CASE NO. 24-2810

IN THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

GET LOUD ARKANSAS; VOTE.ORG; NIKKI PASTOR;
and TRINITY "BLAKE" LOPER
Plaintiffs-Appellees

v.

JOHN THURSTON; *et al*.
Defendants-Appellants

Appeal from the United States District Court for the Western District of Arkansas
Fayetteville Division, No. 5:24-cv-05121
The Honorable Timothy L. Brooks, District Court Judge

BRIEF OF APPELLANTS JOHN THURSTON; SHARON BROOKS; JAMIE CLEMMER; BILENDA HARRIS-RITTER; WILLIAM LUTHER; JAMES HARMON SMITH, III; and JOHNATHAN WILLIAMS

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SUMMARY OF THE CASE AND STATEMENT REGARDING ORAL ARGUMENT

Defendants-Appellants John Thurston, Sharon Brooks, Jamie Clemmer, Bilenda Harris-Ritter, William Luther, James Harmon Smith, III, and Johnathan Williams (collectively, the "SBEC") seek a review of the Honorable Timothy L. Brooks's bench ruling issued on August 29, 2024, and subsequent Memorandum Opinion and Order that Appellants are "PRELIMINARILY ENJOINED from enforcing the Wet Signature Rule and from rejecting or refusing to accept any voter registration application on the ground that it was signed with a digital or electronic signature." (App. 116, 171; R. Doc. 65, at 2; R. Doc. 72, at 52).

The District Court's order granting the Motion for Preliminary Injunction of Plaintiffs-Appellees should be reversed because Appellees have not carried the burden of establishing that the "signature or mark" requirement is not "Material" under 52 U.S.C. § 10101(a)(2)(B).

The SBEC respectfully requests oral argument of twenty minutes per side, as this appeal presents important questions of federal common law that will affect elections in Arkansas and nationwide that must be addressed to ensure uniformity among the federal circuits.

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JURISDICTIONAL STATEMENT

Appellees invoked the District Court's jurisdiction under 28 U.S.C. § 1331. However, the District Court lacked jurisdiction because Appellees failed to establish Article III standing. "When it becomes clear a case originally filed in federal court does not belong there because the plaintiffs lack Article III standing, generally the appropriate remedy is to dismiss *without prejudice*." *Wallace v. ConAgra Foods, Inc.*, 747 F.3d 1025, 1033 (8th Cir. 2014) (emphasis in original).

The District Court entered a preliminary injunction on August 29, 2024, and the SBEC filed a timely notice of appeal on September 4, 2024. This Court has jurisdiction pursuant to 28 U.S.C. § 1292(a)(1).

STATEMENT OF THE ISSUE

Whether the District Court erred in temporarily enjoining Appellants, their employees, agents, and successors in office, and all persons acting in concert with them, from enforcing the handwritten "signature or mark" requirement. *See Vote.Org v. Callanen*, 89 F.4th 459 (5th Cir. 2023).

STATEMENT OF THE CASE

In advance of the November 2024 general election, the SBEC learned that Arkansas's county clerks charged with processing voter registration applications were treating applications bearing electronic signatures differently. Some accepted them; others did not. The SBEC passed an emergency rule, effective May 4, 2024,

and a permanent rule, effective September 2, 2024, clarifying the qualifications for voting in Arkansas: a voter registration application must include an applicant's handwritten "signature or mark."

More than a month after the rule took effect, the Appellees sued the SBEC and the clerks of Benton, Pulaski, and Washington Counties on June 5, 2024, alleging that the "signature or mark" requirement runs afoul of the Materiality Provision of the Civil Rights Act of 1964. Another month passed and, with the general election looming, Appellees moved for extraordinary relief in the form of a preliminary injunction.

The District Court concluded that the "signature or mark" qualification was not material to determining an Arkansan's qualifications to vote, within meaning of the Materiality Provision, and the omission of the "signature or mark" resulted in the denial of the right to vote. (App. 116, 154–167; R. Doc. 65, at 2; R. Doc. 72, at 35–48). The District Court preliminarily enjoined the "signature or mark" requirement from taking effect. (App. 116, 171; R. Doc. 65, at 2; R. Doc. 72, at 52).

The District Court erred. No Appellee has Article III standing to seek the injunction. Even if there was standing, the Materiality Provision does not create a private right enforceable through 42 U.S.C. § 1983. And, most importantly, the "signature or mark" requirement is plainly lawful. The signature requirement passed by the SBEC, pursuant to its legislative and state constitutional authority, is itself a

qualification for voting in Arkansas and is, therefore, "material" to assessing an applicant's qualifications to vote.

Thus, the SBEC's rule withstands review under the Materiality Provision. *See Callanen*, 89 F.4th at 489 (upholding an almost identical handwritten signature requirement because "an original signature advances voter integrity" and "makes such a signature a material requirement"); *Vote.org v. Byrd*, No. 4:23-CV-111-AW-MAF, 2023 WL 7169095, at *7 (N.D. Fla. Oct. 30, 2023) (dismissing identical claims under the Materiality Provision). The District Court's ruling stands in stark contrast to these prior decisions, and the Court should "firmly decline to create a circuit split in this area of federal common law where uniformity is the goal." *McCarty v. S. Farm Bureau Cas. Ins. Co.*, 758 F.3d 969, 974 (8th Cir. 2014) (citation omitted); *see also Throneberry v. McGehee Desha Cnty. Hosp.*, 403 F.3d 972, 979 (8th Cir. 2005) (adopting the reasoning of the Tenth Circuit to "avoid[] a circuit split").

