IN THE ARKANSAS SUPREME COURT

AN ORIGINAL ACTION

ARKANSANS FOR HEALTHY EYES,
a Ballot Question Committee; VICKI
FARMER, individually and on behalf of
ARKANSANS FOR HEALTHY EYES — PETITIONER

VS. **CASE No. CV-20—136**

JOHN THURSTON, ARKANSAS
SECRETARY OF STATE — RESPONDENT

SAFE SURGERY, ARKANSAS
A Ballot Question Committee; and
Laurie Barber, M.D., Individually and on
Behalf of SAFE SURGERY ARKANSAS — INTERVENORS

MASTER'S REPORT AND

FINDINGS OF FACT

On April 2, 2020, the Arkansas Supreme Court appointed the Honorable Mark Hewett as special master to conduct a hearing on Petitioner's allegations contained in Counts 2, 3 and 4 of their Original Action Complaint and to report his findings by July 15, 2020.

A four-day hearing was conducted in the Justice Building on June 16-19. At that hearing, Petitioners appeared through their attorneys Jess Askew and Dale Brown. The Respondent appeared through his attorney, Gary Sullivan. The intervenors appeared through their attorneys, Ryan Owsley, Ed Lowther, Stephen Lancaster, and Scott Irby. The special master heard argument from counsel and testimony from several witnesses.

Based upon the testimony presented and the evidence admitted, the special master makes the following Findings of Fact:

1. Act 579 of 2019 is an act duly passed by the Arkansas General Assembly and signed into law on March 27, 2019 ("Act 579").

2. Act 579 expands the scope of practice for optometry in Arkansas to permit duly credentialed and licensed optometrists to perform the following procedures: (i) Injections, excluding intravenous and intraocular injections; (ii) Incision and curettage of a chalazion; (iii) Removal and biopsy of skin lesions with low risk of malignancy,

excluding lesions involving the lid margin or nasal to the puncta; (iv) Laser capsulotomy; and (v) trabeculoplasty. Exhibit 1.

3. Safe Surgery Arkansas is an Arkansas ballot question committee as defined in Ark. Code Ann. § 7-9-402(2)(A) and registered with the Arkansas Ethics Commission ("SSA"). Its current Chair is Dr. Laurie Barber, who is also an Intervenor. SSA has intervened in this action to oppose the relief requested in the Original Action Complaint.

4. SSA is the sponsor of the referendum petition concerning Act 579 of the 2019 General Assembly (the "Referendum Petition").

5. Petitioner Arkansans for Healthy Eyes is an Arkansas ballot question committee registered with the Arkansas Ethics Commission ("Healthy Eyes"). Its Chair is Vicki Farmer, who is also a Petitioner.

6. Respondent is John Thurston, Arkansas Secretary of State ("the Secretary").

7. In view of the Supreme Court's decision in a related case on December 17, 2019, the parties and the Special Master have used the Election Code relating to Initiatives and Referenda as it existed in 2018, before the 2019 General Assembly. All statutory citations in these findings are, accordingly, to the codification of those laws in the Arkansas Code Annotated 2018 Replacement volume for Title 7. Some of the citations may therefore differ from the citations as they currently appear in the Arkansas Code Annotated.

8. On July 23, 2019, Safe Surgery filed the petition with the Secretary of State.

9. The Petition contained 84,866 signatures across 12,570 petition parts.

10. The Secretary determined that the Referendum Petition requires 54,391 valid signatures to qualify for the 2020 general election ballot, and the parties stipulated to this number.

11. On January 31, 2020, the Secretary of State certified 64,027 valid signatures on the Referendum Petition, and the parties stipulated to this fact. (Transcript-P. 10 line15-19.) The Petition had a validity rate of 75.4%. This submission provided a 9,636 signature margin above the valid signature threshold.

12. The Secretary maintains a Valid Signature Report, stating the name of every voter on the Referendum Petition whose signature was counted as valid. The Valid Signature Report was received in evidence as Exhibit 11.

13. Exhibit 11 (Valid Signature Report) contains the Secretary's Bates number of the petition part on which the valid signature appears, but it does not contain the name of the paid canvasser who procured the signature.

