

Criminal Background Checks for Ballot-Petition Canvassers

Miller v. Thurston

(Timothy L. Brooks, W.D. Ark. 5:20-cv-5163)

Ballot measures were disqualified because their sponsors did not certify that ballot-petition canvassers had passed criminal background checks. A federal complaint alleged that the disqualification was improper because background checks did not have grades of pass or fail. The federal district-court judge denied the plaintiffs relief on res judicata grounds; a similar claim already had failed in the state’s supreme court.

Subject: Ballot measures. *Topics:* Ballot measure; getting on the ballot; matters for state courts.

A September 2, 2020, federal complaint filed in the Western District of Arkansas challenged exclusion from the November 3 general-election ballot two ballot measures that were disqualified because their sponsor did not certify that ballot-petition canvassers had passed criminal background checks.¹ Among the plaintiffs’ allegations were the argument that it was not possible to certify that someone had passed a background check, because background checks do not result in grades of pass or fail.² With their complaint, the plaintiffs filed a motion for a preliminary injunction³ and a motion to expedite briefing, requesting oral argument by September 14.⁴

On September 4, Judge Timothy L. Brooks agreed to hear the case on September 14, advising the defendant secretary of state “that if a preliminary injunction is granted, any ballots without the initiatives at issue here will need to be reprinted.”⁵

Judge Brooks denied the plaintiffs immediate relief on September 15.⁶ The complaint was filed six days after Arkansas’s supreme court ruled that a statement that the sponsor had obtained background checks for the canvassers was not sufficient to certify that the canvassers had passed background checks.⁷ Judge Brooks found that the doctrine of res judicata therefore barred the federal claim.⁸

1. Complaint, *Miller v. Thurston*, No. 5:20-cv-5163 (W.D. Ark. Sept. 2, 2020), D.E. 2; *Miller v. Thurston*, 486 F. Supp. 3d 1256, 1261 (W.D. Ark. 2020).

2. Complaint, *supra* note 1.

3. Preliminary-Injunction Motion, *Miller*, No. 5:20-cv-5163 (W.D. Ark. Sept. 2, 2020), D.E. 3; *Miller*, 486 F. Supp. 3d at 1259.

4. Motion to Expedite Briefing, *Miller*, No. 5:20-cv-5163 (W.D. Ark. Sept. 2, 2020), D.E. 5.

5. Order at 1 n.1, *id.* (Sept. 4, 2020), D.E. 13; *see Miller*, 486 F. Supp. 3d at 1259.

6. *Miller*, 486 F. Supp. 3d 1256.

7. *Miller v. Thurston*, 2020 Ark. 267, 605 S.W.3d 255 (2020); *see The Court on Aug. 27 Blocked Two Proposed Constitutional Amendments*, Ft. Smith Times Rec., Sept. 6, 2020, at A9.

8. *Miller*, 486 F. Supp. 3d at 1265–66.