In addition to their failure on the merits, Appellees failed to make the necessary showing to justify any interim relief. This Court should reverse the District Court's order and allow the SBEC to implement its "signature or mark" requirement to provide greater security in the election process, create uniformity in the administration of voter registration, maintain accurate recordkeeping in compliance with federal and Arkansas law, and help prevent fraudulent voting practices, all of which "provides a sufficient justification for carefully identifying all

voters participating in the election process." *Crawford v. Marion Cnty. Election Bd.*, 553 U.S. 181, 196 (2008).

I. Regulatory Background.

Arkansans in 1964 passed a "comprehensive regulatory scheme governing the registration of voters." *Martin v. Kohls*, 2014 Ark. 427, at 17, 444 S.W.3d 844, 854 (Goodson, J., concurring). Amendment 51 to the Arkansas Constitution was approved for the express purpose of ensuring that all persons who vote in Arkansas elections are "legally qualified" to do so. Ark. Const. amend. 51 §§ 1, 3 ("No person shall vote or be permitted to vote in any election unless registered in a manner provided for by this amendment.").

Amendment 51 included important features. Chief among them is a requirement that any "mail voter registration application" include "[a] signature or mark made under penalty of perjury that the applicant meets each requirement for voter registration." *Id.* § 6(a)(3)(F). When voters passed this requirement six decades ago, they made clear that a "signature or mark" is part and parcel of the "identifying information . . . necessary to assess the applicant's eligibility and to administer voter registration and other parts of the election process." *Id.* § 6(a)(1).

While Amendment 51 did not constitutionally define the phrase "signature or Mark" when enacted in 1964, voters tasked the SBEC with the responsibility to "prescribe, adopt, publish and distribute" the "Rules and Regulations supplementary to

. . . and consistent with [Amendment 51] and other laws of Arkansas as are necessary to secure uniform and efficient procedures in the administration of [Amendment 51] throughout the State." *Id.* § 5(e)(1). In addition, the SBEC has a constitutional obligation to "prescribe, adopt, publish and distribute" the "detailed specifications of the registration record files, the voter registration application forms and other registration forms, including voter registration list maintenance forms, all of which shall be consistent with [Amendment 51] and uniform throughout the State." *Id.*

II. The "Signature or Mark" Requirement.

For nearly sixty years, Arkansas has registered voters—seemingly with little or no controversy—using the voter-approved system in Amendment 51. Appellee Get Loud Arkansas ("GLA"), a nonprofit organization formed to increase civic participation and mobilize voters, utilized the existing system to register 1,179 voters in 2021 and 3,731 voters in 2023. (App. 37–38; R. Doc. 46-2, 2–3). At some point in 2023, GLA implemented a "digital online tool," where a voter registration applicant could sign her voter registration form using "an electronic signature." (App. 38–39; R. Doc. 46-2, at 3–4).

Appellee Nikki Pastor, on February 24, 2024, used GLA's system to complete a voter registration application. (App. 60; R. Doc. 46-4, at 2). Pastor signed the application with an electronic signature, and GLA submitted the application to the

Washington County clerk. (App. 60; R. Doc. 46-4, at 2). The clerk rejected the application and notified Pastor. (App. 60; R. Doc. 46-4, at 2).

Appellee Trinity Loper similarly attempted to register using GLA's "online tool." (App. 61; R. Doc. 46-5, at 1). Loper completed an application using an electronic signature, which GLA submitted to the Pope County clerk on December 11, 2023. (App. 62; R. Doc. 46-5, at 2). The clerk rejected the application. (App. 62; R. Doc. 46-5, at 2). Unlike Pastor, Loper also submitted an application bearing a traditional signature. (App. 62; R. Doc. 46-5, at 2). This application "appears to have been accepted," though a scrivener's error caused Loper's name to be incorrectly identified on voter rolls as "Trinity Lopez." (App. 62; R. Doc. 46-5, at 2).

The SBEC eventually learned of the uniformity issue. "[I]n some counties, the clerk was accepting electronically signed voter registration applications," and in others (like Pope and Washington Counties), the clerk rejected "electronically signed applications." (App. 67; R. Doc. 53-1, at 3). The problem necessitated emergency rulemaking because it "created an unfair and non-uniform application process." (App. 67–68; R. Doc. 53-1 at 3–4). In the SBEC's view, "[w]hether the applicant could apply using an electronic signature was dependent on the county [in] which the applicant resided." (App. 68; R. Doc. 53-1, at 4).

Pursuant to its constitutional mandate, *see* Ark. Const. amend. 51 § 5(e)(1), the SBEC adopted an emergency rule defining what constituted an acceptable "signature or mark" for purposes of Amendment 51:

> a handwritten wet signature or handwritten wet mark made on a Registration Application Form with a pen or other writing device that is physically moved across the form and that forms the applicant's signature or mark on the paper form. A Signature or Mark that utilizes a computer to generate or recreate the applicant's signature or mark is not an acceptable signature or mark of the applicant for purposes of Amendment 51 §§ 6(a)(1) & (a)(3)(F) Registration Application Form.

Ark. Code R. 108.00.14-1400(7).