14. The parties stipulated to the admission into evidence of the original petition parts as Joint Exhibit 1, and a flash drive that contains an electronic image of Joint Exhibit 1 as Joint Exhibit 2.

15. The parties stipulated signature count totals for the following canvassers on the record:

a. Shwanda Clark: 1,974 signatures

b. Adolphus Coleman: 1,350 signatures

c. Lee Evans: 1.477 signatures

d. Regal Johnson: 1,042 signatures

e. Gary Robinson: 2,246 signatures

f. Dustin Rorie: 1,113 signatures

g. Abraham Salazar: 1,544 signatures

h. Waco Day: 1,462 signatures

I. Carol Nolan: 1,494 signatures

(Transcript-P. 9 line 24 - P. 10, line 12); (Transcript P. 822, line 21 - P. 823, line 17.) Healthy Eyes alleges that these nine canvassers have criminal histories, however, Healthy Eyes has not produced sufficient evidence to show that these nine canvassers have disqualifying criminal convictions.

16. The petition parts contain the name of the paid canvasser who procured the signatures on each page of the petition parts.

17. Determining how many valid signatures each paid canvasser procured requires a summary of the information in Joint Exhibit 1 and Exhibit 11.

18. The parties stipulated to the number of signatures for each canvasser in Exhibits 14.1 through 14.55 The 55 canvassers submitted 10,255 petition parts and 52,603 signatures validated by the Secretary of State. See Exhibit 11; (Transcript P. 9 line 24 - P. 10, line 12;) (Transcript P. 822 line 21- P. 823, line 17.)

19. SSA relied exclusively on paid canvassers to obtain signatures on the Referendum Petition.

20. Ark . Code Ann. § 7-9-601 sets forth several mandatory obligations of the Sponsor concerning paid canvassers, and violation of the obligations triggers a "do not count" obligation on the part of the Secretary. Ark. Code Ann.§7-9-601(b)(5)

21. Petitioner's presented evidence of violations of the paid canvasser requirements of Ark. Code Ann.§7-9-601 concerning: a) The requirement that the Sponsor shall obtain at its cost, from the Department of Arkansas State Police, a current state and federal criminal record search on every paid canvasser to be registered with the Secretary. Ark. Code Ann. § 7-9-601(b)(1);

b) The requirement that, upon submission of its list of paid canvassers to the Secretary, the sponsor shall certify to the Secretary that each paid canvasser has passed a criminal background check in accordance with Section 601(b). Ark. Code Ann. §7-9-603(b)(3).

22. A company based in Georgia, National Ballot Access, Inc., ("NBA") supplied the paid canvassers to the Sponsor. The majority of the 85 paid canvassers that SSA registered with the Secretary (Exhibit 13) were professional canvassers who came from out of state and who work for NBA on ballot measures across the country. *See generally* Exhibit 14, paid canvasser file for domiciliary or other permanent address information as to each paid canvasser.

23. NBA recruited and engaged the paid canvassers as independent contractors and received and maintained all records concerning paid canvassers until the Referendum Petition was turned in to the Secretary on July 23, 2019. At that time, NBA transferred the paid canvasser file to SSA, which has the statutory obligation to maintain the records for 3 years. Ark. Code. Ann. § 7-9-601 (e).

24. The Sponsor does not and did not provide the paid canvasser file to the Secretary.

25. The paid canvasser file, which contains 1,654 pages, was received in evidence as exhibit 14.

26. Exhibits 14.1 through 14.55 are excerpts of Exhibit 14 that relate to specific paid canvassers.

27. SSA as Sponsor was required to obtain from the Department of Arkansas State Police, a criminal record search on every paid canvasser to be registered with the Secretary, Ark. Code Ann. §7-9-606(b)(1), and upon submitting its list of paid canvassers to the Secretary, "the sponsor shall 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 sponsor must submit the list of paid canvassers before paid canvassers solicit signatures. Ark. Code Ann. §7-9-601 (a)(2)C.

28. NBA submitted lists of paid canvassers to the Secretary beginning on June 12, 2019.

29. The Secretary maintains a file of the paid canvasser-list submissions, and that file was received in evidence as Exhibit 8.

