

CHUCK GRAHAM, IN HIS CAPACITY
AS LONOKE COUNTY PROSECUTING ATTORNEY PETITIONER

TOBY TROUTMAN and
LONOKE COUNTY ELECTION COMMISSIONERS

Comes Defendant Toby Troutman, through his attorneys, Jeff Rosenzweig and Jennifer M. Lancaster, and for his Response and Answer states:

1. Petitioner Graham seeks removal of Toby Troutman from the ballot for Lonoke County Judge in the 2026 General Election, for which Troutman has qualified as an independent candidate.

2. Both of the counts on which Petitioner Graham relies are without merit, as discussed in this Response:

(i) The statute on which Petitioner Graham relies, Ark. Code Ann. 21-8-305 is unconstitutional as applied to Troutman because it conflicts with Article 5 § 9 of the

Arkansas Constitution by adding qualifications for office beyond what is specified in the Constitution. (Because Troutman argues unconstitutionality of a statute, he serves the Attorney General with this response in compliance with Ark. Code Ann § 16-111-106(b)) ; and

(ii) The allegation that Troutman does not reside in Lonoke County is erroneous. His residential address and domicile is the building in Austin in which he has owned for decades through a revocable trust of which he is a settlor and trustee. Petitioner Graham has mistakenly alleged that Troutman sold the building. Rather, Troutman merely sold a business located with the building, while continuing to own the building and to reside in an apartment contained therein.

SPECIFIC RESPONSES

PUBLIC TRUST ALLEGATIONS

3. With regard to the allegations of ¶ 1 of the petition, Troutman admits that he is a candidate. He admits that he was arrested for Forgery, although that is irrelevant because that allegation was repudiated by the prosecuting attorney. He denies that he “pled Nolo Contendere” to a misdemeanor. Rather, he tendered a plea and the circuit court, as the Sentencing Order attached as Exhibit A to the petition states, “without making a finding of guilt or entering a judgment of guilt,” deferred further proceedings and placed Troutman on probation for 12 months. He successfully

completed the period of probation and the record was sealed and the case dismissed under Ark. Code Ann. § 16-93-303(b).¹

4. Troutman admits the allegations of ¶ 2 of the petition.

5. With regard to the allegations of ¶ 3 of the petition, Troutman has no knowledge of any undeliverable mail and cannot be held responsible for the inefficiencies of the United States Postal Service. He affirmatively states that he receives mail at that address. Attached as Exhibit 1 to this response is a copy of a mailing he received from the Lonoke County Clerk at the address in question. He was served with Petitioner Graham's petition at that address on August 10, 2026. Although the property at issue contains a business, it also contains an apartment in which Troutman resides.

6. With regard to the allegations of ¶ 4 of the petition, Troutman notes that there is no requirement of land ownership to run for political office. A revocable trust of which Troutman is a settlor and trustee does own real property, including the address in Austin in which he resides.

7. Troutman admits the allegations of ¶ 5 of the petition.

¹ The statute provides: "(b) Upon fulfillment of the terms and conditions of probation or upon release by the court prior to the termination period thereof, the defendant shall be discharged without court adjudication of guilt, whereupon the court shall enter an appropriate order that shall effectively dismiss the case, discharge the defendant, and seal the record, if consistent with the procedures established in the Comprehensive Criminal Record Sealing Act of 2013, § 16-90-1401 et seq."

8. Troutman denies the allegations of ¶ 6 of the petition.

9. Troutman admits the allegations of ¶ 7 of the petition.

10. With regard to the allegations of ¶ 8 of the petition, Troutman admits that Graham is the elected prosecuting attorney of Lonoke County. Troutman admits that Graham appears to have standing under the statute. Troutman denies that this petition is in the public interest.

11. With regard to the allegations of ¶ 9 of the petition, Troutman denies the allegation and innuendo contained therein. Rather, he is domiciled at that address and continues to own the property through a revocable trust of which he is a settlor and trustee.

12. Troutman admits the allegations of ¶ 10 of the petition.

13. Troutman admits the allegations of ¶ 11 of the petition.

14. Troutman admits the allegations of ¶ 12 of the petition.

15. Troutman admits the allegations of ¶ 13 of the petition.

16. With regard to the allegations of ¶ 14 of the petition, Troutman admits that the statute does state that, but asserts (i) he did not plead nolo contendere within the meaning of the statute but (ii) even if the statute can be stretched to cover Troutman's proceeding, the statute is unconstitutional as applied because it conflicts with Article 5 § 9 of the Arkansas Constitution by adding qualifications for office beyond what

is specified in the Constitution.

