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.

COLE JESTER; *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

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

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TABLE OF CONTENTS

Page

TABLE OF CONTENTS ii

TABLE OF AUTHORITIES iii

ARGUMENT 1

I. The "signature or mark" requirement is "material" in determining voter qualifications. 1

II. The "signature or mark" requirement does not deny anyone the right to vote. 9

CONCLUSION 13

CERTIFICATE OF COMPLIANCE WITH RULE 32 14

CERTIFICATE OF SERVICE 15

TABLE OF AUTHORITIES

Cases

Brnovich v. Democratic Nat'l Comm., 594 U.S. 647 (2021) 4, 8, 9, 10

Condon v. Reno, 913 F. Supp. 946 (D.S.C. 1995) 12

Crawford v. Marion Cnty. Election Bd., 553 U.S. 181 (2008) 5

Democratic Nat'l Comm. v. Wis. State Legislature, 141 S. Ct. 28 (2020) 4

Dunn v. Blumstein, 405 U.S. 330, 336 (1972) 7

Ex parte Miller, 49 Ark. 18, 3 S.W. 883 (1887) 8

League of Women Voters of Arkansas v. Thurston, 2023 WL 6446015 (W.D. Ark. Sept. 29, 2023) (unpublished) 9

Libertarian Party of N. Dakota v. Jaeger, 659 F.3d 687 (8th Cir. 2011) 4

Liebert v. Millis, 733 F. Supp. 3d 698 (W.D. Wis. 2024) 6

McDonald v. Bd. of Election Comm'rs of Chicago, 394 U.S. 802 (1969) 9

Miller v. Thurston, 967 F.3d 727 (8th Cir. 2020) 6

Munro v. Socialist Workers Party, 479 U.S. 189 (1986) 7

Org. for Black Struggle v. Ashcroft, 493 F. Supp. 3d 790 (W.D. Mo. 2020) 4

Pa. State Conf. of NAACP Branches v. Sec'y Commonwealth of Pa., 97 F.4th 120 (3d Cir. 2024) 6, 10, 12

Purcell v. Gonzalez, 549 U.S. 1 (2006) 5

Vote.org v. Byrd, 700 F. Supp. 3d 1047 (N.D. Fla. 2023) 3

Vote.org v. Callanen, 89 F.4th 459 (5th Cir. 2023) 3, 5, 11

Statutes

52 U.S.C. § 10101 .....1, 10, 11

Other Authorities

Exec. Order 14024, 86 Fed. Reg. 20249 (April 19, 2021) 3

Ark. Const. art. 3 2

Ark. Const. amend. 51 2

Ark. Code Ann. § 1-1-102 8

Ark. Code Ann. § 1-2-125 7

25 AM. JUR. 2D *Elections* § 178 (2025).....2

Eric S. Lynch, *Trusting the Federalism Process Under Unique Circumstances: United States Election Administration and Cybersecurity*, 60 WM. & MARY L. REV. 1979 (2019).....2

ARGUMENT

This appeal turns on a simple question: is the "signature or mark" requirement for Arkansas voter registration "material" under federal law? In response, Appellees and the amicus curiae rely on dissenting opinions—that is the best support they can muster, as the prevailing authorities hold that the answer to this question is unambiguously yes. Accordingly, this Court should reverse the District Court's drastic imposition of a preliminary injunction and avoid creating a circuit split on this issue.

I. The "signature or mark" requirement is "material" in determining voter qualifications.

The materiality provision provides that a rule is "material" if it is relevant to a state's process "in determining" a voter's qualifications. 52 U.S.C. § 10101(a)(2)(B). Appellees label the "signature or mark" requirement a "pointless" one "that serves no useful role in determining whether an applicant is qualified to vote." Appellees' Br., 40. Similarly, the amicus curiae contends "theoretical fraud-prevention and uniformity rationales cannot render the Wet Signature Rule material where, as here, officials do not use the challenged rule for any fraud-prevention purposes and the rule does not further any uniformity interest." Amicus Curiae Br., 15. But personage is an unquestionable qualification to vote under Arkansas law, and Appellees and the amicus curiae concede throughout their briefs that only a "person" may be qualified to vote in Arkansas elections.

The "signature or mark" requirement is "material in determining," directly and necessarily, that an individual registrant is, in fact, a "person" who may meet the remaining qualifications to vote. *See* Ark. Const. art. 3, § 1(a) ("[A]ny person may vote . . . ."); Ark. Const. amend. 51, § 3 ("No person shall vote or be permitted to vote in any election unless registered in a manner provided for by this amendment."). Verification of personage is the first and most essential step in the voter registration process.