30. The first list of paid canvassers that NBA submitted, dated June 12, 2019, contained 7 paid canvassers and stated: "I certify that the canvassers listed below have each passed a criminal background check from the Arkansas State Police within 30 days of canvassing." (Transcript p. 247, lines 15-23.)

31. By contrast, the list of paid canvassers submitted on June 13, 2019 and on following days did not certify that the canvassers listed had passed a criminal background check. Instead the certifications stated:

In compliance with Ark. Code Ann § 7-9-601, please find the list of paid canvassers that will be gathering signatures on the Safe Surgery Referendum. On behalf of the sponsor, this statement and submission of names serves as certification that the statewide Arkansas State Police background check, as well as a 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. (Transcript P. 246, lines 8-17)

That statement does not state that a federal background check has been acquired.

32. The change in the language of the certification to the Secretary after June 12, 2019 to eliminate the statement that the paid canvassers had "passed" a criminal background check was reviewed and approved by attorney Alex Gray, Exhibit 40, acting on behalf of SSA. (Transcript P. 246, line 18 - P.247, line 14); (Transcript P. 1207, line 12 - P. 1211, line 18.)

33. A total of 8 paid canvassers were certified to the Secretary as having passed a criminal-record check before beginning to collect signatures. Those seven paid canvassers are: Jay Taylor, Lee Evans, Nicholas Kowalski, Debra McLain, Richard Riscol, Charmaine Vossberg, Jerime Willour, and Daryl Oberg.

34. These 8 paid canvassers collected a total of 12,116 signatures that the Secretary counted as valid. See exhibit 11.

35. After subtracting the valid signatures obtained by those 8 paid canvassers, the remaining total number of signatures the Secretary counted as valid, 51,911, were

procured by paid canvassers not certified as having passed a criminal record search upon submission of the paid canvasser list from June 13, 2019 and afterward. This violation triggers the "do not count" requirement of Ark. Code Ann §7-601(b)(5), which provides that "signatures incorrectly obtained under this section shall not be counted by the secretary of State " and therefore requires disqualification of 51,911 signatures from the 64,027 that the Secretary counted as valid. The term "shall" has been determined to be mandatory and that substantial compliance cannot be used as a substitute for fulfillment with the statute, Benca v. Martin, 2016 Ark. 359, at 12-13, 500 S.W. 3d at 750; Zook v, Martin, 2018 Ark. 306.

36. The information contained in the Department of Arkansas State Police report pursuant to Ark.Stat.Ann.§7-9-601(b)(1) is not always dispositive of a canvasser having a disqualifying criminal history in Arkansas. The Arkansas State Police report for Lee Evans indicates a conviction for theft of property with the event occurring on 06/19/2002 and that the arresting agency was the Jonesboro police. See Lee Evans deposition Exhibit 3. The report does not indicate whether the theft of property conviction is a felony, which is a disqualifying criminal conviction, or a misdemeanor, which is not a disqualifying criminal conviction. Lee Evans testified that the conviction was not a felony conviction. See Lee Evans deposition P.36 L.8-9.

37. Healthy Eyes alleges that the Secretary should not have counted any signatures on the Petition because Safe Surgery did not obtain federal background checks through the Arkansas State Police on any paid canvasser.

38. The Arkansas State Police have never provided federal background checks for paid canvassers because, according to the Arkansas State Police, Ark. Code

Ann. § 7-9-601 does not meet the FBI's criteria for a state statute to authorize such a check. (Transcript-P. - 1282 line17 - 1285 line1; 1303 line -12 - 1304 line 8; - 1304 line18 - 1305: line 6)

39. Before beginning its canvasing effort, the sponsor (through representatives of National Ballot Access) called the State Police to ask whether they would now provide federal background checks. (Transcript-P. 295 line 19 - 296 line 11; 298 line 4 -7; 299 line 10 - 300 line 9)

40. The Arkansas State Police confirmed on that call that they are still unable to provide that service for paid canvassers under Ark. Code Ann. § 7-9-601. (Transcript-P. 300 line 2-9)

41. The Arkansas State Police also confirmed at trial that they are still unable to provide that service for paid canvassers under Ark. Code Ann. § 7-9-601. (Transcript-P.1281 line17 - 1285 line 1)

42. Therefore, the sponsor cannot comply with the federal background check requirement in Ark. Code Ann. § 7-9-601 (Transcript-P. 1306 line 7 - 17)

43. The sample petition part, which contains instructions to canvassers, a blank petition part, the popular name and ballot title of the proposed ballot measure, and text of the referred measure, was admitted into evidence as Exhibit 4.