The "signature or mark" requirement "serves the interests of 'uniform and efficient procedures'" and "does not change the current and historical means of registration in the State." (App. 70; R. Doc. 53-1, at 6). It also servers as "a necessary component for the verification of the voter's identity." (App. 82–83; R. Doc. 53-2 at 6–7). Further, because Ark. Code Ann. § 7-5-404(a)(2) requires a clerk to compare an absentee ballot application (which must be signed) with the voter's "registration application," the "signature or mark" requirement serves a practical purpose—a handwritten signature on the registration application is the superior means of comparing an absentee request bearing a written or facsimile signature. (App 83; R. Doc. 53-2, at 7). Physically signing or marking documents also serves to deter voter fraud, as Arkansas criminalizes the forgery of signatures on voter

registration applications, pursuant to Ark. Code Ann. § 7-1-105(a)(19). (App 83; R. Doc. 53-2, at 7).

After receiving legislative approval, *see* Ark. Const. art. 5, § 42, the emergency rule took effect on May 4, 2024. It expired September 1, 2024, and was replaced by an identical permanent rule, which took effect September 2, 2024.

III. Procedural History.

More than a month after the emergency rule took effect, Appellees GLA, Pastor, Loper, and Vote.org ("VDO") sued the SBEC and the clerks of Benton, Pulaski, and Washington Counties. Alleging a violation of the Materiality Provision codified at 52 U.S.C. § 10101(a)(2)(B), Appellees sought both declaratory and injunctive relief concerning the so-called "wet signature rule," which Appellees defined as the "emergency rule, and any other regulations or procedures that county clerks have applied to reject applications with electronic or digital signatures." (App. 8; R. Doc. 2, at 2).

More than five weeks then passed before Appellees moved for a preliminary injunction on July 11, 2024. (App. 32–35; R. Doc. 46). The SBEC filed its response in opposition on July 25, 2024. (R. Doc. 51; R. Doc. 53). Appellees did not request a hearing or expedited review. Nor did they amend or supplement their Complaint

to include allegations related to the legislative approval of the permanent rule, which paved the way for it to take effect on September 2, 2024.

Appellees' request to halt the "signature or mark" rule finally came before the District Court during its customary case management hearing on August 29, 2024, just thirty-nine days prior to the close of voter registration. Ruling from the bench, the District Court granted Appellees' motion and enjoined the SBEC and others from "enforcing the wet signature rule AND from rejecting or refusing to accept any voter registration application on the ground that it was signed with a digital or electronic signature." (App. 115–116; R. Doc. 65, at 1–2). The District Court also granted Appellees leave to file a supplemental Complaint "to envelope within their claims the version of the wet signature rule that was formally approved by the Arkansas Legislative Council on August 23[, 2024]." (App. 115–116; R. Doc. 65, at 1–2).

The SBEC's request to stay the preliminary injunction was denied. (App. 115–116; R. Doc. 65, at 1–2). Thus, the District Court's ruling went immediately into effect thirty-nine days before the voter registration deadline, fifty-three days prior to the start of early voting, and sixty-eight days from the general election. On September 9, 2024, the District Court entered "a more fulsome memorandum opinion to further explain its findings and rulings," from which this appeal is taken. (App. 115–116, 120–171; R. Doc. 65, at 2; R. Doc. 72).

On September 4, 2024, the SBEC filed its timely notice of appeal. (App. 117–119; R. Doc. 66; R. Doc. 67). On September 6, 2024, the SBEC filed a motion to stay the injunction pending appeal, which this Court granted on October 4, 2024.

SUMMARY OF THE ARGUMENT

This Court should reverse the District Court's preliminary injunction under the four-factor test for equitable relief. Appellees cannot succeed on the merits. As an initial matter, Appellees have not demonstrated standing. The individual Appellees have not alleged a denial of the right to the vote, and the organizational Appellees failed to allege that the resources they spent were distinct from their usual operating costs. Even if Appellees could demonstrate standing, the Materiality Provision does not contain a private right of action.

Finally, Appellees are unable to establish that a handwritten signature or mark is immaterial as a matter of federal and Arkansas law. The "signature or mark" requirement advances Arkansas's legitimate interests in verifying a voter's identity, deterring fraud, and safeguarding the integrity of the State's elections. Handwritten signatures are inherently more reliable, making them material to determining voter qualifications.

The preliminary injunction should also be reversed because the equities greatly favor the SBEC. The organizational Appellees' missions—to register voters—preclude irreparable harm from a rule clarifying the Arkansas Constitution's

voting requirements. And the individual voters simply have suffered no cognizable injury. Appellees' two-month delay in moving for an injunction further underscores the lack of irreparable injury.

On the other side of the ledger, the preliminary injunction imposes concrete and serious harms on the SBEC, Arkansas county clerks, and the general public in Arkansas. The SBEC is irreparably injured by an order preventing it from carrying out its obligations to secure uniform and efficiency voter registration procedures, and the injunction will lead to the same unfair and non-uniform application process for county clerks and voters that the "signature or mark" requirement was designed to ameliorate.

STANDARD OF REVIEW

This Court reviews a district court's ultimate ruling on a preliminary injunction for abuse of discretion, but underlying legal conclusions, e.g., interpretations of statutes, are reviewed *de novo*. *See MPAY Inc. v. Erie Custom Comput. Applications, Inc.*, 970 F.3d 1010, 1015 (8th Cir. 2020). An injunction against the enforcement of a state regulation is subject to stricter scrutiny by this Court, as state regulations are "entitled to a higher degree of deference and should not be enjoined lightly." *Sleep No. Corp. v. Young*, 33 F.4th 1012, 1016 (8th Cir. 2022) (compiling cases).

