No. 24-2810

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

Get Loud Arkansas, et al.,

Plaintiffs-Appellees,

v.

Cole Jester, 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)

PLAINTIFFS-APPELLEES' RESPONSE IN OPPOSITION TO PETITION FOR REHEARING EN BANC

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

CASES

CONSTITUTIONAL PROVISIONS

STATUTES

RULES

OTHER AUTHORITIES

INTRODUCTION

Get Loud Arkansas ("GLA") created an online tool that allows Arkansans to sign voter registration applications digitally. Arkansas's Secretary of State confirmed the tool was lawful on *three* separate occasions, and the Attorney General agreed. But after GLA received acclaim for its success registering new voters—particularly younger, racially diverse 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 "wet-signature rule"). SBEC's rulemaking process never offered more than pretextual rationales for a rule plainly designed to undermine GLA's voter registration campaign.

The panel properly affirmed the district court's injunction of that rule because it violates the Civil Rights Act of 1964 ("CRA"), which prohibits denying the right to vote based on "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) (the "materiality provision"). That conclusion correctly applied the law to the stark record in this case. Whereas GLA "presented substantial evidence that the wet signature requirement is immaterial," Op.11, SBEC failed to "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, Op.9. And

SBEC's primary *post hoc* rationale—that a wet ink signature confirms an applicant's identity—was "both forfeited and without merit." *Id.*

The Court should deny SBEC's request for a do-over. To start, there is no circuit split on the meaning of "material" within the CRA. *Contra* Pet.ii. The other two circuits to reach this question have adopted substantially the same definition as the panel. *Compare* Op.8 (defining "material" as "important" or having "influence or effect" over a decision), *with Mi Familia Vota v. Fontes*, 129 F.4th 691, 720 (9th Cir. 2025) ("*MFV*") (defining it as having a "probable impact" on a decision), *and Vote.org v. Callanen*, 89 F.4th 459, 478 (5th Cir. 2023) (defining it as "[o]f serious or substantial import," "significant," "important," and "of consequence" (quotation omitted)). Ignoring *MFV*, SBEC points to two decisions from the Third and Eleventh Circuit, but neither construed the term "material." The result in *Callanen*, moreover, was driven by case-specific factors absent here and ignored by SBEC. Ironically, it is SBEC's proposed definition of "material"—reducing the term to mere hypothetical "relevance"—that would make this circuit an outlier and rewrite the materiality provision in the process.

SBEC's claim that concerns about "election integrity" justify rehearing are not well-founded, either. Record evidence showed that election officials "do not employ a wet signature requirement as a means to detect fraud," Op.10, and SBEC "cite[d] no evidence" to claim otherwise, *id*. Indeed, SBEC could not cogently

explain *how* a wet signature could help officials identify fraud in ways a digital signature could not—even hypothetically. Nor does the panel's holding restrict states from ensuring election integrity. The materiality provision's reach is limited; Congress carefully calibrated the provision to govern a targeted class of immaterial "error[s] or omission[s]" that appear on the face of a "record or paper." 52 U.S.C. § 10101(a)(2)(B).

Further considerations weigh against rehearing. As both the panel majority and district court repeatedly observed, this case—in its current preliminary injunction posture—presents a remarkably lopsided record that affords no basis, under *any* conception of "material," for upholding SBEC's rule. The panel's decision applied straightforward statutory text to the district court's factual findings, and no intra- or inter-circuit split exists. The petition should be denied.

BACKGROUND

I. GLA develops an innovative tool to improve Arkansas's abysmal voter registration rates.

GLA was founded in 2021 to address Arkansas's lowest-in-the-nation voter registration rates, particularly among minority and younger voters. App.36-37; R.Doc.46-2 ¶3. GLA initially pursued its voter registration goals by distributing paper applications to new voters, but it quickly realized the practical limitations of that approach, which restricted the number of voters GLA could register at public events and created time-consuming logistical work for the resource-constrained

organization. App.38; R.Doc.46-2 ¶9. GLA therefore developed an online tool that allows Arkansans to complete and sign a mail voter registration application on their phone, tablet, or computer. 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 of State and then uses their finger, stylus, or mouse to sign their name. App.39; R.Doc.46-2 ¶14. 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 then populates the Secretary's form with the applicant's information, allows the voter to review the completed form, and asks voters to authorize GLA to print and submit the form to the voter's county clerk. *Id.*