Omitted from the historical analyses presented by Appellees and the amicus curiae is the more recent and widespread disruption of state election processes by online and cyber activities. *See* Eric S. Lynch, *Trusting the Federalism Process Under Unique Circumstances: United States Election Administration and Cybersecurity*, 60 WM. & MARY L. REV. 1979, 1995–99 (2019) (summarizing cybersecurity breaches and disruptions during 2016 elections and commenting "[t]he 2016 election cycle served as a wake-up call to state and local jurisdictions that election cybersecurity desperately needed improvement to secure confidence in election results"); 25 AM. JUR. 2D *Elections* § 178 (2025) (compiling cases and observing "[t]hird-party voter registration has at times become a vehicle for voter fraud and voter registration fraud").

In response, the "signature or mark" requirement was enacted to determine an applicant's personage during the national emergency declared in the aftermath of

recent "efforts to undermine democratic elections and institutions, engage in malicious cyber activities against the United States and its allies, and use transnational corruption to influence foreign governments." *See* Exec. Order 14024, 86 Fed. Reg. 20249, 20249 (April 19, 2021). Specifically, a handwritten signature is material in determining that an applicant is a "person," the first and most fundamental qualification of a lawfully registered voter.

This requirement is material to verification and critical for ensuring election integrity, security, and fraud prevention. It supports Arkansas's compelling interest in constitutional compliance and ensuring only eligible individuals participate in public elections. *See Vote.org v. Callanen*, 89 F.4th 459, 489 (5th Cir. 2023) (finding that a handwritten signature "carries a solemn weight" and helps ensure "that those applying to vote are who they say they are"); *Vote.org v. Byrd*, 700 F. Supp. 3d 1047, 1056 (N.D. Fla. 2023) (holding that handwritten signatures "carry different weight" and that "the acceptance of electronic signatures in certain circumstances does not render the wet signature requirement immaterial in this circumstance"). A signature or mark serves both to determine the initial voter qualification of a "person" and to confirm that a registration application is complete and accurate as to the registrant.[1]

[1] Contrary to Appellees' assertions, Appellants have not "forfeited" this argument, as the concept of "verifying voter identity" was raised in the District Court. (App. 70; R. Doc. 53-1, at 11).

Appellees and the amicus curiae conflate the materiality of the "signature or mark" requirement with the strong state interests it simultaneously advances: registrant and voter identity verification, fraud prevention, and maintaining a consistent voter registration process statewide. Importantly, "a State may take action to prevent election fraud without waiting for it to occur within its own borders." *Brnovich v. Democratic Nat'l Comm.*, 594 U.S. 647, 651 (2021). The District Court and Appellees failed to acknowledge Arkansas's interests, yet both this Court and the Supreme Court consistently recognize that such interests take precedence in election cases. *See id.*; *see also Libertarian Party of N. Dakota v. Jaeger*, 659 F.3d 687, 693 (8th Cir. 2011) ("The states must ensure elections are fair, honest, and orderly, which necessarily requires substantial regulation"). These concerns about election integrity are "weighty reasons that warrant judicial respect." *See Democratic Nat'l Comm. v. Wis. State Legislature*, 141 S. Ct. 28, 34, 208 L. Ed. 2d 247 (2020) (Kavanaugh, J., concurring); *see also Org. for Black Struggle v. Ashcroft*, 493 F. Supp. 3d 790, 803 (W.D. Mo. 2020) (holding that election officials "may reject applications and ballots that do not clearly indicate the required information required by [state law] without offending 52 U.S.C. § 10101(a)(2)(B)").

These reasons are especially "weighty" in the context of verifying that an applicant is a "person" who may qualify to vote in Arkansas elections. Appellants' arguments about the acceptance of electronic signatures at state agencies is

undermined by the concomitant verification that the registrant is a "person" when the applicant appears, in person, at a state agency. By enjoining the "signature or mark" requirement, the District Court erred in concluding the "signature or mark" is immaterial to the determination of the applicant's qualification as a "person," which thwarted the legitimate goals the requirement fulfills.

Further, public confidence is a crucial element of election integrity. *Purcell v. Gonzalez*, 549 U.S. 1, 4 (2006) ("[A] State indisputably has a compelling interest in preserving the integrity of its election process"). While "public confidence" is "closely related to the State's interest in preventing voter fraud," it also holds "independent significance, because it encourages citizen participation in the democratic process." *Crawford v. Marion Cnty. Election Bd.*, 553 U.S. 181, 197 (2008). Safeguards such as the "signature or mark" requirement "exist to deter or detect fraud or to confirm the identity of voters," which in turn "inspire public confidence." *See id.* at 194.

Appellees and the amicus curae have no answer to these authorities and sidestep the Fifth Circuit's recognition of various state interests under the materiality provision. *See Callanen*, 89 F.4th at 482. They instead rely on Judge Higginson's dissent to claim that the method by which an applicant signs her name is not material. Appellees' Br., 36; Amicus Curiae Br., 21–23. But these arguments ignore this Court's prior holding that Arkansas has a "paramount" interest in determining

whether an applicant is qualified to vote. *Miller v. Thurston*, 967 F.3d 727, 740 (8th Cir. 2020).

