No. 24-2810

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

Get Loud Arkansas, et al.,

Plaintiffs-Appellees,

v.

John Thurston, et al.,

Defendants-Appellants.

On Interlocutory Appeal from the United States
District Court for the Western District of Arkansas
No. 5:24-CV-5121 (Hon. Timothy L. Brooks)

BRIEF OF PLAINTIFFS-APPELLEES GET LOUD ARKANSAS, INC., VOTE.ORG, NIKKI PASTOR, AND BLAKE "TRINITY" LOPER

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SUMMARY OF THE CASE

Get Loud Arkansas ("GLA")—a civic organization in Arkansas—created an online tool that allows Arkansans to sign voter registration applications digitally. Arkansas's Secretary of State and Attorney General confirmed that the tool was lawful. But after GLA received acclaim for its success registering new voters—and particularly younger voters—the Secretary reversed course and, as chair of the State Board of Election Commissioners ("SBEC"), led SBEC to effectively ban GLA's tool by requiring officials to reject mail voter registration applications unless they are signed with wet ink. The district court properly enjoined that rule because it violates the Civil Rights Act of 1964, which prohibits denying the right to vote based "errors or omissions" on application forms that are not material "in determining whether such individual is qualified … to vote," 52 U.S.C. §10101(a)(2)(B) ("materiality provision"). The district court found SBEC did not even "present argument or evidence as to how a wet signature" is material to such a determination.

The district court did not abuse its discretion. SBEC altogether fails to explain how a wet signature or mark—as compared to a digital signature—is "material" in determining a voter's qualifications, and its gatekeeping arguments challenging Plaintiffs' standing and the existence of a private right of action collapse upon the barest scrutiny. The district court's preliminary injunction should be upheld.

Plaintiffs request twenty minutes of argument per side.

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JURISDICTIONAL STATEMENT

The district court had jurisdiction under 28 U.S.C. §1331 and correctly found at least one Plaintiff had Article III standing.

The district court granted a preliminary injunction on August 29, 2024, and SBEC noticed its appeal on September 4, 2024. This Court has jurisdiction under 28 U.S.C. §1292(a)(1).

STATEMENT OF THE CASE

I. Amendment 51 governs voter registration in Arkansas and does not impose a wet signature rule.

The voter registration process in Arkansas is governed by Amendment 51 to the Arkansas Constitution. Under Amendment 51, a person may register to vote in several ways, including by: (1) submitting a mail voter registration application to their respective county clerk in person or by mail, *see* Ark. Const. amend. 51, §§6(a), 9(c); (2) submitting a mail voter registration application through a third-party organization authorized to submit the application on the voter's behalf, *id.* §6(a)(2)(G); or (3) registering at certain state agencies, *id.* §5(a).

Arkansas's Constitution requires applicants to provide a "signature or mark made under penalty of perjury that the applicant meets each requirement for voter registration." *Id.* §6(a)(3)(F). But it does not mandate any specific method or instrument in entering that signature or mark. *Id.* §6(b)(1). Many Arkansans use electronic signatures when they register to vote at state agencies. *Id.* §5(b)(1)-(4);

S.App.42-43; R.Doc.46-6 ¶18.[1] Some do not provide a signature at all—Amendment 51 explicitly permits applicants to enter a simple "mark" on their application. Ark. Const. amend. 51, §6(b)(1). County clerks are responsible for reviewing and approving voter registration applications and they "shall register qualified applicants" if the application is "legible and complete." *Id.* §9(c)(1). A person is qualified to vote in Arkansas if they are: a U.S. citizen; a resident of Arkansas; at least eighteen 18 years of age; and "[l]awfully registered to vote in the election." Ark. Const. art. 3, §1.

II. GLA and VDO develop innovative tools to help Arkansans register to vote.

GLA was founded in 2021 to address Arkansas's lowest-in-the-nation voter registration rates, particularly among younger voters. App.36; R.Doc.46-2 ¶3. GLA initially pursued its voter registration goals by distributing paper applications to new voters, but quickly realized the limitations of that approach. App.38; R.Doc.46-2 ¶9. Using paper applications restricted the number of voters GLA could register at public events and created time-consuming and cumbersome logistical work for the organization, which operates with limited budget and staff. *Id.*

To streamline its efforts, GLA developed an online tool that allows Arkansans to complete and sign a mail voter registration application on their phone, tablet, or

[1] "S.App." refers to Appellees' separate appendix. "App." refers to Appellants' appendix.

computer in minutes. App.38-40; R.Doc.46-2 ¶¶10-13, 19. To use the tool, an applicant provides the information necessary to complete the voter registration application prescribed by the Secretary under Amendment 51. App.39; R.Doc.46-2 ¶14. Applicants then use their finger, stylus, or mouse to sign their name confirming the accuracy of that application. *Id.* Applicants make this signature or mark under penalty of perjury after reviewing the *identical* sworn statement that appears on the Secretary's paper form. *Id.* The tool fills in the Secretary's form with the applicant's information and allows them to review the completed form and authorize GLA to print and submit it to their county clerk. *Id.*

GLA released this tool in January 2024, and instantly saw an increase in the rate at which it registered voters. App.39; R.Doc.46-2 ¶¶13,15. For example, GLA experienced a significant increase in completed registrations events in high schools across Arkansas, from 5-10 students when it was using paper applications to 40-60 students per visit using the online tool. App.40; R.Doc.46-2 ¶17. The digital tool made it easier for GLA staff to instruct applicants on how to complete the form; to ensure the form was complete and errorless; and to track and submit completed applications on behalf of the voters. App.39-41; R.Doc.46-2 ¶¶16, 19-20. Moreover, the tool dramatically expanded GLA's geographic reach, allowing it to offer voter registration opportunities to applicants in all of Arkansas's seventy-five counties. App.40; R.Doc.46-2 ¶18. By February 2024, just a month after launching the tool,

GLA had already registered nearly 400 new voters, 78 percent of whom were under 20 years old. App.39; R.Doc.46-2 ¶15. Based on this enthusiastic initial response, GLA set a goal of registering 9,000 new voters in 2024—more than twice the number of voters it registered in 2023. App.38, 44; R.Doc.46-2 ¶¶8, 31. When SBEC targeted GLA's tool, however, the group's rate of registering new voters plummeted, forcing GLA to significantly scale back its voter registration targets. App.41, 43-44; R.Doc.46-2 ¶¶20, 29-31.

Plaintiff Vote.org ("VDO") is a nationwide organization that also developed online voter registration tools with electronic signature options and offers them to voters in states across the country. App.56-58; R.Doc.46-3 ¶¶3, 8-10. VDO's online tools are designed to meet the needs and requirements of each state in which it offers them. App.56-57; R.Doc.46-3 ¶4. One of the most effective features of its online tools is the e-sign function, which allows applicants to upload an image of their handwritten signature into VDO's web application and have their completed voter registration application sent to the appropriate officials. App.57-58; R.Doc.46-3 ¶8. Because of the wet signature rule, however, VDO is not able to use its e-sign function in Arkansas. App.58; R.Doc.46-3 ¶9. Instead, applicants must print, physically sign, and then submit their application to their county clerk. App.57; R.Doc.46-3 ¶7. These procedural hoops limit the efficiency of VDO's voter registration efforts. App.58; R.Doc.46-3 ¶10.

III. State officials confirm electronic signatures comply with Arkansas law.

In early 2024, GLA began promoting its new tool at events across Arkansas. App.39-40; R.Doc.46-2 ¶¶15-18. GLA had no reason to doubt that the tool complied with Amendment 51's requirement that the voter provide a "signature or mark" made under penalty of perjury—the tool permits applicants to do exactly that, App.39; R.Doc.46-2 ¶14. Nonetheless, out of an abundance of caution, GLA sought confirmation from the Secretary of State. App.41; R.Doc.46-2 ¶21. In response, the Secretary of State's Office told GLA *on at least three occasions* that its tool complies with Arkansas law. App.41-42, 48-50; R.Doc.46-2 ¶22, 13-15. It advised that the Secretary's "attorneys looked into this … and came to the same conclusion [as GLA]" that the tool complied with Amendment 51. App.49; R.Doc.46-2 at 14. The office assured GLA that "the Secretary of State does not see how a digital signature should be treated any differently than a wet signature." App.54; R.Doc.46-2 at 19.

The Arkansas Attorney General reached the same conclusion when later asked by the Secretary for a formal opinion. The Attorney General stated that "an electronic signature or mark is generally valid under Arkansas law" and that:

> Consequently, given the historical acceptance of signatures produced through a variety of means, the widespread acceptance of electronic signatures, and the fact that Amendment 51 does not contain any restrictions on how a "signature or mark" may be made, I believe that an electronic signature satisfies Amendment 51's "signature or mark" requirement.

S.App.65, 67; R.Doc.46-7 at 21, 23.[2]

IV. The Secretary and SBEC reverse course and impose the wet signature rule.

After repeatedly assuring GLA that its new tool complied with Arkansas law, the Secretary abruptly reversed course on February 28, 2024, issuing a two-paragraph letter—with no analysis or explanation—instructing county clerks to reject applications "executed by electronic signature." S.App.61; R.Doc.46-7 at 17. The letter did not explain the Secretary's reversal, but it came just two days after a news report touting the success of GLA's new tool in registering young voters across Arkansas. App.42; R.Doc.46-2 ¶24.

Only after issuing this letter did the Secretary ask the Attorney General for a "formal opinion" on the issue. S.App.63; R.Doc.46-7 at 19. The Attorney General issued his formal opinion on April 10, 2024, rejecting the Secretary's newfound view as contrary to longstanding Arkansas law and further confirming that GLA's tool satisfied Amendment 51. S.App.65-68; R.Doc.46-7 at 21-24. Undaunted, SBEC—chaired by the Secretary—initiated emergency rulemaking to prohibit electronic signatures on mail registration applications. S.App.70-76; R.Doc.46-7 at 26-32.