44. The parties stipulated that the fourth page of Exhibit 4 does not contain either the Title or Subtitle of Act 579 of 2019, the referred measure. (Transcript-P. 1234 line 25 - P. 1235 line 10.)

45. The text of an Act is the legally effective part of a referred Act—not its title or subtitle. *See Baker Refrigeration Sys., Inc. v. Weiss.* 360 Ark 388, 400—01, 201

S.W. 3d 900,907 (2005) (stating that the title of an act is only relevant to resolve disputes over construction of the act).

46. Healthy Eyes alleges that, since Dr. Barber—the chairperson of Safe Surgery—did not personally count the petition parts and signatures on the petition, her affidavit is false and fraudulent.

47. Dr. Barber, as the chairperson of Safe Surgery, relied on people working for and with Safe Surgery to manage the canvassing process. (Transcript-P. 809 line 8-22)

48. Dr. Barber relied on those people to personally count the number of petition parts and the total number of signatures on the Petition. (Transcript-P. 807—808)

49. Before signing her affidavit, Dr. Barber was personally shown each box of signed petitions and told how many petition parts and total signatures Safe Surgery had collected and would be submitting. (Transcript-P. 808 line 8 —809 line 3)

50. Dr. Barber's reliance on the people working for and with Safe Surgery when making her affidavit is reasonable and does not mean the contents of her affidavit were beyond her personal knowledge.

51. Dr. Barber's affidavit only states that "each Paid Canvasser passed a criminal background check." Exhibit 10. The certification statute requires that the affidavit certify that each paid canvasser has passed a criminal background search that includes a current state and federal criminal records search. Ark. Stat. Ann. §7-9-601(b)(1)(3). Therefore, Dr. Barber's affidavit does not satisfy the statutory requirements.

52. Healthy Eyes alleges that a one-page list of "Frequently Asked Questions" Safe Surgery provided to the canvassing company for training paid canvassers is false and fraudulent and should invalidate the entire Petition.

53. Scott Pace, a lawyer, pharmacist, and lobbyist involved in the debate regarding Act 579 at the Legislature testified that he drafted the FAQs to be accurate and not misleading. (Transcript-P. 189 line 4—10; P. 205 line 6—23)

54. Healthy Eyes proffered the testimony of two expert witnesses—Dr. Richard Castillo and Dr. Nathan Lighthizer— in its attempt to show that the FAQs were false and fraudulent.

55. Dr. Castillo is a doctor of osteopathy and a doctor of optometry. (Trial Ex. 22)

56. Though he has practiced as an ophthalmologist, he is not now and has never been a board-certified ophthalmologist. (Transcript-P. 494 line 10—12)

57. Dr. Castillo's main objection to the FAQs is the document's statement that the procedures in Act 579 involve "cutting on the eyes" of Arkansans. He believes that is not true for any procedure in Act 579. (Transcript-P. 493 line 5—19)

58. Safe Surgery relied on the testimony of two medical experts—Dr. Richard Morshedi and Dr. Laura Green—both whom testified that the FAQs are true and correct.

59. Both Drs. Morshedi and Green are board-certified ophthalmologists. (Trial Ex. 27; 38)

60. Both Drs. Morshedi and Green have performed each procedure listed in Act 579 and have trained other doctors how to perform them.