17. The state Supreme Court has made it clear that legislative enactments which add qualifications for office over those specified in the Constitution are unconstitutional. In *Daniels v. Dennis*, 365 Ark. 338, 340-341, 229 S.W.3d 880, 882-883 (2006), the court wrote:

Where specific qualifications for office are listed in both the Arkansas Constitution and a statute, the constitution controls and voids the statute. See, e.g., *Allred v. McLoud*, 343 Ark. 35, 31 S.W.3d 836 (2000). The court in *Allred* relied on *Mississippi County v. Green*, 200 Ark. 204, 138 S.W.2d 377 (1940), where this court noted the prevailing rule that regulation of qualifications in the constitution acted as a restriction on any legislative power to impose additional qualifications.

18. The table below shows the discrepancy. Disqualification under the Constitution requires a conviction. Disqualification under the statute merely requires a plea of guilty or nolo contendere.

Art. 5 § 9(a), Arkansas Constitution	Ark. Code Ann. § 21-8-305(a)
(a) No person <u>convicted</u> of embezzlement of public money, bribery, forgery, or other infamous crime is eligible to the General Assembly or capable of holding any office of trust or profit in this state.	(a) If a person has <u>pleaded guilty or nolo contendere to or has been found guilty</u> of a public trust crime, he or she shall not:

19. Troutman’s misdemeanor charge was resolved under Ark. Code Ann. §16-93-301 et seq. also known as Act 346 of 1975 and as the “First Offenders Act.” As Petitioner’s Exhibit A notes, the Sentencing Order states that the court was not

making a finding of guilt or entering a judgment of guilt. Clearly, the resolution of this case was not a conviction. This conclusion is further buttressed by Ark. Code Ann. §16-93-303(d), which provides, even for felonies (which this is not), that upon successful completion of the period of probation, disposition under this statute is **not** considered as a conviction except for criminal history, sentencing and impeachment issues, none of which are relevant here.

20. Thus, regarding Petitioner Graham's public trust allegation, the Court should hold that even if the circuit court proceedings against Troutman meet the criteria of Ark. Code Ann. § 21-8-301 and 305, those provisions are unconstitutional as applied because they conflict with Art. 5 § 9(a) of Arkansas Constitution.

21. Regarding the allegations of ¶ 15 of the petition, Troutman admits that the statute states what it states, and denies that any sealing or expungement is material to his defense for the reasons stated in ¶¶ 16 through 20 above.

22. With regard to the allegations of ¶ 16 of the petition, Troutman denies that his misdemeanor charge was a "public trust crime" or an "infamous crime" within the meaning of Art. 5 § 9(a) of the Arkansas Constitution, and denies that the authority cited controls, for the reasons stated in ¶¶ 16 through 20 above.

23. Regarding the allegations of ¶ 17 of the petition, Troutman denies that he "pled nolo contendere to theft of property." As set out in ¶¶ 3 and 19 above, and as

Petitioner's own Exhibit A reflects, the circuit court made no finding of guilt and entered no judgment of guilt.

24. Troutman denies the allegations of ¶ 18 of the petition.

RESIDENCY ALLEGATIONS

25. Regarding the allegations of ¶ 19 of the petition, Troutman admits that Ark. Code Ann. § 14-14-1314(a)(1)(B) states what it states. He affirmatively notes that the statute requires residence "at the time of his or her election and during his or her continuance in office," and imposes no residency requirement measured as of the date of filing.

26. Troutman admits the allegations of ¶ 20 of the petition. He affirmatively states that the certification was true when made and remains true, and that he made the same certification on the notarized Affidavit of Eligibility attached to the petition. Petitioner Graham's allegation in ¶ 7 that Troutman "has failed to certify he resides within the county he seeks to represent" is contradicted by Petitioner Graham's own exhibits.

27. Regarding the allegations of ¶ 21 of the petition, Troutman repeats ¶ 5 above. He affirmatively states that Lonoke County's own offices have reached him at that address on multiple occasions since April 2026: the Lonoke County Clerk's mailing attached as Exhibit 1; the Registrar's voter registration certification mailed

July 10, 2026, attached as Exhibit 2; and service of the petition itself on August 10, 2026.