[2] While the Attorney General's formal opinions are non-binding, the Arkansas Supreme Court routinely finds them to be persuasive pronouncements of Arkansas law. *E.g.*, *Arkansas Parole Bd. v. Johnson*, 654 S.W.3d 820, 825 (Ark. 2022); *Jefferson Cnty. Election Comm'n v. Wilkins ex rel. Jefferson Cnty.*, 547 S.W.3d 58, 62 (Ark. 2018); *see also* Ark. Code §25-16-706(a)(1).

SBEC acknowledged its rulemaking was responding to efforts by "third-party registration organizations" (*i.e.*, GLA) to register new voters using tools that relied upon digital signatures. S.App.73-74; R.Doc.46-7 at 29-30. And the agency identified GLA as an organization likely to be impacted by its emergency rule, all but admitting the emergency rulemaking targeted GLA's voter registration tool. S.App.75-76; R.Doc.46-7 at 31-32.

SBEC's wet signature rule bans electronic signatures on mail registration applications in three ways. First, it grafts non-textual language onto the term "signature or mark" in Amendment 51, redefining it to mean "a handwritten wet signature or handwritten wet mark made on a Registration Application Form with a pen or other writing device." S.App.107; R.Doc.46-7 at 63. Second, it provides that "[a] Signature or Mark that utilizes a computer to generate or recreate the applicant's signature or mark" is not acceptable, even though Amendment 51 imposes no such prohibition. *Id.* Third, while Amendment 51 requires county clerks to accept voter registration applications that are "legible and complete," *see* Ark. Const. amend. 51 §9(c)(1), (c)(3)(A), the wet signature rule adds that applications must also be "executed" with a "Signature or Mark" as defined by the rule—in other words, with a handwritten signature. S.App.107; R.Doc.46-7 at 63. The emergency rule took effect on May 4 and was initially scheduled to expire on September 1. S.App.73, 105; R.Doc.46-7 at 29, 61.

On June 5, GLA and VDO, along with Nikki Pastor and Blake "Trinity" Loper—two individuals whose applications were rejected for lack of "wet" signatures—sued SBEC and the clerks for Pulaski, Benton, and Washington Counties for prospective relief under the materiality provision of the Civil Rights Act of 1964. *See* App.7-34; R.Doc.2.

V. Plaintiffs obtained a preliminary injunction after SBEC announced it would make the wet signature rule permanent.

On June 11, SBEC initiated the process to make the emergency rule permanent. S.App.122; R.Doc.46-7 at 78. During a public comment hearing on July 11, sixteen speakers commented in opposition of the rule, while not one member of the public spoke in favor of it. S.App.156; R.Doc.63 ¶¶8-9. Of the 200 written public comments SBEC received, only eight supported the wet signature rule. S.App.156; R.Doc.63 ¶9.

Plaintiffs moved for preliminary relief on July 11—the same day SBEC held its public hearing on the rule—after it was clear that *permanent* adoption of the rule was inevitable. *See* App.32-35; R.Doc.46; *see also* S.App.122; R.Doc.46-7 at 78. Along with their motion, Plaintiffs submitted a declaration from Susan Inman, who has held multiple positions overseeing voter registration across Arkansas and in its largest county, including as Voter Services Supervisor and then Director of Elections for the Arkansas Secretary of State, Pulaski County Elections Commissioner, and Pulaski County Elections Director. S.App.40-44; R.Doc.46-6. Ms. Inman's

declaration confirmed that the instrument used to sign a voter registration form is irrelevant in determining voters' qualifications. *Id.* Defendants offered no evidence to rebut this testimony.

On August 29, the district court heard arguments on Plaintiffs' Motion for Preliminary Injunction. S.App.1, 5; R.Doc.43 at 1, 5. At the hearing, no Defendant explained how a wet signature is used in determining whether an applicant is qualified to vote under Arkansas law. *See* S.App.161-268; Tr. at 1-108. To the contrary, one clerk acknowledged that they look only for the "existence" of a signature or mark on voter application forms—not *how* the signature is made. S.App.246; Tr. at 86:15-22.

The district court granted Plaintiffs requested preliminary injunction from the bench and later issued a 52-page written decision on September 9. S.App.255; Tr. at 95:25-96:6; App.120-171; R.Doc.72.[3] After first concluding at least one Plaintiff—GLA—had standing and could enforce the materiality provision, the court found Plaintiffs likely to prevail on each element of their claim. App.151-170; R.Doc.72 at 32-51. The court stressed that SBEC failed to even "present argument or evidence as to how a wet signature—as compared to a digital signature—aids in determining whether a person is [qualified to vote under Arkansas law]." App.156; R.Doc.72 at

[3] The opinion is also available at: *Get Loud Ark. v. Thurston*, No. 5:24-CV-5121, 2024 WL 4142754 (W.D. Ark. Sept. 9, 2024).

37. Instead, the court found that "the record evidence shows that the 'wetness' of a signature does not affect county officials' determinations of qualifications at all." App.157; R.Doc.72 at 38.

The court also found Plaintiffs would suffer irreparable harm absent relief, including "los[t] opportunities to conduct election-related activities, such as voter registration and education." App.168-169; R.Doc.72 at 49-50. Defendants did not "dispute" the remaining equitable factors, each of which the district court found to weigh in Plaintiffs' favor. S.App.259; Tr. at 99:7-21; *see also* App.169-170; R.Doc.72 at 50-51.

The court ordered that Defendants "be 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." S.App.263-264; Tr. at 103:24-104:5; *see also* App.171; R.Doc.72 at 52.

VI. SBEC appeals the district court's preliminary injunction.

SBEC waited more than a week after the district court issued its preliminary injunction before seeking a stay in this Court. SBEC's Mot. to Stay (Sept. 6, 2024). SBEC's motion offered little defense of the wet signature rule on the merits, instead relying on the so-called *Purcell* doctrine to argue that the injunction came too close in time to the November 4 general election. *Id.* at 17-22. On September 13, this Court entered a temporary administrative stay of the preliminary injunction, followed by a

full stay pending appeal on October 4, over the dissent of Judge Smith. This Court's order did not offer any reasoning for the stay. In dissent, Judge Smith concluded that *Purcell* should not apply, finding it was SBEC that disturbed the status quo. Am. Order at 2 (Oct. 9, 2024).

STANDARD OF REVIEW

"When a party appeals a district court's preliminary injunction … [the] standard of review is 'layered.'" *Cigna Corp. v. Bricker*, 103 F.4th 1336, 1342-43 (8th Cir. 2024) (citing *Tumey v. Mycroft AI, Inc.*, 27 F.4th 657, 665 (8th Cir. 2022)). This Court "review[s] the district court's conclusions of law de novo, its findings of fact for clear error, and its application of the law to the facts for abuse of discretion." *Id*. The district court's "discretion to grant or deny a preliminary injunction is broad" and "is accorded deference because of its greater familiarity with the facts and the parties." *Id.* (cleaned up). Consequently, "the scope of this [C]ourt's review is very limited." *Sleep No. Corp. v. Young*, 33 F.4th 1012, 1016 (8th Cir. 2022) (cleaned up).

SBEC suggests the district court was required to apply a "higher bar" to determine Plaintiffs' likelihood-of-success on the merits because they challenge a regulation, SBEC Br.13 (Nov. 14, 2024) ("Br."), but SBEC forfeited this argument by never raising it below. *See* S.App.142-143; R.Doc.53 at 5-6. Regardless, this Court has only applied that rule where plaintiffs challenge "a state *statute*," *Planned*

Parenthood Minn., N.D., S.D. v. Rounds, 530 F.3d 724, 731 (8th Cir. 2008) (en banc) (emphasis added), because a "duly enacted state statute" reflects "the full play of the democratic process," *D.M. by Bao Xiong v. Minnesota State High Sch. League*, 917 F.3d 994, 1000 (8th Cir. 2019) (quoting *Rounds*, 530 F.3d at 732 & n.6); *see also Richenberg v. Perry*, 73 F.3d 172, 173 (8th Cir. 1995) (per curiam) (similar). This Court has expressly *declined* to apply this standard to administrative rules issued by unelected officials who do not "[have to] answer to their constituents," *D.M. by Bao Xiong*, 917 F.3d at 1000, whereas SBEC does not cite *any* case where this Court imposed a heightened standard on plaintiffs challenging a state agency action[4] In any event, while Plaintiffs are only required to show a "fair chance of prevailing," *D.M. by Bao Xiong*, 917 F.3d at 1001, they satisfy any formulation of this standard.

SUMMARY OF THE ARGUMENT

1. Each Plaintiff has standing. SBEC does not dispute that individual Plaintiffs Pastor and Loper have standing, which alone suffices to uphold the preliminary injunction. *See Town of Chester v. Laroe Ests., Inc.*, 581 U.S. 433, 439

[4] This Court stated in passing in one case that the higher standard applies to "injunctions against the enforcement of statutes and regulations." *Sleep No. Corp.*, 33 F.4th at 1016. But that case ultimately applied the more lenient "fair chance" standard because the defendant was a private party and no regulation was at issue, *id.*, rendering this statement *dicta*, *see Passmore v. Astrue*, 533 F.3d 658, 660-61 (8th Cir. 2008) (explaining "when an issue is not squarely addressed in prior case law," this Court "need not follow [such] dicta" (cleaned up)).

