UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No. 25-2940

DAKOTANS FOR HEALTH and
RICK WEILAND,

Plaintiffs and Appellees,

v.

SECRETARY OF STATE MONAE JOHNSON,
in her official capacity only,

Defendant and Appellant.

ON APPEAL FROM THE UNITED STATES
DISTRICT COURT FOR THE
DISTRICT OF SOUTH DAKOTA,
SOUTHERN DIVISION

THE HONORABLE CAMELA C. THEELER
United States District Court Judge

APPELLANT'S BRIEF

MARTY J. JACKLEY
ATTORNEY GENERAL

Grant M. Flynn
ASSISTANT ATTORNEY GENERAL
Paul S. Swedlund
SOLICITOR GENERAL
1302 S.D. Highway 1889, Suite 1
Pierre, SD 57501-8501
Telephone: (605) 773-3215
E-mail: atgservice@state.sd.us

ATTORNEYS FOR APPELLANT

SUMMARY OF THE CASE AND ORAL ARGUMENT REQUEST

During its 100th Session, the South Dakota Legislature enacted House Bill 1184 (2025) (hereinafter "HB 1184").[1] JApp. 100-102; R. Doc. 7-2, at 1-3; Add. 1-3. HB 1184 changed the petition filing deadlines for initiated constitutional amendments and initiated measures from "the first Tuesday in May of a general election year" to "the first Tuesday in *February*…" *Id*. Appellees challenged HB 1184 as violating their First Amendment right to gather petition signatures. JApp. 9-24; R. Doc. 1, at 36. Appellees' challenges to HB 1184 were similar to those addressed by this Court in *SD Voice v. Noem (SD Voice IV)*, 60 F.4th 1071 (8th Cir. 2023). The District Court agreed with Appellees and enjoined enforcement of HB 1184 in an Order Granting Motion for Permanent Injunction on August 29, 2025. JApp. 453-469; R. Doc. 68; Add. 4-20. Appellants contend on appeal that, consistent with this Court's opinion in *SD Voice IV*, the South Dakota Legislature enacted a petition circulation deadline that satisfies the *Anderson/Burdick* sliding standard in that it "furthers [the] important regulatory interest…" of allowing sufficient time for the litigation of petition challenges. *SD Voice IV*, 60 F.4th at 1080. Appellant respectfully requests 15 minutes of oral argument per side.

[1] *See* An Act to Amend the Deadline for Filing a Petition to Initiate a Measure or Constitutional Amendment, H.B. 1184, 2025 Sess. (S.D. 2025), Committee and Floor discussion, https://sdlegislature.gov/Session/Bill/26001 (last visited November 18, 2025).

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Statues cited:

Other authorities cited:

JURISDICTIONAL STATEMENT

Appellees brought their Complaint pursuant to 42 U.S.C. § 1983. JApp. 10; R. Doc. 1, at 2.[2] Accordingly, the District Court had jurisdiction pursuant to 28 U.S.C. § 1331 and 28 U.S.C. § 1343(3). *Id.* The Clerk of the District of South Dakota, Southern Division, filed the Judgment for this case on September 3, 2025. JApp. 470; R. Doc. 69. Appellants timely filed the Notice of Appeal on September 25, 2025. JApp. 584; R. Doc. 74. This Court has jurisdiction pursuant to 28 U.S.C. § 1291.

STATEMENT OF ISSUES

I. Whether the district court erred in finding that allowing citizens more time to litigate petition challenges prior to an election is not a legitimate state interest?

Apposite Cases
SD Voice v. Noem (SD Voice IV), 60 F.4th 1071 (2023)
Buckley v. Am. Const. Law Found., Inc., 525 U.S. 182, 191, 119 S.Ct. 636, 142 L.Ed.2d 599 (1999)
Timmons v. Twin Cities Area New Party, 520 U.S. 351, 358, 117 S.Ct. 1364, 137 L.Ed.2d 589 (1997)
Sarvis v. Judd, 80 F. Supp. 3d 692, 697 (E.D. Va. 2015)

II. Whether the district court erred in finding that House Bill 1184's deadline for filing petition signatures nine months prior to an election does not further a legitimate state interest?

---

[2] References to the Joint Appendix will be "JApp.__." References to the record will be "R. Doc. __ at __." References to the Transcript of the June 23, 2025, portion of the Motion Hearing to the Court will be "MT __." References to the Transcript of the August 8, 2025, portion of the Motion Hearing to the Court will be "MTII __." References to the addendum following this brief will be "Add. __."

Apposite Cases
SD Voice v. Noem (SD Voice IV), 60 F.4th 1071 (2023)

STATEMENT OF THE CASE

South Dakota's history of citizen-initiated law changes is longer than any other state. *Brendtro v. Nelson*, 2006 S.D. 71, 720 N.W.2d 670, 677 n.4. (citing *South Dakota: Its History and Its People* at 680 (1915)). South Dakota citizens value their chance to enact measures themselves and to call acts of the Legislature into question. *Byre v. City of Chamberlain*, 362 N.W.2d 69, 79 (S.D. 1985). But this opportunity must be subject to reasonable protections and practical limits. *SD Voice IV*, 60 F.4th at 1077. The District Court concluded that Appellants did not identify an important regulatory interest in HB 1184's filing deadline nor demonstrate that the adjusted filing deadline satisfied that interest. JApp. 466-468; R. Doc. 68, at 14-17; Add. 17-19. Because the need for the changes found in HB 1184 outweighs any burden that the law might impose on Appellees, enforcement of the law should not be enjoined, and the District Court's Order should be reversed.