"A district court abuses its discretion when it applies an incorrect legal standard," and the Court reviews "whether the district court applied the correct

legal standard in exercising that discretion de novo." *Union Elec. Co. v. Energy Ins. Mut. Ltd.*, 689 F.3d 968, 970 (8th Cir. 2012) (quoting *Sherman v. Winco Fireworks, Inc.*, 532 F.3d 709, 714 (8th Cir. 2008); *Lauer v. Barnhart*, 321 F.3d 762, 764 (8th Cir. 2003)).

ARGUMENT

Contrary to the conclusions of the District Court, the right to vote "is not absolute; the States have the power to impose voter qualifications, and to regulate access to the franchise in other ways." *Dunn v. Blumstein*, 405 U.S. 330, 336 (1972) (compiling cases); *see also Munro v. Socialist Workers Party*, 479 U.S. 189, 193 (1986) (citing *Storer v. Brown*, 415 U.S. 724, 730 (1974)). As a matter of corresponding Arkansas election law, "[t]here are guardrails to the election process. If the people of Arkansas want these guardrails removed, then they must seek statutory reform." *Lewallen v. Progress for Cane Hill*, 2024 Ark. 167, 7 (2024) (Wood, J., concurring).

Appellees were not entitled to a preliminary injunction, which "is an extraordinary remedy, and the burden of establishing the propriety of an injunction is on the movant." *Roudachevski v. All-Am. Care Centers, Inc.*, 658 F.3d 701, 705 (8th Cir. 2011). To prevail, a plaintiff "must make a clear showing that 'he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction

is in the public interest.'" *Starbucks Corp. v. McKinney*, 144 S. Ct. 1570, 1576 (2024) (quoting *Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008)).

Appellees did not succeed on any element under the "higher bar" of the likely-to-prevail standard that applies to an injunction against the enforcement of a state regulation. *Rodgers v. Bryant*, 942 F.3d 451, 455 (8th Cir. 2019) (citing *Planned Parenthood Minn., N.D., S.D. v. Rounds*, 530 F.3d 724, 731–32 (8th Cir. 2008) (en banc)). Accordingly, the District Court's decision must be reversed.

I. The SBEC is likely to prevail on the merits.

The District Court granted injunctive relief without addressing the heightened likely-to-prevail standard to Appellees' prospects for success on the merits, which applies to injunctions against the enforcement of state statutes and regulations. *See Sleep No. Corp.*, 33 F.4th at 1016 (quoting *Rodgers v. Bryant*, 942 F.3d 451, 455-56 (8th Cir. 2019)). This "more rigorous standard 'reflects the idea that governmental policies implemented through legislation or regulations developed through presumptively reasoned democratic processes are entitled to a higher degree of deference and should not be enjoined lightly.'" *Planned Parenthood Minnesota, N. Dakota, S. Dakota v. Rounds*, 530 F.3d 724, 732 (8th Cir. 2008) (quoting *Able v. United States*, 44 F.3d 128, 131 (2d Cir.1995) (per curiam)).

The District Court made no express findings or analysis under the higher degree of deference due to the "signature or mark" rule, and Appellees did not show

they are likely to prevail on the merits for the reasons that follow. (App. 176–188; Tr., pp. 92–104). The District Court should be reversed.

a. Appellees GLA and VDO lack standing.

As a threshold jurisdictional matter, GLA and VDO do not have standing "to invoke the authority of a federal court." *Pucket v. Hot Springs Sch. Dist. No. 23-2*, 526 F.3d 1151, 1157 (8th Cir. 2008) (internal quotations omitted). To satisfy the "irreducible constitutional minimum" of Article III standing, "[t]he plaintiff must have (1) suffered an injury in fact, (2) that is fairly traceable to the challenged conduct of the defendant, and (3) that is likely to be redressed by a favorable judicial decision." *Spokeo, Inc. v. Robins*, 578 U.S. 330, 338, 136 S. Ct. 1540, 1547 (2016). Standing to seek injunctive relief requires a plaintiff to "show that he is under threat of suffering 'injury in fact' that is concrete and particularized; the threat must be actual and imminent, not conjectural or hypothetical; it must be fairly traceable to the challenged action of the defendant; and it must be likely that a favorable judicial decision will prevent or redress the injury." *See Summers v. Earth Island Inst.*, 555 U.S. 488, 493, 129 S.Ct. 1142 (2009) (citing *Friends of the Earth, Inc. v. Laidlaw Envtl. Servs. (TOC), Inc.*, 528 U.S. 167, 180–81, 120 S.Ct. 693 (2000)).

"The existence of standing is a legal issue" that this Court reviews *de novo*. *L.H. v. Indep. Sch. Dist.*, 111 F.4th 886, 892 (8th Cir. 2024) (quoting *Arc of Iowa v. Reynolds*, 94 F.4th 707, 710 (8th Cir. 2024)). Here, the District Court erred in

finding the organizational Appellees, GLA and VDO, satisfied the standing requirements of Article III.

1. There is no organizational standing.

Organizational standing is assessed with "the same inquiry as in the case of an individual." *Havens Realty Corp. v. Coleman*, 455 U.S. 363, 378–79 (1982). Appellees GLA and VDO were required to establish "(1) that [it] suffered an 'injury-in-fact,' (2) a causal relationship between the injury and the challenged conduct, and (3) that the injury likely will be redressed by a favorable decision." *Pucket*, 526 F.3d at 1157. The Supreme Court has "repeatedly reiterated that threatened injury must be *certainly impending* to constitute injury in fact, and that allegations of *possible* future injury are not sufficient." *Clapper v. Amnesty Int'l USA*, 568 U.S. 398, 409 (2013) (emphasis in original).