(2017). Moreover, SBEC's imposition of the wet signature rule plainly "forbid[s] some action" by GLA and VDO, namely the use of their digital voter registration tools within Arkansas. *FDA v. All. for Hippocratic Med.*, 602 U.S. 367, 382 (2024) ("*Alliance*"). There is no dispute that SBEC imposed the wet signature rule *specifically* to prohibit GLA's continued use of its digital voter registration tool. Such "[g]overnment regulation[] … almost invariably" satisfies standing, *id.*, particularly when "challenged by a party who is a target or object of the [law's] prohibitions," *St. Paul Area Chamber of Com. v. Gaertner*, 439 F.3d 481, 485 (8th Cir. 2006). Moreover, ample record evidence shows GLA and VDO are suffering distinct diversion of resources harms apart from the direct restriction on their activities. SBEC does not dispute these injuries are traceable to the wet signature rule and remedied by an injunction.

2. The district court correctly concluded that Plaintiffs are likely to succeed on the merits of their materiality provision claim. In the proceedings below, SBEC did not even "present argument or evidence as to how a wet signature—as compared to a digital signature—aids in determining" a person's qualification to vote in Arkansas. App.156; R.Doc.72 at 37. In contrast, the record overwhelmingly demonstrates that Arkansas election officials *do not consider* the instrument used to sign a voter registration application for *any* purpose—let alone in determining if an applicant meets Arkansas's voter qualifications.

SBEC's counterarguments ignore the text of the materiality provision, the record, and the district court's findings. SBEC erroneously argues the wet signature rule can be justified by compelling state interests. But as numerous federal courts have found, "the Materiality Provision simply does not care whether a rule furthers important state interests." *Pa. State Conf. of NAACP Branches v. Sec'y Commonwealth of Pa.*, 97 F.4th 120, 137 (3d Cir. 2024) ("*Pa. NAACP*"). Although two out-of-circuit cases upheld wet signature requirements over materiality provision claims, both of those decisions are distinguishable—they concerned *legislatively-enacted* requirements, unlike the agency rule here, and relied on flawed analysis of the materiality provision that ignored plain statutory text. Finally, SBEC's argument that Plaintiffs cannot challenge the *type* of signature required, without challenging the signature requirement itself, finds no support in the text of the Civil Rights Act. This argument directly contradicts the purpose of the materiality provision, which was to preempt arbitrary registration rules that simply "increase the number of errors or omissions on the application forms, thus providing an excuse to disqualify potential voters." *Schwier v. Cox*, 340 F.3d 1284, 1294 (11th Cir. 2003). The wet signature rule is precisely this kind of capricious requirement that serves no material purpose in determining Arkansans' voter qualifications.

3. Plaintiffs may enforce the materiality provision, as the overwhelming majority of federal courts have recognized. *E.g.*, *Vote.org v. Callanen*, 89 F.4th 459,

473-78 (5th Cir. 2023); *Migliori v. Cohen*, 36 F.4th 153, 158-62 (3d Cir.), *vacated on other grounds sub nom. Ritter v. Migliori*, 143 S. Ct. 297 (2022);[5] *Schwier*, 340 F.3d at 1294-97. SBEC fails to even address these cases in arguing otherwise. The small number of courts to disagree did so with little analysis and prior to the Supreme Court's decision in *Gonzaga University v. Doe*, which confirmed that when a federal statute "confers an individual right, the right is presumptively enforceable by § 1983." 536 U.S. 273, 284 (2002). Since *Gonzaga*, *every* federal court to confront the issue has concluded the materiality provision may be enforced by §1983, as the provision plainly confers "the right of any individual to vote" under its terms. 52 U.S.C. §10101(a)(2)(B).

4. The district court did not commit clear error in finding that Plaintiffs would suffer irreparable harm absent relief. The denial of the right to vote guaranteed by the Civil Rights Act, as well as the restrictions on GLA's and VDO's registration related activities, amply establish such harm. Nor did the court clearly err in concluding the remaining equitable factors weigh "decidedly" in Plaintiffs' favor, particularly since SBEC made no argument on those factors below.

[5] Although *Migliori* was vacated by the Supreme Court on mootness grounds, a subsequent decision of the Third Circuit—in a similar lawsuit also brought by private plaintiffs—did not revisit the conclusion that the materiality provision may be privately enforced. *See Pa. NAACP*, 97 F.4th at 139; *see also id.* at 140 n.3 (Shwartz, J., dissenting) ("Plaintiffs are correct that 42 U.S.C. § 1983 provides them a private right of action to enforce the Materiality Provision." (collecting cases)).

ARGUMENT

I. Plaintiffs have standing to challenge the wet signature rule.

SBEC's piecemeal standing arguments pose no barrier to upholding the district court's preliminary injunction. To start, SBEC does not dispute that individual Plaintiffs Pastor and Loper have standing. *See generally* Br. §I.A. Only a single plaintiff needs to have standing to sustain the injunction. *See, e.g.*, *Town of Chester*, 581 U.S. at 439; *Horne v. Flores*, 557 U.S. 433, 446-47 (2009). SBEC has conceded that is the case here.

As to the other Plaintiffs, SBEC's standing arguments are wrong. The wet signature rule prevents GLA and VDO from deploying tools designed to help voters register using digital signatures, and it harms voters—like Pastor and Loper—who used GLA's online tool and had their applications rejected. These harms are traceable to, and redressable by, SBEC—which imposed this requirement specifically to restrict GLA's voter registration activities—and the county clerk Defendants, who enforce it. These undisputed facts readily confer standing. *See Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560-61 (1992).

A. GLA and VDO have organizational standing.

1. GLA and VDO are both directly injured by the restriction on their voter registration activities.

SBEC's argument that GLA and VDO lack standing is meritless. As the Supreme Court recently recognized, "[g]overnment regulations that require or forbid

some action by the plaintiff[s] almost invariably satisfy both the injury in fact and causation requirement." *Alliance*, 602 U.S. at 382 (explaining "standing is usually easy to establish" in such cases). There is no dispute that SBEC's wet signature rule *forbids* GLA and VDO from deploying their voter registration tools, while also *requiring* them to collect wet signatures to register voters. App.43-44, 57-58; R.Doc.46-2 ¶¶29-30; R.Doc.46-3 ¶¶7-9. That is why the district court found that GLA has standing, noting that the organization "has already been, and will continue to be, required to undertake certain actions by the Rule and forbidden to take others." App.150; R.Doc.72 at 31. SBEC does not even dispute the point.[6]

This conclusion is buttressed by the district court's finding—supported by undisputed evidence—that "the SBEC was specifically targeting GLA's activity of registering voters through its online tool." App.148; R.Doc.72 at 29. Indeed, SBEC repeatedly recognized that GLA would be impacted by its proposed rule. *See* S.App.73-76; R.Doc.46-7 at 29-32 (repeatedly citing GLA's voter registration efforts as the motivation for the wet signature rule). Where, as here, a law "is challenged by a party who is a target or object of the [law's] prohibitions, 'there is ordinarily little question that the [law] has caused him injury.'" *Gaertner*, 439 F.3d

[6] While the court limited its analysis to GLA, VDO has standing for similar reasons, as it too developed technology that would allow prospective voters to sign their registration forms digitally. App.57-58; R.Doc.46-3 ¶¶8-10. VDO cannot deploy such tools in Arkansas unless the wet signatures rule is enjoined. *Id.*

at 485 (quoting *Minn. Citizens Concerned for Life v. FEC*, 113 F.3d 129, 131 (8th Cir. 1997)); *accord Lujan*, 504 U.S. at 561 (explaining standing is readily established by a party that is the "object of [government] action"). Based on nearly identical facts, the Fifth Circuit found that VDO had standing to challenge Texas's legislatively-enacted wet signature rule because VDO was "no longer able to make use of its app." *Callanen*, 89 F.4th at 470-71.[7] SBEC does not dispute that GLA was the direct target of its wet signature rule, but in fact concedes the agency was motivated by a desire to halt GLA's use of its digital tool—a result it achieved. *See* Br.6-7 (explaining how GLA's use of its "online tool" "necessitated emergency rulemaking").

2. GLA and VDO are also suffering a distinct diversion of resources injury.

The only aspect of GLA's injury that SBEC *does* dispute is whether it suffered a distinct cognizable harm by diverting resources in response to the wet signature rule. Br.16-17. But, as the Supreme Court recently explained, a diversion of resources injury is simply another one of several ways in which an organization may show an Article III injury. *See Alliance*, 602 U.S. at 395. An organization is not

[7] *Callanen* reached conclusions on a wide range of issues. Many of those conclusions are based on sound reasoning and achieved unanimous support, including on threshold issues related to standing and the enforceability of the materiality provision. *See infra* Argument §III. However, as discussed below, the panel majority's conception of "materiality" is deeply flawed, as the well-reasoned dissent explained. *Callanen*, 89 F.4th at 491-93 (Higginson, J., dissenting).

required to establish diversion of resources where it shows that "[g]overnment regulations" "require or forbid some action by the plaintiff." *Id.* at 382. SBEC does not—and cannot—dispute that is the case here, so its arguments about diversion of resources are irrelevant. *See* App.150; R.Doc.72 at 31.

In any event, both GLA and VDO *have* established an additional diversion of resources injury, apart from the direct restriction on their voter registration efforts. As the district court found, GLA has been forced to divert staff and volunteer time, as well as money, from other organizational activities—including programs meant to help purged voters and to promote local civic engagement—in order to "redesign[] its tool and retrain[] and hir[e] additional staff to register people using paper applications" in response to the wet signature rule. App.149; R.Doc.72 at 30. Absent relief, GLA's need to continue diverting resources to prop up its voter registration efforts will "markedly limit[] its ability to carry out its organizational activities," including beyond voter registration. *Id.* SBEC does not suggest that finding—supported by substantial and undisputed evidence—was clear error. *See* App.44-45; R.Doc.46-2 ¶32. The district court had ample basis to conclude that the wet signature rule is causing "concrete and demonstrable injury to the organization's activities," with a "consequent drain on the organization's resources." App.149; R.Doc.72 at 30 (quoting *Havens Realty Corp. v. Coleman*, 455 U.S. 363, 379 (1982)).