II. The Secretary of State confirms that GLA's digital voter registration tool complies with Arkansas law.

After developing its tool, GLA went to great lengths to ensure its compliance with Arkansas law, which requires only that applicants provide a "signature or mark made under penalty of perjury that the applicant meets each requirement for voter registration." Ark. Const. amend. 51, § 6(a)(3)(F). Under the Constitution's plain terms, a simple "mark" suffices. *See id.* § 6(b)(1)(G). It does not mandate any specific method or instrument for entering that signature, *id.*, and it facilitates the use of electronic signatures for registering to vote at state agencies, *id.* § 5(b)(1)-(4); S.App.42-43; R.Doc.46-6 ¶18. Moreover, county clerks must "register qualified

applicants" if the application is "legible and complete." Ark. Const. amend. 51, § 9(c)(1).

Although there was no reason to doubt that their registration tool complied with Arkansas law, GLA repeatedly sought—and obtained—confirmation of that fact from the Secretary of State. App.41; R.Doc.46-2 ¶21. The Secretary's Office told GLA *on at least three occasions* that its tool complies with Arkansas law. App.41-42; R.Doc.46-2 ¶22; App.48-50; R.Doc.46-2 at 13-15. It advised that the Secretary's "attorneys looked into this . . . and came to the same conclusion" as GLA—that the tool was compliant. 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.

III. The Secretary and SBEC reverse course to impose the wet-signature rule to curb GLA's voter registration activities.

After launching the tool in January 2024, GLA instantly increased 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 at events in high schools across Arkansas, rising from 5-10 students using paper applications to 40-60 students per visit using the online tool. App.40; R.Doc.46-2 ¶17. Moreover, the tool dramatically expanded GLA's geographic reach, allowing it to offer voter registration opportunities in each of Arkansas's 75 counties. App.40; R.Doc.46-2 ¶18. By February 2024, just a month after launching the tool, GLA had already

registered nearly 358 new voters, 78 percent of whom were under 20 years old. App.39; R.Doc.46-2 ¶15.

Despite 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—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 sudden 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.

To justify this reversal, the Secretary asked 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 Arkansas law. S.App.65-68; R.Doc.46-7 at 21-24. He explained, "an electronic signature or mark is generally valid under Arkansas law," and that because Amendment 51 of the Arkansas constitution, which covers voter registration, "does not contain any restrictions on how a 'signature or mark' may be made, . . . an electronic signature satisfies Amendment 51[.]" S.App.65,67; R.Doc.46-7 at 21, 23.

Undaunted, SBEC—which is 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. 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. It further identified GLA as an organization likely to be impacted by the emergency rule, all but admitting that the rushed proceedings targeted GLA's voter registration tool. S.App.75-76; R.Doc.46-7 at 31-32; *see also* App.148; R.Doc.72 at 29&n.10 (finding "SBEC was specifically targeting" GLA).

The emergency rule took effect on May 4, 2024, and quickly achieved its intended effect. S.App.73,105; R.Doc.46-7 at 29,61. GLA's rate of registering new voters plummeted and forced the organization to significantly scale back its voter registration targets. App.41, 43-44; R.Doc.46-2 ¶¶20, 29-31.

IV. GLA obtains a preliminary injunction, which the panel affirms.

GLA promptly challenged the wet-signature rule by suing SBEC and the county clerks of Arkansas's three largest counties under the materiality provision of the Civil Rights Act of 1964. *See* App.7-31; R.Doc.2. The materiality provision prohibits denying the right to vote, as defined by statute, "because of an error or omission on any record or paper . . . if such error or omission is not material in determining whether such individual is qualified under State law to vote[.]" 52 U.S.C. § 10101(a)(2)(B).

GLA moved for a preliminary injunction after SBEC initiated the process to make the emergency rule permanent. App.32-34; R.Doc.46; S.App.122; R.Doc.46-

7 at 78. At the preliminary injunction hearing, no Defendant explained how a wet signature is used, or could be used, by clerks to determine whether an applicant is qualified to vote in Arkansas. S.App.161-268; R.Doc.64 ("Tr."). One clerk candidly 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.86:15-22. This confirmed GLA's uncontested evidence that election officials do not consider the type of instrument used in signing or marking a voter registration application as a factor in determining whether the applicant is qualified to vote. S.App.40-44; R.Doc.46-6. The district court granted preliminary injunctive relief, finding 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.