61. The first procedure Act 579 adds to the scope of optometric practice is all "injections, excluding intravenous or iintraocular injections." (Transcript-P. 640: line 9—25)

62. An intravenous injection is directly into a vein or veins.

63. An intraocular injection is directly into the globe of the eye, or the "eyeball."

64. This first procedure would authorize optometrists to perform retrobulbar injections, which involve using a needle to inject an anesthetic into the space behind ("retro") the globe of the eye ("bulbar"). (Transcript-P. 641 line 6—643 line 17)

65. A needle makes a small incision because it penetrates and creates a hole in human tissue. (Transcript-P. 640 line16—25)

66. The first procedure Act 579 adds to the scope of optometric practice involves cutting on one's eye. (Transcript-P. 640 line 12—15)

67. The second procedure Act 579 adds to the scope of optometric practice is an "incision and curettage of a chalazion." (Transcript-P. 643 line18—25)

68. A chalazion is a nodule that can grow on the inside of one's eyelid. To incise—or cut—the chalazion , the physician must evert the eyelid by using a medical device to turn it inside out. Then the physician uses a scalpel to cut the nodule and then scrapes it with a different device, a process know as "curettage." (Transcript-P. 644 line 2—645 line14). This procedure involves cutting on or into the eye.. Transcript.P. 1102 line17—18)

69. The third procedure Act 579 adds to the scope of optometric practice is the "removal and biopsy of a skin lesion with low risk of malignancy, excluding lesions involving the lid margin or nasal to the puncta." Transcript-P. 647 line12—16)

70. This procedure involves the use of a cutting instrument, usually a scalpel, to remove the lesion. *Id.*

71. Dr. Castillo—Healthy Eyes's medical expert designated to opine on the FAQs—believes that the second and third procedures involve only cutting on one's eyelid, not one's eye. Also, Dr. Castillo believes the eyelid is not part of the eye.

72. Drs. Morshedi and Green each testified that, from a medical and scientific perspective, the eyelid is part of the single organ system of the eye. (Transcript-P. 645 line15—646 line 25; P. 1098 line 22— P. 1099 line 13)

73. Drs. Morshedi and Green each testified that, when speaking with their patients, both they and their patients regularly refer to the "eye" when speaking about the "eyelid." *Id.*

74. Dr. Morshedi, when speaking to other doctors about the eye, uses the technical medical jargon. But when speaking to patients, he uses colloquial terms. (Transcript-P. 636 line 24—647 line 11)

75. These FAQs were designed to educate paid canvassers about the matters at issue in Act 579, not physicians or other medical professionals.

76. In everyday speech laypeople often refer to the "eye" when speaking about the "eyelid." (Transcript-P. 512 line 10—513 line 13)

77. The FAQs are not false or fraudulent when they refer to the "eye."

78. The fourth procedure Act 579 adds to the scope of optometric practice is a laser capsulotomy. (Transcript-P. 648 line 7—24)

79. A capsulotomy is a procedure often performed some time after cataract surgery. The procedure involves shooting a laser into the eye, where the laser is focused on a capsule behind the eye's surface tissue. Sometimes the capsule can become clouded and obscure the patient's vision. The laser passes through the surface tissue and permanently creates an opening in the capsule itself, restoring the patient's clarity of sight. (Transcript-P. 648 line 7– 649 line 8; 1107 line 12—1109 line 19)

80. Dr. Castillo believes while this procedure does permanently open the capsule, the procedure cannot be described as "cutting." (Transcript-P. 1109 line 20—24)

81. Drs. Green and Morshedi believe that the procedure does cut on one's eyes , and that it is generally regarded in the world of ophthalmology as a "light knife." (Transcript-P. 1109 line15—19)

82. It is not false or fraudulent to say the laser capsulotomy involves "cutting."

83. The fifth procedure Act 579 adds to the scope of optometric practice is a laser trabeculoplasty.

84. There is some difference of opinion among the medical experts on the nature of this laser procedure and whether it involves "cutting." (Transcript-P. 672 line 13–20)

85. Since the first four procedures involve cutting, it is unnecessary to resolve the question whether this procedure involves cutting.

86. The trier of fact determines the credibility of the witnesses and the weight to be given to their testimony. As the trier of fact I give more weight and credibility to the testimony of Drs. Green and Morshedi.

87. The FAQs give a description of the medical procedures at issue in Act 579 in a way that is true for the context in which the FAQs would be used.

88. Optometrists are not medical doctors, have not been to medical school, and have not completed a surgical residency. (Transcript-P. 658 line 5—18; 623 line12 —19)

89. The FAQs statements about optometric training are not false or fraudulent.

90. Healthy Eyes alleges that Safe Surgery failed to properly disclose its purpose in its initial filing with the Arkansas Ethics Commission.