28. Regarding the allegations of ¶ 22 of the petition, Troutman denies the allegation and innuendo contained therein and repeats ¶¶ 6 and 11 above. He sold a business; he did not sell the building, and he did not change his residence. Troutman objects to Petitioner Graham's reliance on an unauthenticated third-party social media page, which is inadmissible hearsay and is not competent evidence of anyone's residence.

29. Regarding the allegations of ¶ 23 of the petition, Troutman repeats ¶ 6 above and denies that individual record title is a requirement of, or material to, eligibility for county office. The 3.4-acre parcel at 18134 Ark Hwy 5, Austin, Lonoke County (Parcel No. 001-12534-001), in which his apartment is located, is held of record by the Troutman Joint Revocable Trust by deed recorded August 2, 2019, a certified copy of which is attached as Exhibit 6. The adjoining 20.43-acre parcel (Parcel No. 001-12533-000) is held by TRT Investments, Inc., of which Troutman is President and sole stockholder. Ad valorem taxes on both parcels are paid to the Lonoke County Collector. Attached as Exhibit 3 is the Collector's paid tax receipt for the 2024 assessment year on Parcel No. 001-12534-001, in the amount of \$6,350.28, showing the taxpayer address of record as 18134 Ark Hwy 5, Austin. Attached as

Exhibit 4 is the Collector's paid receipt for the same year on Parcel No. 001-12533-000, in the amount of \$695.87.

30. Regarding the allegations of ¶ 24 of the petition, Troutman admits that he owns real property in White County, including property at 228 Round Mountain Road, El Paso, Arkansas. He denies that ownership of property in White County establishes domicile in White County or defeats his domicile in Lonoke County. He affirmatively notes that Petitioner Graham's own Exhibit D reflects that no homestead has been claimed on the White County property for any assessment year shown, and that the only conveyance identified is a September 19, 2019 transfer from Troutman to Troutman.

31. Troutman denies the allegations of ¶ 25 of the petition. He did not relocate to White County in September 2024 or at any other time, and his voter registration is valid. Attached as Exhibit 2 is the certification of Eddie J. Williams, Registrar of Lonoke County, printed July 10, 2026, certifying that Toby Ray Troutman of 18134 Hwy 5, Austin, Arkansas 72007, Registration No. 2689103, is a registered voter in Lonoke County — issued seventeen days before this petition was filed, and mailed to the very address Petitioner Graham alleges is not Troutman's. Attached as Exhibit 5 is Troutman's Arkansas driver's license, issued September 26, 2025, and bearing the same address, a year after the relocation Petitioner Graham alleges.

32. Regarding the allegations of ¶ 26 of the petition, Troutman is without knowledge of what charges, if any, the Lonoke County Prosecutor's office has initiated, and denies the same. He denies that any such action bears on his eligibility.

33. Regarding the allegations of ¶¶ 27 through 30 of the petition, Troutman denies that Petitioner Graham is entitled to a writ of mandamus or to any declaratory relief. A writ of mandamus issues only where the duty to be compelled is ministerial and not discretionary and the petitioner has shown a clear and certain right to the relief sought. *Axley v. Hardin*, 353 Ark. 529, 535–36, 110 S.W.3d 766, 770 (2003). Domicile turns on intention, and intention is a question of fact. *Clement v. Daniels*, 366 Ark. 352, 355, 235 S.W.3d 521, 523 (2006). Petitioner Graham has no clear and certain right to strike a qualified candidate from the ballot on a contested factual record.

34. Troutman denies the allegations of ¶¶ 31 through 34 of the petition and denies that Petitioner Graham is entitled to any of the relief prayed for.

RESIDENCY AND DOMICILE

35. Because the office sought is a county office, legal residence is defined by statute as “the domicile of the officer evidenced by the intent to make such residence a fixed and permanent home.” Ark. Code Ann. § 14-14-1306(c). The burden of proving that Troutman is not so domiciled rests on Petitioner Graham, and the

quantum of proof required is substantial. In *State v. Jernigan*, 2011 Ark. 487, 385 S.W.3d 776, the circuit court found on the record that the State had made a strong case that the candidate's claimed residence was "a subterfuge and a farce" — the candidate kept his clothing in his truck, did not bathe or shower at the residence, had no telephone or television service there, could not say how many nights a week he stayed, and admitted he had moved inside the city limits in order to run for office. *Id.* at 2–5. The writ was nonetheless denied, and the denial affirmed, because the State had failed to carry its burden. *Id.* at 9, 385 S.W.3d at 782. Suspicion and inference are not proof. Petitioner Graham has offered considerably less than the State offered in *Jernigan*.