SBEC appealed, and a panel of this Court upheld the district court's injunction. On the merits, the panel majority affirmed the district court's finding that the record evidence showed Arkansas election officials do not use signature type to evaluate voter qualifications: county clerks are not trained as handwriting analysts, are instructed to accept applications bearing "any type of signature or mark," and are "taught to err on the side of the voter." Op.8-9. The majority emphasized that Defendants failed to present *any* evidence or argument as to the relationship between a wet signature and determining voter qualifications under Arkansas law. Op.9.

The majority also rejected arguments that the wet-signature requirement was material because a handwritten signature confirms an applicant's existence and identity and carries a fraud-deterring "solemn weight" that digital signatures lack. Op.9-10. The identity-and-existence argument was both forfeited and unsupported. Officials do not use signature type to confirm identity, and a paper form marked with an "X"—entirely permissible under Arkansas law—provides no more guarantee that the applicant exists than does a digital signature. Op.9. The solemn-weight argument likewise lacked evidentiary support, given that the perjury attestation on GLA's digital tool was identical to the one on the State's paper form, and "the solemn consequences of submitting a fraudulent registration form" were equally "evident" regardless of signature type. Op.10-11. Judge Stras dissented.

ARGUMENT

I. The Petition does not identify any circuit split.

The panel majority applied a plain-text, commonsense definition for "material," explaining that, for a registration requirement to be "material," it must be "important" to, or have "influence or effect" over, election officials' determination of a voter's eligibility. Op.8 (quoting Material, *Black's Law Dictionary* 1128 (4th ed. 1951)); *see also* Material, *Webster's Third New International Dictionary* 1392 (1966) ("being of real importance or great consequence," "having a certain or probable bearing on the proper determination").

Every federal circuit court to address the meaning of "material" in the materiality provision has adopted a substantially identical definition.

A. The panel's interpretation of "material" does not create a circuit split, but Petitioners' definition would.

Petitioners' attempt to gin up a circuit split ignores the most recent appellate decision on this question. In *MFV*, the Ninth Circuit held that the "ordinary, contemporary, common meaning" of "material" in the CRA means something that "has a probability of affecting an election official's eligibility determination." 129 F.4th at 720 (citation omitted). In other words, the "erroneous or omitted information need not be absolutely essential to determine if a person is eligible to vote, but it must have probable impact on eligibility to vote." *Id.* The Fifth Circuit adopted a similar definition in *Callanen*. Drawing on similar dictionary definitions, the court "reject[ed]" 'essential' as a reasonable meaning," but decided that related definitions—including "[o]f serious or substantial import," "significant," "important," and "of consequence"—"seem about right." 89 F.4th at 478. The Ninth and Fifth Circuits' definitions are harmonious with the panel's definition, and no other circuit has yet reached the issue.

Petitioners wrongly suggest that the Third and Eleventh Circuits have held differently; in fact, those Circuits have not addressed the definition of "material" in § 10101(a)(2)(B) at all. In one case, the Third Circuit held that the materiality provision did not apply to the "record or paper" at issue—an absentee ballot return

envelope—because it understood the materiality provision to "govern[] voter qualification determinations" but not ballot-casting materials. *Pa. NAACP v. Schmidt*, 97 F.4th 120, 131 (3d Cir. 2024). Right or wrong, that decision had no occasion to discern the meaning of "material"—it rejected the plaintiffs' claim on other grounds. *Contra* Pet.1. And, in *Florida State Conference of NAACP v. Browning*, 522 F.3d 1153, 1174 (11th Cir. 2008), the Eleventh Circuit expressly *declined* to decide whether "material" in the CRA is "closer" to "minimal relevance" or "outcome-determinative." The court's statement that the materiality provision "does not establish a least-restrictive-alternative test for voter registration applications" had nothing to do with the meaning of "material," but rather whether the CRA requires weighing the burdens a requirement imposes on the right to vote. *See id.* at 1175. Nothing in the panel decision is inconsistent with that unremarkable observation. And, notably, the Eleventh Circuit recently embraced a definition of materiality nearly identical to the panel's here. *See Creative Choice Homes XXX, LLC v. Amtax Holdings 690, LLC*, 162 F.4th 1083, 1097 (11th Cir. 2025) ("[T]aken together, 'material' means having real importance or being significant.").