91. On June 6, 2019, Safe Surgery formally became a ballot question committee when it filed with the Arkansas Ethics Commission a statement of organization, stating its purpose as to "advocate for any ballot initiatives that will protect the practice of surgery by medical doctors and oppose any efforts to the contrary." (Trial Ex. 30)

92. On July 8, 2019, Safe Surgery amended its filing with the Arkansas Ethics Commission, stating its purpose was supporting a referendum on Act 579 of 2019. (Trial Ex. 30)

93. Healthy Eyes has not provided any evidence that Safe Surgery's statements of purpose were fraudulent or designed to deceive anyone.

94. Healthy Eyes did not produce any evidence that Safe Surgery's statements of purpose led to any of the 64,027 signatures of Arkansas voters being improperly counted or validated by the Secretary of State.

95. Vicki Farmer, Healthy Eyes's chairperson, testified that, as of June 11, 2019, she knew Safe Surgery was planning a referendum, and she was planning for how to keep it off the ballot. (Transcript-P. 879 line 20—23)

96. Safe Surgery's statement of purpose was not intended to be false or deceptive.

97. Healthy Eyes alleges that the entire Petition is invalid because Jason Cline, an employee of the Secretary of State's office at the relevant time, allegedly attempted to falsify public records for Safe Surgery's benefit.

98. On July 8, 2019, Jason Cline learned that an FOIA request had been made about whether Safe Surgery had submitted the sworn statements from their paid canvassers. (Transcript-P. 1009 line 12—18)

99. On that day, Jason Cline sent a picture of the FOIA request to Alex Gray and called him on his cell phone to let him know there may be an issue with the canvasser statements. (Transcript-P. 1012 line 5—1013 line 8; 1149 line 24—1150 line 7)

100. Mr. Gray was in Colorado at the time on family vacation and had no knowledge about whether the statements had been submitted. (Transcript-P. 1146 line 23—1147 line 15)

101. Mr. Gray then added Heidi Gay (a representative of National Ballot Access) to the call to discuss this issue. (Transcript-P. 1013 line 2—8; 1150 line 6—7)

102. Heidi Gay testified that after this call she had a falling out with Jason Cline because she believed he was trying to steal her business model. (Transcript-P. 371 line 6-17)

103. Mr. Gray and Ms. Gay were unsure whether the statements were required to be filed and, if so, whether they may have already been submitted. (Transcript-P. 1150 line 10—21)

104. Mr. Cline volunteered to call Leslie Bellamy, the director of elections at the Secretary of State's office, to ask whether the statements were required to be filed and, if so, whether it was possible they had already been submitted but had been misplaced. (Transcript-P. 1018 line 10—1019 line 10)

105. Ms. Bellamy received Mr. Cline's call, which lasted 13 minutes, at around 6:26 pm on July 8, 2019. (Trial Ex. 21a)

106. She received the call while driving home with her husband and daughter as passengers in the car. (Transcript-P. 401 line 4—21)

107. She was uncomfortable with what she heard Mr. Cline say, believing that he was giving her a "soft nudge" to see if she would do what they were asking, if they could be found. (Transcript-P. 391 line 18–22)

108. She told Mr. Cline she would not do anything unethical, and Mr. Cline said he understood and was not asking her to. (Transcript-P. 1019: line 7—10)

109. All relevant witnesses testified that Mr. Cline made this call at his own behest or initiative and that he was not working for or on behalf of Safe Surgery at the time. (Transcript-P. 365 line 7—10; 366 line 24—367 line 7; 409 line 6—11; 1017 line 16—25)

110. Mr. Cline never worked for Safe Surgery in any capacity. (Transcript-P. 1166 line 7—10)

111. Mr. Cline notarized Dr. Barber's sponsor affidavit on July 23, 2019, after having left the employ of the Secretary of State, but there was no evidence he received any remuneration for doing so.