Like an individual, an organization can demonstrate injury in fact only if it can show a "concrete and demonstrable injury to [its] activities which drains its resources and is more than simply a setback to its abstract social interests." *Nat'l Fed'n. of the Blind v. Cross*, 184 F.3d 973, 979 (8th Cir. 1999) (citing *Coleman*, 455 U.S. at 379). However, "[a]bsent specific facts establishing distinct and palpable injuries fairly traceable to the defendants' conduct the injury in fact requirement is not satisfied." *Id.* at 980–81 (internal citations omitted).

Organizations "cannot convert ordinary program costs into an injury in fact." *Nat'l Taxpayers Union, Inc. v. United States*, 68 F.3d 1428, 1434 (D.C. Cir. 1995). An organization must demonstrate that the "defendant's illegal acts impair its ability to engage in its projects by forcing the organization to divert resources to counteract those illegal acts." *Georgia Republican Party v. Sec. & Exch. Comm'n*, 888 F.3d 1198, 1203 (11th Cir. 2018) (internal quotations omitted); *see also Nat'l Taxpayers Union*, 68 F.3d at 1434.

VDO has no injury that is "certainly impending." *See Clapper*, 568 U.S. at 409. VDO conceded in the District Court that VDO has not yet deployed its web platform in Arkansas and has not alleged any diversion of resources to date. (App. 57–58, 97–98; R. Doc. 46-3, at 2–3; R. Doc. 58, at 10–11). VDO's alleged injury is contrived from VDO's choice "to make expenditures based" on a conjectural and hypothetical injury, which does not satisfy Article III. *See Clapper*, 568 U.S. at 402. There is nothing in the record that the "Signature or Mark" requirement has impacted VDO in any "measurable way." *See Cross*, 184 F.3d at 981. VDO's claimed standing presumes that a voter in Arkansas may attempt to use a nonexistent web platform to register to vote in the future. *See Pucket*, 526 F.3d at 1157.

GLA likewise lacks organizational standing. GLA asserted only that it is an Arkansas nonprofit that seeks to "increase civic participation in Arkansas." (App. 10, 37; R. Doc. 2, at 4; R. Doc. 46-2, at 2). GLA asserted that the "Signature or Mark"

requirement "caused immediate damage to GLA's voter registration efforts and will severely restrict how it conducts voter registration efforts moving forward." (App. 26; R. Doc. 2, at 20). It "works to register new voters, engage low propensity voters, and mobilize all eligible citizens to utilize the power of their vote to shape the future of Arkansas. (App. 10; R. Doc. 2, at 4). Consequently, registering voters is GLA's "true purpose." *See Nat'l Taxpayers Union*, 68 F.3d at 1434.

GLA also asserted it "has also been forced to divert its limited staff and financial resources towards less efficient means of pursuing its voter registration goals" by "retraining its staff . . . to attend public events to encourage people to register to vote using paper applications." (App. 28; R. Doc. 2, at 22). To the extent GLA diverted any resources, those costs did not "impair" its mission because they are part of its usual operating costs. Thus, investing resources "to encourage people to register to vote using paper applications" is GLA's day-to-day work, not a diversion of resources away from that work. *See NAACP v. City of Kyle*, 626 F.3d 233, 238 (5th Cir. 2010) (dismissing case for lack of standing because the plaintiff did not illustrate "how the activities described above . . . differ from the [plaintiff's] routine lobbying activities.").

GLA did not demonstrate its expenditure of resources occurred outside its normal operations, depriving the District Court of subject-matter jurisdiction. *See Cross*, 184 F.3d at 979; *see also Elec. Privacy Info. Ctr. v. Presidential Advisory*

Comm'n on Election Integrity, 878 F.3d 371, 379 (D.C. Cir. 2017) (holding that a diversion of resources when a party has not been harmed is a "self-inflicted budgetary choice that cannot qualify as an injury in fact"). Neither GLA or VDO established organizational standing, and the District Court was without jurisdiction to grant any relief to GLA or VDO.

2. There is no associational standing.

For similar reasons, neither GLA nor VDO can establish associational standing, which requires an organization to demonstrate that "(a) its members would otherwise have standing to sue in their own right; (b) the interests it seeks to protect are germane to the organization's purpose; and (c) neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit." *Kuehl v. Sellner*, 887 F.3d 845, 851 (8th Cir. 2018) (quoting *Hunt v. Wash. State Apple Advert. Comm'n*, 432 U.S. 333, 343 (1977)).

VDO has no associational standing as a matter of law. Membership is a threshold requirement for associational standing, and VDO is a non-membership organization. *See Callanen*, 39 F.4th at 303, n.2 ("Because it is a non-membership organization, Vote.org cannot contend that it has associational standing"). And there is no allegation or evidence that any member of GLA has been injured by the "Signature or Mark" requirement. (App. 9–10; R. Doc. 2, at 3–4). This, too, is fatal to the Appellees' allegations of associational standing, which are purely speculative

and wholly insufficient to confer jurisdiction. Under controlling circuit and Supreme Court precedent, both VDO and GLA have failed to satisfy settled Article III standing requirements.

b. The Materiality Provision does not create a private right of action.