As is clear from the record, the SBEC adopted the "signature or mark" requirement to secure the compelling interests of uniform and efficient procedures, specifically the verification that an application is submitted by a person that wishes to register to vote. (App. 70; R. Doc. 53-1, at 6). Appellees counter that the "SBEC could just as easily ensure uniformity by permitting digital signatures." Appellees' Br., 51. This contention goes far beyond the language of the Materiality Provision, which "does not say the error [or omission] must be immaterial 'to' whether an individual is qualified to vote. It uses the words 'in determining,' and that choice must mean something." *Pa. State Conf. of NAACP Branches v. Sec'y Commonwealth of Pa.*, 97 F.4th 120, 131 (3d Cir. 2024).

Appellees make no attempt to explain how an unwitnessed, unverified typed signature of unknown provenance permits election officials to determine whether a registrant is a person eligible to vote. To the contrary, the 'signature or mark" requirement "is a type of safeguard for ensuring that the voter is qualified to vote," which is enough to show the "requirement is 'material' to whether the voter is qualified." *Liebert v. Millis*, 733 F. Supp. 3d 698, 718–19 (W.D. Wis. 2024) (holding witness requirement for absentee ballots would not violate Materiality Provision, even if it applied to requirements for absentee ballots).

Appellees also disregard Supreme Court and Arkansas precedent. The right to register to vote in any manner Appellees wish, like the right to vote itself, "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, 92 S. Ct. 995, 1000 (1972) (compiling cases); *cf. Munro v. Socialist Workers Party*, 479 U.S. 189, 193, 107 S. Ct. 533, 536 (1986) (citing *Storer v. Brown*, 415 U.S. 724, 730, 94 S. Ct. 1274, 1279 (1974)) (holding the rights of qualified voters to cast their votes "are not absolute and are necessarily subject to qualification if elections are to be run fairly and effectively").

Similarly, Appellees' notion of universal, unverified digital signatures for voter registration applications is incompatible with the public policy of Arkansas memorialized in its statutory law. From August 1, 2017, to August 1, 2021, Act 960 of 2017, which was codified as Ark. Code Ann. § 1-2-125, authorized, but did not require, Arkansas state agencies to accept any "information, record, report, application, or other required material in an electronic form" that the agency was "required by law to accept." Ark. Code Ann. § 1-2-125(a)(1). However, Act 960 of 2017, by its own language, expired on August 1, 2021. Ark. Code Ann. § 1-2-125(c) ("This section expires four (4) years after August 1, 2017."). The current lack of any statutory authorization for the blanket acceptance of digital or electronic signatures on voter registration applications, for which Appellees press, further

bolsters the materiality of the "signature of mark" requirement and its intended purpose of ensuring uniformity in the election process, beginning with verification that only persons submit voter registration applications.

Appellees' argument also ignores the historical context of handwritten signatures in Arkansas, as well as the lack of verification of personage in connection with remotely prepared applications, which is another equally compelling reason for implementing the "signature or mark" requirement. The law in Arkansas, historically and currently, requires verification by a witness of a person's signature by mark. *See Ex parte Miller*, 49 Ark. 18, 3 S.W. 883, 884 (1887) ("[T]he mark of one who cannot write is not to be considered a signature or subscription unless the person writing his name writes his own name as a witness."); *see also* Ark. Code Ann. § 1-1-102(2) ("[A] signature by mark on a document is legal for the purposes of executing the document if the signature is . . . [w]itnessed by at least one (1) disinterested person.").

In sharp contrast, remotely completed registration applications with digital signatures simply do not offer the same level of verification—or any verification at all—that an in-person signature witnessed by an authorized agent from a Registration Agency or a county clerk provides. "[T]he degree to which a challenged rule has a long pedigree or is in widespread use in the United States is a circumstance that must be taken into account." *Brnovich*, 594 U.S. at 671, 141 S. Ct. at 2339. For more than 100 years, handwritten signatures and witnessed marks have been in widespread use

in Arkansas elections, daily practice, and jurisprudence. Unwitnessed, unverified digital signatures have not. Accordingly, the "signature or mark" requirement is "material in determining" whether an applicant is a person qualified to vote.

II. The "signature or mark" requirement does not deny anyone the right to vote.

As to the alleged denial of the right to vote, Appellees and the amicus curae present a flawed interpretation of the Materiality Provision. There is nothing to indicate any intent for the Materiality Provision to deny or restrict a state's registration requirement for persons to sign their registration applications. Denying a particular *method* of voter registration does not deny an applicant's right to vote when other, well-established methods for registration are readily available, particularly the customary method that long predated the enactment of the Materiality Provision. *See McDonald v. Bd. of Election Comm'rs of Chicago*, 394 U.S. 802, 807 (1969) (holding that denying method of voting by absentee ballot did not deny the right to vote); *Brnovich*, 594 U.S. at 682 (finding that denying method of voting out-of-precinct did not deny the right to vote).