Ironically, it is *Petitioners* who would have this Court break with its peers by construing "material" to simply mean "*relevant* to an individual's qualifications to vote." Pet.1 (emphasis added). But Petitioners do not cite any federal decision, appellate or otherwise, adopting that definition. For good reason. Petitioners'

reading abandons the plain text of the materiality provision and cannot be squared with its purpose. The paradigmatic violation of the materiality provision is the Jim Crow-era requirement that voters state their age in days or months, rather than years. *See Condon v. Reno*, 913 F.Supp. 946, 950 (D.S.C. 1995). That requirement is plainly "relevant" to voter qualification—and would satisfy Petitioners' watered-down definition—but is not "material" because that level of precision is not significant to a person's age. Congress crafted the materiality provision to thwart such ploys, which serve no practical purpose but tend to "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). SBEC's wet-signature rule does just that, and the district court and panel were both right to find Plaintiffs are likely to succeed on their claim.

B. This case is different from *Callanen* in important ways.

Petitioners also insist *Callanen* creates a circuit split because it upheld a wet-signature requirement. Pet.ii. But *Callanen* differs from this case in several important ways, as GLA highlighted to the panel. GLA.Br.35-36. To start, *Callanen* rooted its holding substantially on the basis that "some weight should be given to Texas's legislative judgment." 89 F.4th at 479. That principle has no application here because Arkansas's wet-signature requirement does not appear in any legislation—it was created by agency fiat, *not* the Legislature. If anything, legislative

judgment weighs in favor of *GLA*. As the Attorney General explained in his opinion disagreeing with Defendants' position, Arkansas's Constitution *permits* the use of digital signatures on voter registration applications. S.App.67; R.Doc.46-7 at 23. And even the Secretary—prior to his sudden reversal—did "not see how a digital signature should be treated any differently than a wet signature." App.54; R.Doc.46-2 at 19.

The platform at issue in *Callanen* also differed from GLA's tool. *Callanen* accepted a factual finding that, based on the design of that platform, applicants "did not see" several statements that appeared on the state's written form instructing the voter to affirm their eligibility to vote. 89 F.4th at 488. The court relied upon this finding to credit Texas's argument that its wet-signature requirement *actually* assisted election officials "in determining" eligibility by ensuring applicants review the form's qualification requirements and perjury warning. *Id.* at 488-89. The record here showed the opposite: GLA's tool presented the statements required under Arkansas law, in the *identical* manner as on the Secretary's form, and at the time of signature. App.39; R.Doc.46-2 ¶14. In other words, facts that were determinative in *Callanen* are different here, undercutting any argument for *en banc* review.

Further still, circuit splits concern disputes of law—not diverging *applications* of law. *Cf.* Sup.Ct.R.10 (explaining certiorari is not typically granted over "misapplication of a properly stated rule of law"). Petitioners' Rule 40(b) Statement

alleges the panel "adopt[ed] a heightened definition of materiality" relative to *Callanen*. Pet.ii. But, as explained, the definition of "material" adopted by the panel is indistinguishable from the Fifth Circuit's definition. *Supra* Arg. § I(A). *Callanen* went awry at the application stage: Rather than use its definition of "material," the Fifth Circuit misapplied irrelevant case law from other contexts—specifically, the *Anderson-Burdick* test and the Voting Rights Act—to the particular facts of that case. 89 F.4th at 485-87. The panel here wisely avoided that puzzling analytical lapse. Op.10. But critically, that portion of *Callanen* is *not* what Petitioners point to in their Rule 40(b) Statement.