The District Court also erred in its interpretation of the Materiality Provision as creating a private right of action that can be enforced through 42 U.S.C. § 1983. Issues of statutory interpretation are reviewed *de novo*. *United States v. Lester*, 92 F.4th 740, 742 (8th Cir. 2024) (citing *United States v. Houck*, 2 F.4th 1082, 1085 (8th Cir. 2021)). To bring a 42 U.S.C. § 1983 claim challenging a violation of federal law, Appellees must demonstrate that the federal statute "manifests an intent to create not just a private right but also a private remedy." *Gonzaga Univ. v. Doe*, 536 U.S. 273, 284 (2002) (quotations omitted).

This Court has held that "it is now clear that the proper focus is on congressional intent, and nothing short of an unambiguously conferred right will support an implied right of action." *Osher v. City of St. Louis, Missouri*, 903 F.3d 698, 702 (8th Cir. 2018) (quoting *Does v. Gillespie*, 867 F.3d 1034, 1040 (8th Cir. 2017)) (cleaned up). The District Court erred in finding that the Materiality Provision contains an unambiguously conferred right that may be enforced through 42 U.S.C. § 1983. *See Arkansas State Conf. NAACP v. Arkansas Bd. of*

Apportionment, 86 F.4th 1204, 1209 (8th Cir. 2023) ("[H]aving the judiciary decide who can sue bypasses the legislative process.").

By contrast, Arkansas law creates a statutory private right and remedy for "any person . . . who considers himself or herself injured in his or her person, business, or property by final agency action." Ark. Code Ann. § 25-15-212(a). This clear legislative manifestation is missing from the Materiality Provision, and it is settled that "[s]ection 1983 guards and vindicates federal rights alone." *Doe v. Gooden*, 214 F.3d 952, 955 (8th Cir. 2000) (quoting *Ebmeier v. Stump*, 70 F.3d 1012, 1013 (8th Cir. 1995)).

What is unambiguously conferred by the Materiality Provision is the right of the Attorney General to bring an enforcement action when "any person has engaged or there are reasonable grounds to believe that any person is about to engage in any act or practice" that would violate the Materiality Provision. *See* 52 U.S.C. § 10101(c). Only if the Attorney General prevails in the enforcement action, a person of the disadvantaged race "within the affected area" has the right to seek a federal-court judgment "declaring him qualified to vote." 52 U.S.C. § 10101(e).

This "comprehensive remedial scheme," *see Health & Hosp. Corp. of Marion Cnty. v. Talevski*, 599 U.S. 166, 189 (2023), indicates that Congress intended to preclude the application of more generalized remedies. By providing an express, private means of redress in the statute itself, Congress indicated that it did not intend

to leave open a more expansive remedy under § 1983. *See Alsbrook v. City of Maumelle*, 184 F.3d 999, 1011 (8th Cir. 1999); *see also Wong v. Minnesota Dep't of Hum. Servs.*, 820 F.3d 922, 936 (8th Cir. 2016) (same); *Ne. Ohio Coal. for the Homeless v. Husted*, 837 F.3d 612, 630 (6th Cir. 2016) (holding that no private right of action exists to enforce the Materiality Provision).

The District Court's injunction order breaks with the Supreme Court's pronouncement that "recognizing implied causes of action" is an "*ancient regime*." *Ziglar v. Abbasi*, 582 U.S. 120, 131 (2017). This Court will not "fill in the gaps" where statutes lack a private right of action. *Arkansas State Conf. NAACP*, 86 F.4th at 1209. 52 U.S.C. § 10101 includes no private right of action, express or implied, and "nothing short of an unambiguously conferred right will support" one. *See Osher*, 903 F.3d at 702 (internal quotations omitted). Without "an unambiguously conferred right," *see id.*, Appellees cannot use 52 U.S.C. § 10101 as a vehicle to obtain private relief.

c. The "signature or mark" requirement is "material."

The District Court next erred in concluding that the "signature or mark" requirement is immaterial in determining whether a prospective voter is qualified under Arkansas law. This statutory interpretation of the Materiality Provision vis-à-vis Arkansas law is reviewed *de novo*. *See Turner v. Faulkner Cnty., Arkansas*, 78 F.4th 1025, 1030 (8th Cir. 2023); *see also Pennsylvania State Conf. of NAACP*

Branches v. Sec'y Commonwealth of Pennsylvania, 97 F.4th 120, 129 n.5 (3d Cir. 2024) (*de novo* review of interpretation and application of Materiality Provision).

Arkansas "indisputably has a compelling interest in preserving the integrity of its election process." *Purcell v. Gonzalez*, 549 U.S. 1, 4 (2006). This compelling interest, manifested through the SBEC and state law voter qualifications, exists as a matter of law. *See id.* And a state regulation enacted to protect the integrity of a state election instills public confidence in the electoral process because it "encourages citizen participation in the democratic process." *Crawford*, 553 U.S. at 197.

This Court has established that the SBEC's "paramount" interest in election integrity includes preventing fraud and corruption during voter registration, and "preventing mistakes as well, like duplicate signatures and signatures from ineligible voters." *Miller v. Thurston*, 967 F.3d 727, 740 (8th Cir. 2020) (citing *John Doe No. 1 v. Reed*, 561 U.S. 186, 195–96, 130 S.Ct. 2811 (2010)). The *Miller* court held that a in-person signature requirement for ballot initiative petitions "is designed to have in-person canvassers ferret out fraud and mistake by ensuring, at a minimum, only one signature per person and that signatures come from eligible voters." *Id.* at 740–41. The holding of *Miller* is fatal to Appellees' challenge to the "wet signature requirement," which is material to Arkansas's "paramount" interest in determining whether an applicant is qualified to vote under Arkansas law.

