2020 Ark. at *7, 606 S.W.3d at 586.

Finally, Appellants assert that prior initiatives have complied with Section 601(b)'s requirements. App. Brief. pp. 18-19. This is a "red herring." To SSA's knowledge, the federal background requirements of Section 601(b)(1) had not previously been raised in any proceeding before the dispute in *Arkansans for Healthy Eyes*. In fact, Arkansas State Police's counsel testified twice that Arkansas State Police has *never* supplied a federal background check to a sponsor of a state-wide referendum or initiative. Contrary to Appellant's statement that "other courts have rejected claims like Appellees," every authority that has considered this issue has determined that that Section 601(b) contains impossible requirements. Appellants citation to *League of Women Voters of Ark. v. Thurston*, Case No. 5:20-CV-05174-PKH, 2020 WL 5535017 (W.D. Ark. Oct. 26, 2020) is misplaced because this issue was not squarely before that court. The issue presented in that case was under the First Amendment and concerned whether "it was impossible to comply with 601(b)(3) before the state supreme court interpreted what was meant by 'passing' a background check." *Id.* at *6-*8.

The questions squarely before this Court is how SSA and sponsors of other initiatives can **strictly comply** (*see Arkansans for Healthy Eyes*, 2020 Ark. at *8, 606 S.W.3d at 586-87) with the statute requiring them to obtain federal background checks "from the Division of the Arkansas State Police" if Arkansas State Police do not provide those records. They simply cannot. Appellants' suggested work-around invites SSA to knowingly sign a false certification under Section 601(b)(4) and spend hundreds of thousands of dollars gathering signatures only to be met with a last-minute challenge by an opposition ballot question committee seeking to invalidate all petition parts for failure to strictly comply with Section 601(b)(1)'s requirement that it obtain federal background checks *from* State Police. Effectively, Appellants ask this Court to re-make and re-write the law to save its constitutionality. This Court should decline that invitation as that duty is the responsibility of our Legislature.

B. The circuit court did not err in finding irreparable harm.

Appellants' arguments on irreparable harm are similar to its arguments above. First, Appellants suggest SSA can register its canvassers without first obtaining the federal background checks from ASP. App. Brief, p. 21. For brevity's sake, SSA incorporates the

arguments made above as to why that suggestion is untenable. SSA cannot under risk of criminal penalty and invalidation of any gathered signatures "certify to the Secretary of State that each paid canvasser in [SSA]'s employ has passed a criminal background check" "obtain[ed] . . . from the division of Arkansas State Police" because to do so is impossible. Ark. Code Ann. § 7-9-601(b)(1)-(4).

Appellants suggested below and repeat here that SSA's claim of irreparable harm is not ripe because it must file a draft proposal of its initiative prior to having to "worry about compliance with Section 601(b)." App. Brief., p. 22. That is simply not the case. The requirements of Ark. Code Ann. § 7-9-107 are concurrent with those of Section 601(b), not prerequisite. In other words, a sponsor must comply with both Section 107 and Section 601 ***prior to*** gathering signatures on a petition. As a valid ballot question committee formed for the 2022 election cycle, a fact which was not disputed at the circuit court level, but for the issues pertaining to Section 601(b), SSA could register its canvassers now for the 2022 cycle and later file its original drafts in compliance with Section 107. The operative date to consider for both is the date on which a paid canvasser begins to collect signatures.

Appellants also suggest this entire issue is "speculative" because SSA could simply use volunteer canvassers and not have to comply with Section 601(b). App. Brief, p. 22-23. Our Constitution forecloses that argument because it states the Legislature cannot pass a law to force sponsors to use voluntary canvassers instead of paid canvassers: "No law shall be *passed to prohibit any person or persons from giving or receiving compensation* for circulating petitions, nor to prohibit the circulation of petitions, nor in *any manner interfering with the freedom of the people in procuring petitions* . . . ." Ark. Const., art. 5, § 1 ("Unwarranted Restrictions Prohibited") (emphases added). Adopting Appellants' position would disallow almost any challenge to unconstitutional restrictions on paid canvassers and must be rejected.

The circuit court heard and considered testimony from SSA regarding the time and expense involved in exercising its I&R rights and correctly determined that SSA would be irreparably harmed without the issuance of a preliminary injunction. Each day that passes without certainty on the requirements of Section 601(b) is another day that SSA and other sponsors of I&R petitions cannot work on gathering signatures for the 2022 election, thus increasing costs and difficulty in the already-

daunting petition process. Accordingly, SSA clearly met its burden to show irreparable harm and the circuit court did not err in its determination.

III. The circuit court did not err in finding unconstitutional portions of Section 601(b) non-severable from the remainder.

The circuit court correctly determined that the impossible federal background check requirements of Section 601(b)(1) and (b)(3) were inseparably linked with the remainder of Section 601(b). In considering whether an unconstitutional part of a statute is inseparably linked with the remainder, courts must address two questions: (1) whether a single purpose is meant to be accomplished by the act, and (2) whether the sections of the act are interrelated and dependent upon each other. *McGhee v. Ark. St. Bd. of Collection Agencies*, 375 Ark. 52, 63, 289 S.W.3d 18, 27 (2008). Section 601(b) is all part of Act 1219 of 2015, which links state and federal background checks as a single, intertwined check and sets the penalties and procedure in connection with the certification to the Secretary of State.

Appellants gloss over the fact that Section 601(b) contemplates that the sponsor will conduct a single background check encompassing state

and federal records, requiring sponsors to certify to the Secretary of State that its paid canvassers have "passed ***a*** criminal background search in accordance with this section." (emphasis added.) Striking just the federal criminal record search, while leaving Section 601(b)'s other requirements regarding a state criminal record search, cannot be consistent with the General Assembly's intent because the remainder of Act 1219, section 4, now codified in Ark. Code Ann. § 7-9-601(d)(3), makes clear that the General Assembly was concerned not just with Arkansas convictions but with convictions in "any state of the United States, the District of Columbia, Puerto Rico, Guam, or any other United States protectorate."

Further, Act 1215 lacks a severability clause, which "while not determinative," certainly "suggests that the legislative intent was to pass the act as a whole. *See Hobbs v. Jones*, 2012 Ark. 293, 18, 412 S.W.3d 844, 856. The state and federal background checks are interrelated and dependent on each other. Thus, the required certification to the Secretary of State and the ability to obtain state *and* federal background checks *from* State Police are interrelated and dependent on each other.

Conclusion

In conclusion, SSA respectfully asks this Court to affirm the decision of the circuit court in its entirety.

Respectfully submitted,

By: /s/ Alec Gaines

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Certificate of Service

I certify that on December 23, 2020, a copy of the foregoing was filed with this Court's eFlex filing system, which serves all counsel of record.

/s/ Alec Gaines
Alec Gaines

Certification of Compliance

I certify that the foregoing 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 statement of the case and the facts and the argument sections altogether contain 4,775 words.

By: /s/ Alec Gaines
Alec Gaines