36. Arkansas law further presumes that a domicile once established continues until it is abandoned. "A person removing from his old home does not acquire a new domicile until he abandons his old one." *Clement v. Daniels*, 366 Ark. 352, 355, 235 S.W.3d 521, 523 (2006). To effect a change of domicile there must be an actual abandonment of the first domicile, coupled with an intention not to return to it, and a new domicile acquired by actual residence elsewhere with the intent of making that residence a permanent home. *Id.* at 358, 235 S.W.3d at 526. In *Clement*, years spent in California, England, and Washington, D.C., together with property purchased in Garland County, did not defeat an Arkansas domicile evidenced by voter registration,

an Arkansas driver's license, and Arkansas taxes. *Id.* at 356–58. Each of those indicia is documented here: the Registrar's certification of Lonoke County registration (Exhibit 2); a driver's license issued September 26, 2025, at the Austin address (Exhibit 5); Lonoke County ad valorem taxes paid on that property and on adjoining acreage (Exhibits 3 and 4); and county mail delivered to the address (Exhibit 1). Where a candidate's assertions of intent are supported by conduct consistent with that intent, the finding must stand. *Brick v. Simonetti*, 279 Ark. 446, 448–49, 652 S.W.2d 23, 24 (1983).

37. Petitioner Graham's proof does not approach what *Clement* requires. His premise that ownership through an entity is no ownership at all is mistaken even as a matter of Arkansas property tax law, which provides that a homestead "includes ... a dwelling owned by a revocable or irrevocable trust and used as the principal place of residence of the person who formed the trust." Ark. Code Ann. § 26-26-1122(a)(2)(B)(i). The dwelling in which Troutman resides is held by exactly such a trust, by a deed recorded in 2019 — five years before the relocation Petitioner Graham alleges. Ownership is not the test in any event; the candidates in *Jernigan* and *Brick* were renters. What remains is a single envelope returned by the Postal Service in April 2026, against county correspondence delivered to the same address in July 2026 and personal service of this petition there in August 2026. The asserted

relocation to White County “in September of 2024” rests entirely on a social media post announcing a business sale. Petitioner Graham has produced no deed, no lease, no closing statement, no utility record, no change-of-address filing, and no testimony placing Troutman in White County on any night.

38. Petitioner Graham’s White County exhibit affirmatively supports Troutman. A “homestead” is “the dwelling of a person that is used as his or her principal place of residence.” Ark. Code Ann. § 26-26-1122(a)(2)(A). Exhibit D to the petition reflects that no homestead has ever been claimed on the White County property. Petitioner Graham has thus offered, as his proof that Troutman resides in White County, an official record showing that the property has never been claimed as a principal residence.

39. Troutman denies every allegation of the petition not specifically admitted herein, and reserves the right to plead such further defenses as discovery may reveal.

WHEREFORE, Respondent Toby Troutman respectfully prays that this Court deny the petition for writ of mandamus in its entirety; declare that Ark. Code Ann. §§ 21-8-301 and 21-8-305 are unconstitutional as applied to Troutman because they add qualifications for office beyond those specified in Art. 5 § 9(a) of the Arkansas Constitution; declare that the disposition of Lonoke County Case No. 43CR-12-29 under Ark. Code Ann. § 16-93-301 et seq. was not a conviction and does not render

Troutman ineligible; declare that Troutman is a resident of and domiciled in Lonoke County, Arkansas, and is a lawfully registered voter of Lonoke County; declare that Troutman is eligible to file for, run for, and hold the office of Lonoke County Judge; direct the Lonoke County Board of Election Commissioners to place Troutman's name on the ballot for the November 3, 2026 General Election and to count and certify all votes cast for him; and grant Troutman all other relief to which he may be entitled.

TOBY TROUTMAN

/s/ Jeff Rosenzweig

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CERTIFICATE OF SERVICE

I certify that on this 13 day of August 2026, a copy of the foregoing was served on Chuck Graham, Lonoke County Prosecuting Attorney, and on counsel for the Lonoke County Board of Election Commissioners, via the Court's electronic filing system, and upon the Attorney General of the State of Arkansas in compliance with Ark. Code Ann. § 16-111-106(b).

/s/ Jeff Rosenzweig

JEFF ROSENZWEIG