Importantly, the Materiality Provision "does not establish a least-restrictive-alternative test" for voter registration applications. *League of Women Voters of Arkansas v. Thurston*, 2023 WL 6446015, at *17 (W.D. Ark. Sept. 29, 2023) (quoting *Fla. State Conf. of N.A.A.C.P. v. Browning*, 522 F.3d 1153, 1175 (11th Cir. 2008)). A requirement is "material" so long as it is relevant to Arkansas's process "in determining" a voter's qualifications. 52 U.S.C. §10101(a)(2)(B).

The record makes clear that the District Court applied a least-restrictive-alternative test in granting injunctive relief. (App. 161–162, 174–175, 182; R. Doc. 72, at 42–43; Tr., pp. 65–66, 98). Appellees did not challenge the materiality of the signature itself; they simply challenged the materiality of the *type* of signature. The Appellees' contention—and the District Court's acceptance of that contention—fails under the text of the Materiality Provision, which "refers to the nature of the error rather than the nature of the underlying information requested." *Fla. State Conf. of N.A.A.C.P. v. Browning*, 522 F.3d 1153, 1175 (11th Cir. 2008). Stated differently, the Materiality Provision inquiry is whether "the information contained in the error is material to determining the eligibility of the applicant." *See id.* The Third Circuit recently reached the same conclusion about the contours of the Materiality Provision:

> The text does not say the error must be immaterial 'to' whether an individual is qualified to vote. It uses the words 'in determining,' and that choice must mean something. Read naturally, we believe they describe a process—namely, determining whether an individual is qualified to vote. So the information containing an error or omission, material or not, must itself relate to ascertaining a person's qualification

> to vote (like paperwork submitted during voter registration), and it is only in that context that officials are prohibited from using a mistake to deny ballot access unless it is material in determining whether the applicant indeed is qualified to vote.

Pennsylvania State Conf. of NAACP Branches, 97 F.4th at 131 (cleaned up). Here, Appellees contest only the nature of the underlying wet signature requirement, which is beyond the statutory language of the Materiality Provision.

Appellees' argument also fails because "an original signature meaningfully, even if quite imperfectly, corresponds to the substantial State interest of assuring that those applying to vote are who they say they are." *Callanen*, 89 F.4th at 489. To reach this conclusion, the Fifth Circuit appropriately framed the issue of materiality against this important state interest:

> Texas's interest in voter integrity is substantial. Second, that interest relates to the qualifications to vote—are the registrants who they claim to be? Finally, most voter registration forms likely are completed far from any government office or employee. That limits the methods of assuring the identity of the registrant. Though the effect on an applicant of seeing these explanations and warnings above the signature block may not be dramatic, Texas's justification that an original signature advances voter integrity is legitimate, is far more than tenuous, and under the totality of the circumstances, makes such a signature a material requirement.

Id.

The SBEC was not required to present "elaborate, empirical verification of the weightiness of [its] asserted justifications." *Miller*, 967 at 740 (quoting *Timmons v. Twin Cities Area New Party*, 520 U.S. 351, 364, 117 S.Ct. 1364 (1997)). A state can

"respond to potential deficiencies in the electoral process with foresight, provided that the response is reasonable and does not significantly impinge on constitutionally protected rights." *Id*. (cleaned up). Nonetheless, the District Court granted injunctive relief on the basis that less restrictive alternatives would serve the SBEC's interests, which the District Court disregarded as non-compelling. (App. 161–162, 174–175; R. Doc. 72, at 42–43; Tr., pp. 65–66).

In a second challenge in Florida, the district court reached the same conclusion in response to the same arguments Appellees make here: that a physical signature "bears no relation to the statutory qualifications" and "the act of signing—rather than the method used—affirms the information provided as true and accurate." *Byrd*, 2023 WL 7169095 at *6. The present case is no different. The SBEC adopted the "signature or mark" requirement to secure the compelling interests of uniform and efficient procedures. (App. 70; R. Doc. 53-1, at 6).

Moreover, the "signature or mark" requirement confirms an applicant's existence and identity, helps detect and deter identity fraud, and instills confidence in the electoral process. (App. 70–71; R. Doc. 53-2, at 6–7). These are some of the exact same justifications that led Florida and Texas to adopt almost identical signature requirements, both of which survived judicial review. A handwritten signature or mark confirms that the applicant is both a living person and the same person who is registering to vote in Arkansas. *See Henry v. Union Sawmill Co.*, 171 Ark. 1023, 287

S.W. 203, 204 (1926) ("A signature to a paper by mark, made by a person for the purpose of identifying himself as a party thereto, was good at common law.").

Handwritten signature requirements are ubiquitous for this reason. *See* IRS Pub. No. 17, *Your Federal Income Tax (for Individuals)* 14, 2022 WL 18636267, at *28 (2022) ("You must handwrite your signature on your return if you file it on paper. Digital, electronic, or typed-font signatures are not valid signatures for Forms 1040 or 1040-SR filed on paper.")[1]; Ark. Code Ann. § 27-14-705(a)(2) (requiring every application for motor vehicle registration and issuance of a certificate of title to "bear the signature of the owner, written with pen and ink"); Ark. Code Ann. § 27-16-801(a)(4) ("signature in ink" required for Arkansas driver's to be valid); Ark. Bar Adm. R. VI, Reg. 4 (requiring character questionnaire to "bear the original signature of the applicant" for admission to practice law in Arkansas); *In re Phillips*, 433 F.3d 1068, 1071 (8th Cir. 2006) (discussing requirements of debtor's physical signature on an original bankruptcy petition prior to filing).