Arkansas law permits applicants to cure defects in their voter registration. The Materiality Provision provides only an as-applied challenge on behalf of a voter who is unable to cure a signature deficiency. In doing so, 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 *Browning*, 522 F.3d at 1175) (unpublished). Instead, it applies only to rules that "deny" the right of an "individual" to vote. 52 U.S.C. §10101(a)(2)(B).

Appellees do not allege any individual has been denied the right to vote. Importantly, Appellee Loper corrected the signature deficiency in her registration application. (App. 62; R. Doc. 46-5, at 2). In other words, there is no loss of the right to vote where registrants can simply register to vote through the means available to all Arkansas citizens.

Voter registration, like voting itself, "requires compliance with certain rules." *Brnovich*, 594 U.S. at 669. An applicant who fails to timely register, to follow the registration rules, or to timely cure has not been denied the right to vote—she has simply failed in "following the directions" for registration. *Id.*; *Pa. State Conf. of NAACP Branches*, 97 F.4th at 133 ("a voter who fails to abide by state rules prescribing how to make a vote effective is not denied the right to vote when his ballot is not counted") (cleaned up). And the downstream financial or mission-related harms to the organizational Appellees are even farther removed from those "usual burdens of voting." *Brnovich*, 594 U.S. at 678.

The "signature or mark" requirement does not deny anyone the right to vote. Appellees' and the District Court's reading of the Materiality Provision to preclude this perceived "burden" is untenable. It would mean that, any time a citizen's voter

registration application is rejected because she failed to follow the rules, she is "den[ied] the right . . . to vote." 52 U.S.C. §10101(a)(2)(B).

But "[i]t cannot be that any requirement that may prohibit an individual from voting if the individual fails to comply denies the right of that individual to vote." *Callanen*, 39 F.4th at 306 n.6. "Otherwise, virtually every rule governing how citizens vote would [be] suspect." *Id.* Failure to comply with the "signature or mark" requirement "constitutes the forfeiture of the right to vote [and to register], not the denial of that right." *Ritter v. Migliori*, 142 S. Ct. 1824, 1825 (2022) (Alito, J., dissenting from denial of stay). Indeed, the "signature or mark" requirement gives effect to the Materiality Provision's directive to look to qualifications under state law. *See id.* at 1826 ("[The Materiality Provision] leaves it to the States to decide which voting rules should be mandatory.").

At bottom, the Materiality Provision prohibits enforcing arbitrary requirements that "deny the right" to vote, *see* 52 U.S.C. §10101(a)(2)(B), not those that merely impose a burden. The "signature or mark" requirement simply imposes a requirement to determine whether a person may register to vote. There is nothing in the record to show irreparable harm caused by this requirement or why the individual Appellees were unable to comply.

Instead, Appellees contend that "under [this] reasoning, a state could require" discriminatory enforcement practices that Congress intended to eliminate under the

Materiality Provision, such as "require[ing] an applicant to provide her age . . . in days or months, rather than in years." Appellees' Br., 39. This argument fails, as the age requirement is distinct from the "signature or mark" requirement to determine personage. Failing to list an applicant's age in the exact number of months and days serves no material role in determining whether she is of qualifying age to vote under state law.

Conversely, a handwritten signature is material in determining an applicant is a person, an incontrovertible requirement for Arkansas voter registration. *See supra*, § I. The Materiality Provision was intended to dispose of requirements that unjustly denied ballot access to eligible voters, such as a requirement to calculate the number of days and months in a voter's age, *Condon v. Reno*, 913 F. Supp. 946, 950 (D.S.C. 1995), or to spell "Louisiana." *Pa. State Conf. of NAACP Branches*, 97 F.4th at 126. Contrary to Appellees' assertion, Congress did *not* intend for the Materiality Provision to deny states the ability to require persons to sign their registration applications—even by hand. Appellees have provided no evidence to the contrary.

Application of a least-restrictive alternative test could have been proper, had Appellees, for instance, alleged an undue burden on the right to vote based on a state restriction. But they did not. The District Court thus erred as a matter of law in its application of such a test and in granting injunctive relief.

CONCLUSION

For the foregoing reasons, the Court should vacate the preliminary injunction.

Respectfully submitted,

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I certify that this brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B)(ii) because it contains 2,906 words, less than half of the type volume specified in Rule 32(a)(7)(B)(i) for a principal brief.

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I hereby certify that on February 18, 2025, 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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