SBEC's only response to these undisputed facts is to suggest they do not qualify as injuries because the expenditures at issue merely concerned GLA's "normal operations." Br.17. But courts have repeatedly rejected that argument as a basis to ignore an otherwise valid diversionary injury. "Any work to undo a frustrated mission is, by definition, something in furtherance of that mission … [i]ndeed, we have a hard time imagining … why it is that an organization would undertake any additional work if that work had nothing to do with its mission." *Common Cause Ind. v. Lawson*, 937 F.3d 944, 954-55 (7th Cir. 2019); *see also Sixth Dist. of Afr. Methodist Episcopal Church v. Kemp*, 574 F. Supp. 3d 1260, 1270 (N.D. Ga. 2021). At bottom, GLA's various civic initiatives were "perceptibly impaired" by SBEC's rule, which forced GLA to dramatically divert resources from other programs to sustain its voter registration efforts targeted by SBEC. App.148-149; R.Doc.72 at 29-30.[8]

[8] SBEC's reference to *NAACP v. City of Kyle*, 626 F.3d 233, 238 (5th Cir. 2010), is unavailing. Br.17. The Fifth Circuit itself found *City of Kyle* distinguishable in *Callanen*, where VDO "provided substantial evidence that, because of the requirement for original signatures, it had to expend additional time beyond the routine activities of multiple departments and divert resources away from particular projects." *Callanen*, 89 F.4th at 471 (cleaned up). Similarly, in *National Taxpayers Union, Inc. v. United States*, the plaintiff failed to provide "evidence" that the challenged action subjected it "to operational costs beyond those normally expended[.]" 68 F.3d 1428, 1434 (D.C. Cir. 1995). Accordingly, the plaintiff could not show its alleged diversion kept it "from pursuing its true purpose" as an organization. *Id.* In contrast, the district court here found GLA presented just such evidence, as shown by "the precipitous decline in registrations through GLA," as

While the district court did not reach the issue, substantial evidence establishes VDO is suffering similar harm. By prohibiting VDO from using its e-signature tool, the rule forces VDO to divert resources from other critical activities to pursue a significantly more costly and less efficient voter registration program in Arkansas. App.57-58; R.Doc.46-3 ¶¶7-8, 10. The Fifth Circuit found nearly identical facts provided VDO with standing to challenge Texas's wet signature statute. *Callanen*, 89 F.4th at 470-71. Despite citing *Callanen's* divided merits discussion elsewhere, SBEC nowhere explains why that court's *unanimous* conclusion on standing should not apply here. SBEC's only argument as to VDO is that it is not suffering a *present* injury because it had not already deployed its online tool in Arkansas at the time suit was filed. Br.16. But that simply misreads the record, which shows that but for the wet signature rule, VDO intends to use its e-sign function in Arkansas. App.57-58; R.Doc.46-3 ¶¶7-10. VDO's intent to deploy its tool in Arkansas but for the wet signature rule is thus not "mere speculation," *Clapper v. Amnesty Int'l USA*, 568 U.S. 398, 410 (2013), but rather a sworn and undisputed fact.

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well as by harm to its "other organizational activities." App.148-149; R.Doc.72 at 29-30. Accordingly, GLA does not suffer from the failure of proof at issue in *National Taxpayers Union*.

3. SBEC does not dispute the remaining standing elements.

SBEC does not dispute the remaining two elements of standing—causation and redressability—for good reason: causation is "easy to establish" where, as here, a state actor has prevented a plaintiff from engaging in certain activity. *Alliance*, 602 U.S. at 382. Redressability is apparent for the same reason. *E.g.*, *Parents Defending Educ. v. Linn Mar Cmty Sch. Dist.*, 83 F.4th 658, 667 (8th Cir. 2023). The elements of Article III standing are thus satisfied by the organizational plaintiffs.[9]

B. Pastor and Loper have standing.

As noted above, SBEC does not dispute that the individual Plaintiffs—Pastor and Loper—have standing. No party disputes that Pastor and Loper are qualified to vote in Arkansas, App.123; R.Doc.72 at 4, yet they both had their voter registration applications rejected for lack of a wet signature. App.59-60, 61-62; R.Doc.46-4 ¶¶2-4, 11; R.Doc.46-5 ¶¶2-3, 8. If either Pastor or Loper attempted to register in the future without providing a wet signature, their applications would again be rejected.

These uncontested facts readily establish standing. Denial of a qualified voter's registration application is plainly an injury-in-fact. *See Charles H. Wesley Educ. Found., Inc. v. Cox*, 408 F.3d 1349, 1352 (11th Cir. 2005) (rejection of voter registration form sufficiently alleged an injury-in-fact). That injury is traceable to

[9] GLA and VDO have never asserted associational standing in this case, making SBEC's discussion of the topic immaterial. Br.18-19.

SBEC's wet signature rule, as well as the county clerks' enforcement of the rule (as mandated by SBEC). *See Parents Defending Educ.*, 83 F.4th at 667 (holding injury is fairly traceable to the officials responsible for enforcing it); *281 Care Comm. v. Arneson*, 638 F.3d 621, 631 (8th Cir. 2011) (similar). And such harm will be redressed by an injunction permitting Pastor and Loper to register using digital tools offered by organizations like GLA and VDO. *See id.* SBEC disputes none of this. Accordingly, Pastor and Loper each provide the standing necessary to sustain the district court's injunction, as "only one plaintiff need satisfy Article III standing requirements." App.145; R.Doc.72 at 26 (citing *Horne*, 557 U.S. at 446-47).

II. The district court correctly concluded Plaintiffs are likely to succeed on the merits of their Civil Rights Act claim.

A straightforward application of the materiality provision's text compels the conclusion that the wet signature rule cannot pass muster, particularly given the *uniform* record evidence showing that Arkansas's election officials do not look to *how* a person signs or marks their registration form when "determining whether such individual is qualified under [Arkansas] law to vote." 52 U.S.C. §10101(a)(2)(B). The district court was therefore correct in finding Plaintiffs likely to succeed on the merits. App.152-167; R.Doc.72 at 33-48.

A. The materiality provision bars denying the right to vote due to immaterial paperwork errors or omissions.

Congress enacted the Civil Rights Act of 1964 to remove "obstacles to the exercise of the right to vote and provide means of expediting the vindication of that right." H.R. Rep. No. 88-914, *as reprinted in* 1964 U.S.C.C.A.N. 2391, 2393. This included eliminating arbitrary denials of the franchise based on irrelevant paperwork errors. Accordingly, the materiality provision of the Civil Rights Act provides that:

> No person acting under color of law shall … deny the right of any individual to vote in any election because of an error or omission on any record or paper relating to any application, registration, or other act requisite to voting, if such error or omission is not material in determining whether such individual is qualified under State law to vote in such election[.]

52 U.S.C. §10101(a)(2)(B). This text prescribes three elements. *First*, the challenged state action performed "under color of law" must have the effect of "deny[ing] the right of any individual to vote." *Id*. "[T]he word 'vote' includes all action necessary to make a vote effective including, but not limited to, *registration* or other action required by State law prerequisite to voting." *Id.* §10101(a)(2)(3)(A), (e) (emphasis added). *Second*, the right to vote must be denied "because of an error or omission on any record or paper relating to any application, registration, or other act requisite to voting." *Id*. §10101(a)(2)(B). *Third*, the error or omission must not be "material in determining whether such individual is qualified under State law to vote." *Id.*

Appellants do not, and cannot, dispute the first two elements. When Arkansas election officials reject a voter registration application under the wet signature rule, they deny Arkansans the right to vote, as defined by the Civil Rights Act. *See* App.152-153; R.Doc.72 at 33-34. The fact that they are rejecting an application—rather than a ballot—makes no difference: the term "vote" as used in the materiality provision includes not only the ultimate act of casting a ballot, but also successfully registering to vote in the first place. *See, e.g.*, *Schwier*, 340 F.3d at 1294; *Mi Familia Vota v. Fontes*, 719 F. Supp. 3d 929, 993-95 (D. Ariz. 2024). That is consistent with Congress's choice to define the term "vote" in the Act to "include[] all action necessary to make a vote effective including … *registration*." 52 U.S.C. §10101(e) (emphasis added).[10] The second element is also met as a matter of "common sense." App.154; R.Doc.72 at 35. Under the wet signature rule, election officials must treat the lack of a wet signature on a mail voter registration application as an "error or omission" on a "record or paper relating to any application [or] registration." 52 U.S.C. §10101(a)(2)(B).

[10] SBEC abandons its argument "that the opportunity to resubmit in accordance with the [Wet Signature] Rule cures any statutory violation." App.153; R.Doc.72 at 34. Courts have rejected that argument because "the opportunity to resubmit the application in compliance with the Rule does not negate the denial of the right to vote." *Id.* (collecting cases); *see also Vote.org v. Ga. State Election Bd.*, 661 F. Supp. 3d 1329, 1339 (N.D. Ga. 2023) (rejecting "argument that the opportunity to cure an error rehabilitates any potential violation"); *Kemp*, 574 F. Supp. 3d at 1282 (same).

The only remaining issue is whether the "wetness" of a signature or mark on an application form is "material in determining" whether the applicant is qualified to vote under Arkansas law. *Id*. The record overwhelmingly demonstrates that a *wet* signature is not material in determining voter qualifications. The district court was thus correct that Plaintiffs are likely to succeed in establishing all three elements.