112. Neither Dr. Barber nor anyone on the ballot question committee had any knowledge that Mr. Cline was calling Ms. Bellamy. (Transcript-P. 365 line 11— 366 line 2)

113. Mr. Gray never asked Mr. Cline to modify or alter public records nor did he ask Mr. Cline to cause that to occur. (Transcript-P. 1017 line 17—23; 1020 line 24—1021 line1; 1156 line 5—19)

114. Mr. Gray testified that it was his understanding that even if the canvasser statements had not been provided in a timely manner, the signatures gathered by those canvassers could be used in order to obtain a cure period to gather a sufficient number of signatures . (Transcript-P.1156 line 20—1161 line15)

115. Leslie Bellamy testified that no actions by Jason Cline led to the validation of a single signature for the referendum on Act 579. (Transcript-P. 407 line13—408 line 10)

116. Healthy Eyes did not produce any evidence that any actions by Jason Cline caused a single signature to be improperly validated or for the referendum on Act 579 to be certified as sufficient.

117. Healthy Eyes alleges that the entire Petition is invalid because some of Safe Surgery's paid canvassers said things about Act 579 or the Petition that were not true.

118. The evidence Healthy Eyes presented to prove this claim are three videos of canvassers.

119. These videos were surreptitiously recorded by two different people who were supporters of Act 579 and who did not and had no intention of signing the Petition. (Paige Willett, (Transcript-P. 560—561; 563 line 5 —11; Cassie Gonzales, (Transcript-P. 694 line 25— 695 line 2; 695 line 6—9)

120. The witnesses admitted that they had no proof that anyone signed the petition based on any misstatement by a canvasser. (Transcript-P. 563 line 16—20; 695: line 15—25)

121. The witnesses never testified about why anyone signed the petition.

122. The witness who recorded two of the videos testified that she did not see anything objectionable in one of the two videos she recorded. (Paige Willett, Transcript-P. 563 line 21—564 line 11)

123. Healthy Eyes introduced several purported transcripts of interactions between canvassers and people who questioned the canvassers about Act 579 and the Petition. Those transcripts included those from witnesses who testified that they did not sign the petition, had no intention of signing the petition, and could not say that any person signed the petition based on the statements of a canvasser. Those transcripts were admitted, not for their truth, but to show what Dr. Nathan Lighthizer relied on in forming his opinions that some of what the canvassers said was inconsistent with Act

579 and with the nature of optometric training. (Transcript-P. 598 line13-18; 612 line11 —620 line 11)

124. Dr. Lighthizer testified that he does not know whether anyone in the transcripts signed the Petition. (Transcript-P. 612 line 11 — 620 line11)

125. Also, Healthy Eyes has not produced any evidence to show the canvassers made any misrepresentations knowingly.

126. Healthy Eyes has not provided any evidence that any of the 64,027 signatures were from someone who relied on the canvasser statements in the videos or transcripts.

127. Healthy Eyes did not provide testimony from any of the 64,027 Arkansas voters whose signatures were validated by the Secretary of State that they were misled by any statements by canvassers or the content of the FAQs. Pamela Dawn Vaughn testified that the canvasser lied to her. (Transcript - P. 719 line 5). However, her signature was not counted by the Secretary of State. (Transcript-P 723 line 15–18) Very little weight was given to her testimony.

128. The text of Act 579 was attached to each petition part.

129. Each person who signed the petition had the opportunity to read Act 579 before signing the petition.

130. No petition part with signatures verified by the Secretary of State has a material defect that, on its face, renders the petition part invalid.

131. The Secretary relies on the accuracy of a sponsor's certifications in support of a ballot measure, including those relating to paid canvassers. ((Transcript-P. 57 line 11–18.) The Secretary does not go behind those certifications to confirm the

accuracy of statements about canvasser qualification. (Transcript-P. 62 line 22 — 63 line—3.

132. Based on the foregoing findings, I find that the Respondent, Secretary of State erroneously included 51,911 total signatures in its verified and final count. Therefore, after deducting the 51,911 invalid signatures from the Secretary of State report of 64,027 valid signatures, the remaining 12,116 valid signatures does not satisfy the 54,391 valid signature requirement. Accordingly, I find that the Sponsor, Safe Surgery Arkansas, submitted insufficient signatures to qualify for the November 3, 2020 General Election Ballot. I also find that all other claims made by the Petitioner, Arkansas for Healthy Eyes, should be denied for lack of proof.

Respectfully Submitted to the Arkansas Supreme Court on this

on this 10th day of July 2020.

Mark Hewett
Special Master