II. The panel's decision was record-driven.

Petitioners' overreliance on *Callanen* highlights another consideration against rehearing: the panel's decision followed inevitably from the record in *this* case. Petitioners do not dispute the district court's finding—affirmed by the panel—that SBEC "did not '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." *Id.* In contrast, GLA's evidence showed that election officials "are instructed to accept voter registration applications with 'any type of signature or mark,' even if the signature is illegible." *Id.*

Petitioners argue it should be enough that the wetness of a signature "is *capable* of influencing voter eligibility determinations" because "[a] handwritten

signature confirms that an applicant is a real person" and "links the applicant to the application." Pet.5. Nothing in the CRA's text condones this approach. The materiality provision asks whether a requirement "*is*" material "in determining" a voter's qualifications—not whether it *could* be. 52 U.S.C. § 10101(a)(2)(B). Asking whether a voting prerequisite is theoretically "capable" of influencing an eligibility determination—divorced from record evidence showing whether it *does*—would permit states and localities to justify immaterial requirements based on flimsy, pretextual justifications, neutering the materiality provision entirely. That provision was intended by Congress to "sweep away such tactics." *Condon*, 913 F.Supp. at 950; *see Pa. NAACP*, 97 F.4th at 126 (explaining the materiality provision was designed to eliminate "hyper-technical" bases for rejecting voter application forms, such as "failing 'to calculate [their] age to the day'"). Accordingly, as the panel found, materiality must be grounded in how officials *actually* determine eligibility, not the creative hypotheticals of courts or litigants. Indeed, a requirement only abstractly "capable" of informing a determination cannot "ha[ve] a probability of affecting an election official's eligibility determination." *MFV*, 129 F.4th at 720; *see also* Op.9 (similar).

Petitioners' argument also fails on its own terms, as the record shows a wet signature is *not* capable of influencing qualification determinations. As the panel explained, "[c]ounty clerks are not trained to analyze or compare signatures," Op.9,

so they instead simply look for the "existence" of a signature or mark, S.App.246; Tr.86:15-22.

III. The panel opinion does not threaten election integrity.

Petitioners are also wrong that the panel's decision imperils the ability of states to "adopt procedures to protect the integrity of the election process." Pet.6. Congress carefully calibrated the reach of the materiality provision. It does not regulate all election rules—only those relating to (1) "error[s] or omission[s]"; (2) on a "record or paper"; and (3) relating to an "act requisite to voting." 52 U.S.C. § 10101(a)(2)(B). Rather than explain how the panel's straightforward application of this text will undermine election integrity, Petitioners offer only baseless speculation.

Petitioners' own exaggerated description of other state laws merely proves that the panel's decision will not have any cascade effect. Georgia, for example, does not require wet signatures on voter registration applications; in fact, it permits some voters to register online. Ga. Code § 21-2-221.2. The provision Petitioners cite governs absentee-ballot requests. *See* Pet.7 (citing Ga. Code § 21-2-381(a)(1)(C)(i)). And Texas's wet signature requirement has already been upheld on the specific factual record in *Callanen*. So Petitioners identify, at most, *two* states with wet-signature requirements like SBEC's rule.

IV. This case is unsuited for *en banc* review.

This case is also a poor vehicle for rehearing. The panel's decision rests on a straightforward application of the statute to a strikingly clear and lopsided factual record. *Supra* Arg. § II; *see also* Op.9-11. Combined with the preliminary injunction posture of the appeal, the Petition presents an exceptionally weak and tenuous claim for review, particularly given that a materiality provision analysis often requires a fact-based inquiry. *See* Op.8-9; *see also Brandt v. Rutledge*, No. 21-2875, 2022 WL 16957734, at *1 (8th Cir. Nov. 16, 2022) (Colloton, J., concurring in denial of rehearing *en banc*) (explaining appeal from preliminary injunction "is not [an] appropriate [posture] for rehearing en banc").

The vehicle problem is compounded by SBEC's failure to preserve its arguments. The panel noted that SBEC's primary identity-and-existence argument—that a wet signature is material because it confirms that an applicant is a real person—was both forfeited and meritless. Op.9. SBEC similarly failed to develop its solemn-weight and fraud-deterrence rationales with any supporting evidence before the district court. Op.10-11. A petition for *en banc* review is not the place to rehabilitate arguments that were inadequately presented below.

CONCLUSION

For the foregoing reasons, the Court should deny the petition for rehearing *en banc*.

Dated: May 7, 2026

Respectfully submitted,

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Certificate of Service When All Case Participants Are CM/ECF Participants

I hereby certify that on May 7, 2026, 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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