B. A wet signature is not material in determining whether an individual is qualified to vote in Arkansas.

At the core of this case rests a very straightforward question: how do Arkansas's election officials use the "wetness" of a signature in determining whether an applicant is qualified to vote? The record confirms that they do not use it *at all*, never mind in a manner that is "significant" or "essential" to determining voter qualifications. *See* Material, BLACK'S LAW DICTIONARY (12th ed. 2024)). SBEC's arguments on this score are so thin that the district court correctly found that the agency did not even "present argument or evidence as to how a wet signature—as compared to a digital signature—aids in determining" a person's qualification to vote in Arkansas. App.156; R.Doc.72 at 37. In contrast, Plaintiffs offered "record evidence" confirming "that the 'wetness' of a signature does not affect county officials' determinations of qualifications at all." App.157; R.Doc.72 at 38. Given this lopsided record, the district court plainly did not abuse its discretion in concluding Plaintiffs are likely to show the wet signature rule is not material "in

determining whether such individual is qualified under [Arkansas] law to vote." 52 U.S.C. §10101(a)(2)(B).

"To determine whether an error or omission is material, the information required must be compared to state-law qualifications to vote." *La Union del Pueblo Entero v. Abbott*, 705 F. Supp. 3d 725, 751 (W.D. Tex. 2023) ("*LUPE*"), *stayed pending appeal sub nom. United States v. Paxton*, No. 23-50885 (5th Cir. Dec. 15, 2023); *Mi Familia Vota*, 719 F. Supp. 3d at 993-95. The qualifications to vote under Arkansas law consist of: (1) U.S. citizenship, (2) Arkansas residency, (3) being at least eighteen years old, (4) not having been convicted of a felony, and (5) not having been adjudged mentally incompetent by a court. *See* Ark. Const. art. 3, §1(a); Ark Const. amend. 51, §11(a).

The instrument a prospective voter uses to sign their registration application bears no relationship to any of these qualifications. Tellingly, when issuing the wet signature rule, SBEC nowhere explained how the use of a wet signature is even "useful or minimally relevant"—never mind "material"—in "determining a person's eligibility to vote." *Mi Familia Vota*, 719 F. Supp. 3d at 993-95 (explaining that required information must be "*more* than useful or minimally relevant" to survive scrutiny under materiality provision (emphasis added)). At the preliminary injunction hearing, counsel for one county clerk admitted clerks look solely for the "existence" of a signature or mark on an application form—not *how* the signature is

made. S.App.246; Tr. at 86:15-22. That concession confirmed uncontested testimony that clerks "are advised to accept voter registration applications with any type of signature or mark," S.App.42; R.Doc.46-6 ¶16, and that they do not remove voters from the rolls "based on the quality or method of the signature on voter registration applications," S.App.42; R.Doc.46-6 ¶17. Meanwhile, SBEC failed to present *any* evidence of materiality. App.156-157; R.Doc.72 at 37-38.

The record further shows that, before the wet signature rule, the Attorney General and the Secretary *agreed* that requiring a wet signature on voter registration applications would be contrary to state law. The Arkansas Constitution provides that election officials "shall register" qualified applicants who submit "a legible and complete voter registration application." Ark. Const. amend. 51 §9(c)(1). And while a signature or mark is required to complete an application, there is no requirement that the signature be applied with any specific instrument. The only express requirement is that the signature or mark be "made under penalty of perjury" and affirm "that the applicant meets each requirement for voter registration." *Id.* §6(a)(3)(F).

The Attorney General emphasized this plain text reading in his formal opinion, which explained that "[t]he Arkansas Constitution does not define a 'signature or mark,' nor does it specify how a signature or mark may be made," and accordingly, "an electronic signature satisfies Amendment 51's 'signature or mark'

requirement." S.App.66-67; R.Doc.46-7 at 22-23. And the Secretary's own representations to GLA make clear that, before the wet signature rule, it was uncontroversial that electronic signatures satisfied Amendment 51. Indeed, the Secretary "d[id] not see how a digital signature should be treated any differently than a wet signature," App.54; R.Doc.46-2 at 19. Although the Secretary later reversed this position—without any legal analysis or explanation—his own "attorneys [previously] came to the same conclusion [as GLA] about the" meaning of Amendment 51, App.49; R.Doc.46-2 at 14. These acknowledgments from "the attorney for all state officials," Ark. Code §25-16-702(a) (describing duties of Attorney General), and the State's "chief election official," Ark. Const. amend. 51, §5(b)(1) (duties of Secretary), further confirm that the wet signature rule is an arbitrary invention of SBEC, rather than a material aspect of voter registration.

Although they mostly abandon it on appeal, the record also does not support SBEC's argument that the wet signature rule is somehow material to the signature matching process for absentee voters. While Arkansas law permits county clerks to compare the signature on an absentee ballot application with the voter's corresponding signature on their registration application, the signatures used for comparison are frequently in digital form. Many Arkansans register at state agencies where electronic signatures are currently permitted. S.App.42-43; R.Doc.46-6 ¶¶18-19. Additionally, election officials take digital scans of the handwritten signatures

submitted on paper applications and compare signatures using those digital images. S.App.43; R.Doc.46-6 ¶19. This, too, was confirmed at the preliminary injunction hearing, where counsel for the Washington County Clerk acknowledged that the signature comparator kept by that office is "a [digital] scan of the paper copy." S.App.230-231; Tr. at 70:24-71:3.

In any event, any utility that a handwritten signature may serve at other stages of the voting process cannot justify the denial of a voter registration application. *See LUPE*, 705 F. Supp. 3d at 751 (rules governing a voter's qualification to register are "distinct from rules governing the conduct of elections"). The evidence before the district court conclusively established that clerks do not "use the wetness of a signature to determine whether an applicant is qualified to vote under Arkansas law." App.157; R.Doc.72 at 38. Appellants did not present any evidence to the contrary, nor do they assert that this finding was clearly erroneous. This Court has no reason to conclude otherwise.

In the absence of any evidence that it plays a material role in determining voter qualifications, the wet signature rule cannot be deemed material in the abstract simply because it is mandated by state law, as SBEC suggests. Br.2-3. Although Arkansas requires voters to be "[l]awfully registered to vote in the election," Ark. Const. art. 3, §1, it does not follow that every state registration requirement is, *ipso facto*, material. That twisted logic "would erase the Materiality Provision from

existence, by defining *whatever* requirements might be imposed by state law in order to vote, no matter how trivial, as being material in determining whether such individual is qualified under State law to vote in such election." *LUPE*, 705 F. Supp. 3d at 751 (quotation marks omitted). In other words, states may not "circumvent the Materiality Provision by defining all manner of requirements, no matter how trivial, as being a qualification to vote and therefore 'material.'" *Callanen*, 89 F.4th at 487.

C. SBEC's counterarguments on the materiality of a wet signature are forfeited, legally irrelevant, and wrong.

Instead of grappling with the text of the materiality provision, the record evidence, or the district court's findings, SBEC asserts four inapposite arguments in a last-ditch attempt to establish materiality. These arguments fail at every turn.

1. For the first time in this litigation, SBEC asserts that a handwritten signature "helps ensure that the applicant is a real, living person." Br.27. Appellants have "forfeited this argument," however, "because they did not raise it in the district court." *Schnuck Mkts., Inc. v. First Data Merch. Servs. Corp.*, 852 F.3d 732, 737 (8th Cir. 2017). Regardless, "it would fail even if it had been preserved." *Id.* Appellants seem to suggest that the wet signature rule is necessary to ensure that clerks do not erroneously accept fraudulent voter registration applications from fictitious persons. But the record is devoid of evidence or explanation showing how a *wet* signature—relative to a digital one—aids election officials in determining whether an applicant is "real," particularly since paper applications can be delivered

by mail or by a third-party. This lack of evidence is unsurprising—SBEC never identified this argument as a rationale for the wet signature rule during either its emergency or permanent rulemaking. It was simply invented for this appeal.

Record evidence also undercuts this belated justification. Testimony below established that digital and wet signatures are often indistinguishable to county election officials, who have no training or expertise differentiating such signatures. *See* S.App.43; R.Doc.46-6 ¶19 ("when looking at a PDF scan on a computer, it would be very difficult to tell the difference between a signature made by a pen and a signature made by a stylus"); *see also* App.39; R.Doc.46-2 ¶14 (explaining that GLA's tool requires applicants to "use their finger, stylus, or mouse to sign their name," in the same way one would use a pen to sign their name). Simply put, officials across Arkansas's seventy-five counties "are not signature analysts," S.App.43; R.Doc.46-6 ¶19, as SBEC's argument simply assumes.

2. SBEC next argues that Arkansas has a "compelling interest" in "election integrity" and "preventing fraud and corruption during voter registration." Br.22. But the agency has not presented a scrap of evidence as to how the wet signature furthers that goal. As the district court pointed out, the Arkansas Constitution permits a person to execute their application with a "mark." Ark. Const. amend. 51, §6(a)(3)(F), and it is nearly impossible to "understand … how a

handwritten 'x' (i.e., a mark) would better protect against fraud than a signature made with a stylus on a tablet." App.165; R.Doc.72 at 46.

In any event, under the Civil Rights Act, it is not enough for a requirement to be "helpful" in some abstract sense; it must be "material *in determining whether [an] individual is qualified under [Arkansas] law to vote*." 52 U.S.C. §10101(a)(2)(B) (emphasis added); *see also Schwier v. Cox*, 412 F. Supp. 2d 1266, 1276 (N.D. Ga. 2005) (holding preventing "fraud" did not render mandatory disclosure of social security number "material"), *aff'd*, 439 F.3d 1285 (11th Cir. 2006); *LUPE*, 705 F. Supp. 3d at 743-46 (holding fraud prevention did not render identification number requirement material). SBEC's attempt to invoke "state interests" erroneously conflates the materiality provision with a separate body of case law for voting challenges under the First and Fourteenth Amendments. *See Anderson v. Celebrezze*, 460 U.S. 780, 789 (1983) (requiring courts to weigh the burdens of election rules with competing state interests); *Burdick v. Takushi*, 504 U.S. 428, 434 (1992) (similar). But Plaintiffs did not bring a constitutional challenge. And as the district court correctly held, the "state['s] interests are not a relevant consideration in analyzing a violation under the materiality provision." App.158-164; R.Doc.72 at 39-45. Indeed, federal courts across the country have likewise found that "the Materiality Provision simply does not care whether a rule furthers important state interests." *Pa. NAACP*, 97 F.4th at 137; *LUPE*, 705 F. Supp. 3d at 743-44 (similar).