The fact that "the Arkansas Constitution permits digital signatures from Registration Agencies," (App. 164; R. Doc. 72, at 45), reinforces, rather than undermines, this point. When registering at the Department of Motor Vehicles, an applicant "combines the drivers license and voter registration applications," *see* Ark.

[1] *Available at* https://www.irs.gov/pub/irs-prior/p17--2022.pdf (last accessed October 31, 2024).

Const. amend. 51 § 5, thereby physically presenting himself to the State, in person, and providing several physically signed documents to confirm the registrant's identity and qualifications. *See* Ark. Code Ann. §§ 27-16-801(a)(4); 27-16-1104; 27-16-1105.

In the context of paper applications, Arkansas does not have the security and confidence afforded by a signature that has been affixed in the presence of an authorized agent of a Registration Agency. Arkansas has determined that a handwritten signature on a mail-in voter registration application is a sufficient substitute for the in-person identification that occurs at a Registration Agency—it helps ensure that the applicant is a real, living person. *See Byrd*, 2023 WL 7169095, at *6; *Callanen*, 89 F.4th at 490–91. The fact that electronic signatures are accepted in certain circumstances involving in-person appearance and verification does not render the "signature or mark" requirement immaterial; it illustrates the significant materiality of the requirement.

Because "original signatures carry different weight than other 'signatures,'" *Byrd*, 2023 WL 7169095 at *6, the handwritten "signature or mark" requirement is material in determining whether an applicant is qualified to vote. Appellees failed to carry their burden to show a probability of success on the merits.

II. The equitable factors greatly favor the SBEC.

Even if Appellees could establish a likelihood of success on the merits, "a preliminary injunction does not follow as a matter of course." *Benisek v. Lamone*, 585 U.S. 155, 158 (2018) (per curiam). The equitable factors weigh against injunctive relief, providing several independently adequate grounds to reverse the preliminary injunction.

a. Appellees fail to demonstrate irreparable harm absent preliminary relief.

To establish irreparable harm, Appellees must show that, in the absence of a preliminary injunction, they are likely to suffer a harm that is "certain and great and of such imminence that there is a clear and present need for equitable relief." *Morehouse Enters., LLC v. ATF*, 78 F.4th 1011, 1017 (8th Cir. 2023). Because Appellees have not shown any Article III injury, they necessarily have not shown irreparable harm. *See Summers*, 555 U.S. at 493 (requirements of standing to seek injunctive relief). But even if this Court finds that Appellees has suffered injuries sufficient to confer standing, Appellees have not established that any injury is so "certain and great" as to justify injunctive relief. *See Morehouse Enters., LLC*, 78 F.4th at 1017.

VDO has not yet deployed its web platform in Arkansas and has not alleged any diversion of resources to date. Neither VDO nor GLA has offered any reasons for why they cannot direct their outreach programs to facilitating voter registration in a way that complies with Arkansas law. The District Court erred in holding that VDO

and GLA "have and will continue to incur compliance costs and suffer interference with their organizational activities." (App. 169; R. Doc. 72, at 50).

Appellees' delay in seeking injunctive relief further also undermines their claim of irreparable harm. *See Benisek*, 585 U.S. at 159 ("[A] party requesting a preliminary injunction must generally show reasonable diligence."); *Novus Franchising, Inc. v. Dawson*, 725 F.3d 885, 894 (8th Cir. 2013). The reasonableness of any delay, of course, is "context dependent," *see Ng v. Board of Regents of the Univ. of Minn.*, 64 F.4th 992, 998 (8th Cir. 2023), but Appellees have not offered any reasonable explanation for their two-month delay.

b. The balance of equities and public interest weigh against injunctive relief.

Finally, the preliminary injunction is improper because the balance of the equities and the public interest strongly favor the SBEC. *See Morehouse Enters., LLC*, 78 F.4th at 1018 ("The third and fourth factors for a preliminary injunction . . . merge when the Government is the party opposing the preliminary injunction."). Given the mismatch between Appellees' speculative injuries and the SBEC's strong interests in implementing the "signature or mark" requirement to determine a voter's qualifications, "consideration of these factors alone requires denial of the requested injunctive relief." *Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7, 23 (2008).

Arkansas voters, county clerks, and state election officials have a "paramount" interest in ensuring consistency and integrity in accepting voter

registration applications, and a preliminary injunction would harm their expectations of such consistency. *See Miller*, 967 F.3d at 740. The "signature or mark" requirement does not "deny voters in Arkansas their statutory rights under federal law." (App. 169–170, 172–173; R. Doc. 72, at 50–51; Tr., pp. 47–48). Rather, the "signature or mark" is material to election officials' determination of an applicant's qualifications to vote under Arkansas law.

CONCLUSION

For the foregoing reasons, the preliminary injunction enjoining Appellants, their employees, agents, and successors in office, and all persons acting in concert with them, from enforcing the Wet Signature Rule and from rejecting or refusing to accept any voter registration application on the ground that it was signed with a digital or electronic signature should be vacated and dissolved.

Respectfully submitted,

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/s/ Graham Talley
Graham Talley

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I hereby certify that on November 12, 2024, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Eighth Circuit by using the CM/ECF system. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

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