SBEC's reliance on *Miller v. Thurston*, 967 F.3d 727 (8th Cir. 2020), is therefore misplaced. In *Miller*, the plaintiffs alleged that Arkansas's initiative petition rules requiring in-person contact between petition circulators, signatories, and notaries during COVID-19 violated the First Amendment. *Id.* at 732. Because those plaintiffs brought a constitutional claim, this Court applied the *Anderson-Burdick* "sliding standard of review," by "weigh[ing] the character and magnitude of the burden the State's rule impose[d] on First Amendment rights against the interests the State contend[ed] justif[ed] that burden." *Id.* at 739 (cleaned up). Unlike a constitutional challenge, a materiality provision claim does not require—or allow—the Court to weigh the state's interests in enforcing the challenged rule; the only question here is whether a *wet* signature is "material in determining whether [an] individual is qualified" to vote in Arkansas. *See* 52 U.S.C. §10101(a)(2)(B). Far from being "fatal" to Plaintiffs' materiality provision claim, the analysis of state interests in *Miller* is irrelevant. *See Pa. NAACP*, 97 F.4th at 137.

3. Appellants also heavily rely on two non-binding, out-of-circuit cases to support their argument that the instrument used to sign a voter registration application is material. *See Callanen*, 89 F.4th at 468; *Vote.org v. Byrd*, 700 F. Supp. 3d 1047, 1055-56 (N.D. Fla. 2023). But those cases—both of which concerned *legislatively-enacted* wet signature requirements—are distinguishable and flawed in their analysis of the materiality provision.

In *Callanen*, the panel majority correctly recognized that the materiality provision "is not a constitutional claim necessitating the application of a balancing test." 89 F.4th at 480-81. But it nonetheless relied on authority concerning *constitutional* voting rights challenges, as well as the Voting Rights Act, to uphold Texas's wet signature law based on policy arguments that have no bearing under the materiality provision. *Id.* at 481-83.

The dissenting judge in *Callanen* ably summarized these analytic lapses, explaining the majority "invoke[d] a line of constitutional vote-denial cases … for the proposition that states have considerable discretion in establishing rules for their own elections," but ignored that the plain text of the materiality provision "expressly limits states' purported 'considerable discretion.'" *Id*. at 491-92 (Higginson, J., dissenting) (cleaned up). "The considerable deference to be given to state election procedures thus has no place in a materiality analysis." *Id.* at 492 (cleaned up). The dissent further noted that the majority erroneously injected "the multifactorial test in *Thornburg v. Gingles*—which applies to section 2 claims under the Voting Rights Act—in its materiality analysis." *Id.* (citing 478 U.S. 30 (1986)). But "reliance on the *Gingles* factors is inapposite in the materiality context" because plaintiffs bringing a claim under the materiality provision "need only demonstrate that the state's procedural requirement 'is not material in determining whether' they are 'qualified' to vote." *Id.* (quoting 52 U.S.C. §10101(a)(2)(B)). The divided panel's

majority constructed this strained reading of "materiality" from whole cloth. And most importantly, the *Callanen* majority disregarded the undisputed fact that election officials did not use the wet signature in any capacity to determine a voter's qualifications, which should have "slam[med] the door shut on any argument that [a wet signature] is material." *Id.* at 493 (quoting *Migliori*, 36 F.4th at 164).

The district court here recognized these shortcomings as well, emphasizing the need for fidelity to the plain text of the materiality provision as drafted by Congress. *See* App.159-160; R.Doc.72 at 40-41. As it noted, the "strained discussion" in *Callanen* of irrelevant bodies of constitutional and VRA caselaw resulted in "a rather strained test." App.159; R.Doc.72 at 40. But "[i]t is unclear why the creation of such a test was necessary or appropriate where the statutory text of the Materiality Provision itself makes quite clear the relevant question: Is the error or omission material in determining whether an applicant is qualified to vote under state law?" App.160; R.Doc.72 at 41. The district court was exactly right in emphasizing that the "relevant question" here is the one posted by the plain text of the Civil Rights Act—not extraneous bodies of law.

As it further noted, three members of the Supreme Court have cast serious doubt on the Fifth Circuit's ultimate conclusion that the method of signature is material in determining voter qualifications. *See Ritter v. Migliori*, 142 S. Ct. 1824 (2022) (Alito, J., dissenting from denial of application for stay) (explaining that

whether a voter "typed his or her name instead of signing it" would "not be 'material in determining whether such individual is qualified under State law to vote in such election.'"); *see also* App.162-163; R.Doc.72 at 43-44. In sum, this Court should not adopt *Callanen*'s "strained test"—it need only "apply the [materiality provision] according to its terms." *Carcieri v. Salazar*, 555 U.S. 379, 387 (2009).

The district court's analysis in *Byrd* contains similar errors. The court there erred by shifting the analysis away from whether the form of a signature is material in determining a voter's qualifications to whether "a copied, faxed, or otherwise non-original signature is equal in stature to an original, wet signature." 700 F. Supp. 3d at 1055. But the materiality provision does not include a safe harbor for non-material requirements that have some purported justification, such as "stature": It prohibits denial of the right to vote based on any error or omission unless the error or omission materially bears on the voter's qualifications. *See* 52 U.S.C. §10101(a)(2)(B).

Finally, unlike the wet signature rule invented by SBEC, the laws in *Callanen* and *Byrd* were enacted by the legislatures of those states—a "legislative judgment" the majority in *Callanen* found determinative. *Callanen*, 89 F.4th at 468, 478-79; *see also Byrd*, 700 F. Supp. 3d at 1050. Arkansas's wet signature rule is unsupported by any similar legislative judgment; it was adopted by unelected agency officials, not the Legislature. And as the Arkansas Attorney General has confirmed, the Arkansas Constitution in fact *permits* digital signatures or marks—the exact opposite

scenario as in *Callanen* and *Byrd*. To the extent any "legislative judgment" exists here, it is that "an electronic signature satisfies Amendment 51's 'signature or mark' requirement." S.App.67; R.Doc.46-7 at 23.[11] The reasoning in *Callanen* and *Byrd* is flawed and inapposite; this Court should not follow it.

4. Appellants' final gambit is to argue that the materiality provision does not apply because Plaintiffs challenged the *type* of signature required under the wet signature rule and not the signature requirement itself. Br.23. But that confused argument finds no support in the text of the Civil Rights Act. What matters for purposes of the materiality provision is whether an Arkansas voter would have their statutory right to vote denied due to an "error or omission" on their "registration" form. 52 U.S.C. §10101(a)(2)(B). SBEC does not dispute that, under the wet signature rule, Arkansas election officials must reject registration forms if the signature was not entered with pen and ink—even where a digital signature made under penalty of perjury is provided. Yet nowhere does SBEC coherently explain

[11] SBEC passingly notes, Br.9, that the permanent rule was ultimately approved by the Arkansas Legislative Council, an "ad interim committee of the General Assembly." Ark. Code §10-3-301(a). But SBEC does not contend that the assent of a legislative subcommittee constitutes the formal "legislative judgment" that persuaded the majority in *Callanen*—nor could it. In Arkansas, as in most states, laws must pass out of both houses of the legislature and be signed by the Governor to have such weight. *See* Ark. Const. art. 5, §22; *id.* art. 6, §15; *cf. INS v. Chadha*, 462 U.S. 919, 959 (1983) (a single chamber may not exercise legislative authority without complying with constitutional lawmaking requirements).

how this omission is material to the "process" of "determining whether an individual is qualified to vote." *Pa. NAACP*, 97 F.4th at 131.[12] The record uniformly confirms that it is not. *Supra* Argument §II.B.

SBEC's argument also runs headlong into the purpose of the materiality provision. Under its reasoning, a state could require an applicant to provide her age—which is indisputably material to qualification to vote—in days or months, rather than years. Under SBEC's logic, such a requirement would be immune from challenge because it concerns only the "nature" of the age requirement, rather than the age requirement itself. Br.24. But that is dead wrong. Congress passed the materiality provision *specifically* to bar "tactics [such] as disqualifying an applicant who failed to list the exact number of months and days in his age," notwithstanding that age itself is material to voting. *Condon v. Reno*, 913 F. Supp. 946, 950 (D.S.C. 1995). Congress enacted the provision to preempt arbitrary registration rules that simply "increase the number of errors or omissions on the application forms, thus providing an excuse to disqualify potential voters." *Schwier*, 340 F.3d at 1294.

[12] Appellants cite *Pennsylvania NAACP* for their assertion that Plaintiffs' challenge is "beyond the statutory language of the Materiality Provision." Br.24. But it is not clear why they believe that case helps them. That decision confirmed that, at a minimum, the materiality provision reaches errors or omissions on paperwork "relate[d] to ascertaining a person's qualification to vote (*like paperwork submitted during voter registration*)." *Pa NAACP*, 97 F.4th at 131 (emphasis added). That is precisely the issue here.

SBEC's wet signature rule is just that—a pointless requirement that serves no useful role in determining whether an applicant is qualified to vote.

III. Plaintiffs may enforce the rights granted by the materiality provision.

With little to say about how the wet signature rule is material in determining voter qualifications, SBEC instead disputes whether Plaintiffs can enforce the protections of the Civil Rights Act. *See* SBEC Br. §I.B. But federal courts have overwhelmingly held that private parties may enforce the rights granted by the materiality provision through 42 U.S.C. §1983. *See, e.g.*, *Callanen*, 89 F.4th at 473-78; *Migliori*, 36 F.4th at 158-62; *Schwier*, 340 F.3d at 1294-97; *Mi Familia Vota*, 719 F. Supp. 3d at 988-92; *Davis v. Commonwealth Election Comm'n*, No. 1-14-CV-00002, 2014 WL 2111065, at *9-10 (D. N. Mar. I. May 20, 2014), *aff'd*, 844 F.3d 1087 (9th Cir. 2016). Indeed, another court in the district below reached the same conclusion just a few years ago. *See League of Women Voters of Ark. v. Thurston*, No. 5:20-CV-05174, 2021 WL 5312640, at *4 (W.D. Ark. Nov. 15, 2021) ("A private right of action exists to enforce the materiality provision[.]"). The district court properly joined this chorus of authority—which SBEC fails to acknowledge—and correctly applied Supreme Court precedent for determining when a statute may be enforced through §1983.

1. Under the Supreme Court's *Gonzaga* test, a federal statute is privately enforceable under §1983 "where the provision in question is phrased in terms of the

persons benefited and contains rights-creating, individual-centric language with an unmistakable focus on the benefited class." *Health & Hosp. Corp. of Marion Cnty. v. Talevski*, 599 U.S. 166, 183 (2023) (cleaned up); *see also Gonzaga Univ.*, 536 U.S. at 283-84. The materiality provision easily satisfies this test. The first section of the statute makes clear that "[a]ll *citizens of the United States* who are otherwise qualified by law to vote … *shall be entitled and allowed to vote at all such elections*." 52 U.S.C. §10101(a)(1) (emphases added). And the materiality provision specifically prohibits any "person acting under color of law [from] … deny[ing] th[at] *right of any individual to vote*" on specific grounds. *Id.* §10101(a)(2)(B) (emphasis added). Based on this clear text, the district court correctly found that "Congress unambiguously intend[ed] to create a right within the Materiality Provision." App.139; R.Doc.72 at 20.

The district court has good company in making this determination: every federal court of appeals that has applied *Gonzaga* to the materiality provision has uniformly reached the same conclusion. *See Schwier*, 340 F.3d at 1296; *Migliori*, 36 F.4th at 159; *Callanen*, 89 F.4th at 474-75. They have explained that "the focus of the [materiality provision's] text is … the protection of each individual's right to vote," *Schwier*, 340 F.3d at 1296, and that it "places all citizens qualified to vote at the center of its import," *Migliori*, 36 F.4th at 159 (cleaned up). And the relevant text is "decidedly more rights-focused than language the Court has held *not* to confer

a private right." *Callanen*, 89 F.4th at 474-75.[13] The district court correctly joined these circuits in holding that the materiality provision "confers rights on a particular class of persons," thus making such a "right … presumptively enforceable by § 1983." *Gonzaga*, 536 U.S. at 274 (citation omitted).[14]

The only appeals court to reach a different conclusion did so before *Gonzaga* was decided. In a single sentence, the Sixth Circuit held in *McKay v. Thompson*, 226 F.3d 752, 756 (6th Cir. 2000), that the materiality provision "is enforceable by the Attorney General, not by private citizens." That sentence encompassed the sum of its analysis—a stark contrast to the extensive treatment the issue has subsequently received from the Third, Fifth, and Eleventh Circuits, in decisions that each post-date *Gonzaga* and two of which expressly reject the Sixth Circuit's holding. *See Callanen*, 89 F.4th at 473-78; *Migliori*, 36 F.4th at 159-62; *Schwier*, 340 F.3d at

[13] Specifically, the materiality provision's "[n]o person … shall" formulation targets "the denial of rights to individuals" and is "clearly analogous to the right-creating language [in Titles VI and IX] cited by the Supreme Court in *Gonzaga*." *Schwier*, 340 F.3d at 1291, 1296.

[14] SBEC argued below that the materiality provision is not privately enforceable because its text "focuses on the local official regulated, rather than individual voters." S.App.151; R.Doc.53 at 14. It has abandoned that argument on appeal, and wisely so. *See Callanen*, 89 F.4th at 473-75 (rejecting this argument); *Migliori*, 36 F.4th at 159 (same); *Schwier*, 340 F.3d at 1296–97 (same). Moreover, the Supreme Court has "never … held" that rights-conferring language must be framed exclusively in terms of the persons benefitted. *Talevski*, 599 U.S. at 185. After all, it "would be strange to hold that a statutory provision fails to secure rights simply because it considers, alongside the rights bearers, the actors that might threaten those rights." *Id*.

1294-97; *see also* App.136; R.Doc.72 at 17-18 (explaining why *McKay* is not persuasive). As the Fifth Circuit noted, *McKay* simply failed to "wrestle[] with the considerations for implying a private right," which is not surprising since "*McKay* predates … the 2002 *Gonzaga* opinion." *Callanen*, 89 F.4th at 478. Indeed, *McKay* is so unpersuasive that SBEC does not even bother to cite it, notwithstanding that it is the only appellate decision to adopt its argument (albeit with little analysis).[15]

SBEC's remaining authority is irrelevant. It notes that this Court has made "clear" that "nothing short of an unambiguously conferred right will support an implied right of action" through §1983. Br.19 (quoting *Osher v. City of St. Louis*, 903 F.3d 698, 702 (8th Cir. 2018)). But, as the district court and many other courts have found, the materiality provision *does* provide such an unambiguous right—the "right of any individual to vote in any election," notwithstanding immaterial errors or omissions. 52 U.S.C. §10101(a)(2)(b). SBEC simply fails to grapple with this clear statutory text.[16]

[15] SBEC passingly cites, Br.21, a subsequent Sixth Circuit decision that dutifully found it could not revisit the question because "[*McKay*] binds this panel." *Ne. Ohio Coal. for the Homeless v. Husted*, 837 F.3d 612, 630 (6th Cir. 2016). But the court acknowledged that "[a]nother circuit later reached the opposite conclusion." *Id.* (citing *Schwier*, 340 F.3d at 1294-96).

[16] Both *Osher* and *Does v. Gillespie*, 867 F.3d 1034, 1041 (8th Cir. 2017) concerned statutes—42 U.S.C. §4622(a) and 42 U.S.C. §1396a(a)(23)(A), respectively—that lack the "explicit rights-creating terms" and "unmistakable focus on the benefited class" that are clearly present in the materiality provision. *Gonzaga*, 536 U.S. at 284 (cleaned up).

Similarly, *Arkansas State Conference NAACP v. Arkansas Board of Apportionment* is not helpful to SBEC because the plaintiffs there declined to even bring a §1983 claim, choosing to proceed on the theory that the Voting Rights Act supplies its own implied cause of action. *See* 86 F.4th 1204, 1208-09 (8th Cir. 2023) (recognizing the question of "*who* can sue under § 2" is the "centerpiece" of the case). This Court *agreed* "that private plaintiffs can bring proceedings to enforce voting guarantees that the Attorney General cannot" with the "most prominent example [being] 42 U.S.C. § 1983." *Id.* at 1212-13 (quoting 52 U.S.C. §10302(a)-(c)). But it denied the plaintiffs' "belated request to add a § 1983 claim to their complaint" and "declin[ed] to say anything further about what would have happened if the advocacy groups had acted sooner." *Id.* at 1217-18. That decision is thus doubly irrelevant here: (1) it did not concern plaintiffs who chose to proceed under §1983, as Plaintiffs do here, *see* App.9, 29; R.Doc.2 at 3, 23; and (2) it concerned the Voting Rights Act—not the Civil Rights Act—and thus does not offer insight into whether the relevant statutory text *here* satisfies *Gonzaga*.

2. Because the text of materiality provision "confers rights on a particular class of persons, the right is presumptively enforceable by § 1983." *Gonzaga*, 536 U.S. at 274 (citation omitted). SBEC can overcome this presumption only "by demonstrating that Congress did not intend" for §1983 enforcement. *Rancho Palos Verdes v. Abrams*, 544 U.S. 113, 120 (2005). But unless a statute "expressly

forbid[s] § 1983's use, … a defendant must show that Congress issued the same command implicitly, by creating a *comprehensive* enforcement scheme that is *incompatible* with individual enforcement under § 1983." *Talevski*, 599 U.S. at 186 (cleaned up) (emphases added). Congress has not "expressly" forbidden enforcement of the materiality provision through §1983, and SBEC does not contend otherwise. *See Migliori*, 36 F.4th at 160 ("The text of § 10101 does not preclude a § 1983 remedy[.]"). Accordingly, it must show "incompatibility between enforcement under § 1983 and the enforcement scheme that Congress has enacted." *Talevski*, 599 U.S. at 187.

SBEC has not met this high bar, as Section 10101 does not "include a comprehensive enforcement scheme that is incompatible with individual enforcement under § 1983." *Migliori*, 36 F.4th at 160. The most SBEC musters is to observe that the Civil Rights Act grants the U.S. Attorney General authority to enforce the provision. *See* 52 U.S.C. §10101(c). But nothing about this grant of authority is *incompatible* with concurrent enforcement by private parties—it does not preclude private enforcement or suggest the Attorney General has exclusive enforcement authority. *See Schwier*, 340 F.3d at 1296 (concluding it was error to find that "enforcement by the Attorney General precluded private enforcement" of materiality provision). The Civil Rights Act also expressly contemplates private enforcement, authorizing suits in federal court "without regard to whether the party

aggrieved shall have exhausted" any remedies provided by law. 52 U.S.C. §10101(d); *see also Schwier*, 340 F.3d at 1296 (explaining this language was intended to "remove roadblocks" for suits by private plaintiffs (cleaned up)). Accordingly, the mere fact that the Attorney General can also sue to enforce the materiality provision fails to carry SBEC's "burden" to show incompatibility. *Talevski*, 599 U.S. at 186 n.13, 189.

The legislative history of the Civil Rights Act further makes clear that Congress *desired* such concurrent enforcement. *Callanen*, 89 F.4th at 475-76 (interpreting "the[] 1957 amendments as augmenting the implied but established private right to sue with an explicit right in the Attorney General"); *Schwier*, 340 F.3d at 1295 (reviewing legislative history and rejecting notion that "granting the Attorney General authority to bring suit … foreclose[d] the continued use of § 1983" by private parties). In fact, "[w]hen Congress added [the] provision for civil enforcement by the Attorney General, it acknowledged that private individuals had enforced the substantive rights in § 10101(a) via § 1983 for nearly a century" and it declined to "make the Attorney General's enforcement mandatory." *Migliori*, 36 F.4th at 162 (relying on legislative history); *Mi Familia Vota*, 719 F. Supp. 3d at 992-93 (similar). Indeed, prior to the grant of enforcement power to the Attorney General, "the first part of what is now Section 10101 was routinely enforced through Section 1983. That means there is a long history of *compatibility* between at least

parts of Section 10101 and Section 1983 that predates the addition of the Attorney General enforcement in 1957." *Callanen*, 89 F.4th at 476 (citing *Schwier*, 340 F.3d at 1295). SBEC has no answer to this longstanding historical practice of concurrent enforcement.

Finally, there is nothing "comprehensive" about enforcement by the Attorney General. *Talevski*, 599 U.S. at 186. The Supreme Court has found "implicit preclusion" in only three cases, each of which "concerned statutes with self-contained enforcement schemes that included statute-specific rights of action." *Id.* at 189 (collecting cases). In each of these cases, permitting §1983 enforcement "would have thwarted" alternative enforcement schemes Congress crafted to channel the claims of private plaintiffs. *Id.* The materiality provision, in contrast, "lacks any specific 'private judicial right of action' or 'private federal administrative remedy' that requires plaintiffs to comply with particular procedures." *Callanen*, 89 F.4th at 476 (quoting *Talevski*, 599 U.S. at 190). Nor does it contain an administrative exhaustion requirement or a more restrictive private remedy. *Migliori*, 36 F.4th at 160, 162; *Mi Familia Vota*, 719 F. Supp. 3d at 993 (similar). In other words, it contains no alternative enforcement scheme that would be "thwarted"

by permitting §1983 claims.[17] "Thus, this exception to using Section 1983 is inapplicable." *Callanen*, 89 F.4th at 476.[18]

IV. The district court correctly concluded that the equitable factors favor a preliminary injunction.

"The district court has considerable discretion in determining whether or not a preliminary injunction should issue, and [this Court's] scope of review is very limited." *Sleep No. Corp.*, 33 F.4th at 1018 (cleaned up). SBEC's arguments on appeal simply rehash those rejected by the district court, without offering any reason to second guess that court's conclusion that these factors weigh heavily in favor of preliminary relief.

A. Absent a preliminary injunction, Plaintiffs will continue to suffer irreparable harm.

The district court correctly concluded that the denials of the right to vote under the materiality provision constitute irreparable harm to "voters in Arkansas—

[17] SBEC cites two Eighth Circuit cases concluding that the ADA and Rehabilitation Act contain enforcement schemes that preclude private rights of action under §1983. *See* Br.20-21 (collecting cases). But the presence of a "comprehensive remedial scheme [in] those Acts" says nothing about whether one exists for the materiality provision. *Vinson v. Thomas*, 288 F.3d 1145, 1156 (9th Cir. 2002). To the contrary, every court to consider the Civil Rights Act's statutory scheme has concluded it *lacks* a similar comprehensive remedial scheme.

[18] Even if enforcement by the Attorney General did constitute a "comprehensive enforcement scheme"—and no precedent suggests this—that alone does not foreclose §1983 enforcement. Absent such a showing of incompatibility, "§ 1983 can play its textually prescribed role as a vehicle for enforcing [statutory] rights, even alongside a detailed enforcement regime that also protects those interests." *Talevski*, 599 U.S. at 188.

including Individual Plaintiffs." App.168; R.Doc.72 at 49 (collecting cases). It further recognized that organizations like GLA and VDO "suffer irreparable harm when a defendant's conduct causes them to lose opportunities to conduct election-related activities, such as voter registration and education." App.168; R.Doc.72 at 49 (quoting *League of Women Voters of Mo. v. Ashcroft*, 336 F. Supp. 3d 998, 1005 (W.D. Mo. 2018)). Moreover, the district court recognized the fundamental principle that each election is unique such that "once the election occurs, there can be no do-over and no redress." *League of Women Voters of N.C. v. North Carolina*, 769 F.3d 224, 247 (4th Cir. 2014). Thus, lost opportunities to register, vote, and organize constitute irreparable harm here. And that harm is ongoing, as GLA and VDO remain barred from using their digital voter registration tools to register new voters for upcoming elections.

SBEC offers no reason to conclude that the district court's finding of irreparable harm was clear error. *See Sleep No. Corp.*, 33 F.4th at 1018. Its lead argument is simply to point back to its earlier standing arguments. Br.28. But, as explained, those arguments are wrong. *Supra* Argument §I.

SBEC next suggests that GLA and VDO could remedy any irreparable harm by simply choosing to comply with the wet signature rule. But "it is no answer to say that [a plaintiff] may avoid [irreparable] harm by complying with an unlawful agency rule." *VanDerStok v. Garland*, 625 F. Supp. 3d 570, 584 (N.D. Tex. 2022).

Moreover, it ignores that GLA's and VDO's ongoing irreparable harm stems *from* their continued compliance with the wet signature rule, which has restricted their voter registration efforts and limited their impact in Arkansas. *Supra* Argument §I.A.

As to VDO specifically, SBEC suggests it has suffered no irreparable harm because it has not yet deployed its e-signature tool in Arkansas. Br.28-29. But that argument is again backwards. The fact that VDO is barred from deploying its e-signature tool in Arkansas—despite being willing and able to do so—illustrates precisely why irreparable harm is present, as VDO continues to lose "mobilization opportunities [that] cannot be remedied." *In re Georgia Senate Bill 202*, No. 1:21-CV-01259-JPB, 2023 WL 5334582, at *11 (N.D. Ga. Aug. 18, 2023) (quoting *Ga. Coal. for People's Agenda, Inc. v. Kemp*, 347 F. Supp. 3d 1251, 1268 (N.D. Ga. 2018)).[19]

Lastly, SBEC accuses Plaintiffs of "delay" in seeking injunctive relief, but that charge misses the mark. Plaintiffs filed suit shortly after SBEC adopted the emergency (temporary) rule and moved for preliminary relief immediately once it became obvious the rule would be made permanent. *Supra* Background §V. Nothing

[19] SBEC errantly claims that VDO has "not yet deployed its web platform in Arkansas." Br.28. That is not true—VDO's website has long offered voter registration to Arkansans and continues to do so. *See Register to Vote*, Vote.org, https://www.vote.org/register-to-vote/arkansas/ (last accessed Jan. 13, 2025); App.57; R.Doc.46-3 ¶¶6-7. VDO has not yet deployed its *e-signature tool* in Arkansas because it cannot do so while the wet signature rule stands.

about this timing reflects unreasonable delay. *Cf. Cath. Benefits Ass'n v. Burrows*, 732 F. Supp. 3d 1014, 1027 (D.N.D. 2024) ("The Court does not find a two-month delay significant."). Second, delay itself is not reason alone to defeat a meritorious request for preliminary relief. Delay precludes such relief only where "the parties cannot be returned to the status quo" or where it undermines a claim of irreparable harm. *Ng v. Bd. of Regents of Univ. of Minn.*, 64 F.4th 992, 998 (8th Cir. 2023) (quoting *McKinney ex rel. NLRB v. S. Bakeries, LLC*, 786 F.3d 1119, 1125 (8th Cir. 2015)). SBEC has not shown either to be the case here, particularly in view of the stark evidence of irreparable harm presented to the district court. *See* App.133-135; R.Doc.72 at 14-16.

B. The balance of equities and public interest both weigh in favor of a preliminary injunction.

SBEC did not present *any* argument to the district court on these factors, so its arguments here are forfeited. *Schnuck Mkts.*, 852 F.3d at 737. In any event, SBEC's opening brief addresses these factors only in passing, once more collapsing them into its flawed standing arguments. Br.28; *supra* Argument §I. It also fleetingly suggests the public interest is served by the wet signature rule because it ensures consistent treatment of voter registration applications. Br.29-30. But SBEC could just as easily ensure uniformity by adhering to the Civil Rights Act—and the Arkansas Attorney General's formal opinion, which confirms that digital signatures are acceptable on mail registration applications *as a matter of law*. *Supra*

Background §III. Doing so would provide the greatest degree of uniformity by ensuring that *all* voter registration applicants in Arkansas can use digital signatures, rather than just those who register at state agencies.

In sum, the public interest and balance of equities overwhelmingly weigh in favor of making it easier for Arkansans to register to vote and permitting groups like GLA and VDO to pursue their valuable civic missions. Indeed, "ensuring qualified voters exercise their right to vote is always in the public interest." *League of Women Voters of Mo.*, 336 F. Supp. 3d at 1006. SBEC identifies no reason to conclude the district court erred in finding that "[t]he balance of equities and public interest here decidedly favor" preliminary injunctive relief. App.169-170; R.Doc.72 at 50-51.

CONCLUSION

The Court should affirm the district court's grant of preliminary injunction.

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Respectfully submitted,

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