SDCL 2-1-1.1 describes the petition process for initiated constitutional amendments while SDCL 2-1-1.2 addresses the process for initiated measures. Prior to the enactment of HB 1184, both statutes required that "petition signatures must be filed with the secretary of state by the first Tuesday in May of a general

election year" for the amendment or measure to appear on the ballot. JApp. 100-102; R. Doc. 7-2, at 1-3; Add. 1-3. This deadline falls approximately six months before the election when the initiative will be considered. *Id*. HB 1184 changes that timeline, making the deadline "the first Tuesday in *February*…", or nine months prior to the election. *Id*.

The District Court found that the February filing deadline unconstitutionally limited Appellees' First Amendment Rights and struck it down. JApp. 466-468; R. Doc. 68, at 14-17; Add. 17-19. In defense of the measure, the State presented testimony that an important regulatory interest supported the filing deadline in HB 1184. Both Speaker of the South Dakota House of Representatives, Jon Hansen, and South Dakota attorney, Sara Frankenstein testified in support of the deadline. JApp. 739-813; R. Doc. 79, at 155-229; MT 155-229. JApp. 475-541; R. Doc. 73, at 5-71; MTII 5-71. Their testimony explained that the only mechanism under South Dakota law by which every signature supporting a ballot measure can be scrutinized and challenged is via a private challenge in state circuit court. JApp. 746; R. Doc. 79, at 162; MT 162. JApp. 540; R. Doc. 73, at 70; MTII 70. And the brief timeframe between petition filing in May and the printing of the ballot in August, not to mention the November election, was insufficient for a meaningful challenge to that petition. JApp. 750-55; R. Doc. 79, at 166-171; MT 166-171. JApp. 505; R. Doc. 73, at 35; MTII 35.

This important regulatory interest came to Speaker Hansen's attention through his own efforts to challenge petition signatures supporting a ballot initiative that he believed were obtained in violation of South Dakota law. JApp. 753-55; R. Doc. 79, at 169-71; MT 169-71. His challenge to the ballot initiative was not able to be completed prior to the election. JApp. 762-66; R. Doc. 79, at 178-82; MT 178-82. And in response, Speaker Hansen brought HB 1184 for consideration by the Legislature and the Governor to expand the timeframe between petition filing and the deadline for publicizing and voting on the ballot. *Id*. Speaker Hansen's purpose in advancing HB 1184 was to allow the citizens of South Dakota to conduct meaningful reviews of these petitions to ensure that the rules were properly followed. JApp. 754-55; R. Doc. 79, at 170-71; MT 170-71. Because this is the only mechanism under the law by which each signature may be scrutinized, the regulatory interest served is important to the State as well as every South Dakota voter. JApp. 746; R. Doc. 79, at 162; MT 162.

The District Court disagreed, however, concluding that the State failed to tie "HB 1184's nine-month deadline to the *State's* regulatory interest in protecting the integrity and reliability of the initiative process." JApp. 466; R. Doc. 68, at 14; Add. 17. (emphasis in original). The District Court found that the State itself did not have an interest in permitting meaningful challenges to elections because it is individual citizens who must bring these challenges rather than any institution of

the State. *Id*. As such, the District Court determined that the State has no interest in ensuring that its own policies can be carried out. *Id*. Under the District Court's analysis, the State has a regulatory interest in establishing a process by which petition signatures may be challenged but has no interest in establishing deadlines that permit the challenges to occur.

The District Court continued that, even if the State had established an important regulatory interest in establishing deadlines by which signatures could be effectively challenged, the District Court found that extending the deadline would not serve this purpose as a court challenge including an appeal still could not be completed within the time set forth by HB 1184's February deadline. JApp. 466-67; R. Doc. 68, at 14-15; Add. 17-18. Through this position, the District Court entirely disregarded the influence that any information presented at a public trial would have on an election, regardless of whether an appeal was completed prior to a vote. *Id*. The District Court further ignored the Legislature's attempt to comply with *SD Voice IV* by setting the deadline at less than one year prior to the election. *Id*. Finally, the District Court reasoned that the State's interest in completing litigation of petition challenges pre-election was insufficient justification for the February deadline because such challenges may be brought post-election. JApp. 467; R. Doc. 68, at 15; Add. 18.

Because Appellant presented an important regulatory interest outweighing

any burden on Appellees' First Amendment rights, the District Court erred in granting Appellees a permanent injunction; and Appellant appeals.

STANDARD OF REVIEW

After a bench trial, or a motion hearing as occurred here, "this Court reviews legal conclusion de novo and factual findings for clear error." *Brandt by & through Brandt v. Griffin*, 147 F.4th 867, 878 (8th Cir. 2025) (quoting *Urban Hotel Dev. Co., Inc. v. President Dev. Group, L.C.*, 535 F.3d 874, 879 (8th Cir. 2008)). As was the case in *SD Voice IV*, a First Amendment challenge to a state statute is reviewed de novo. *SD Voice IV*, 60 F.4th at 1077 (citing *Calzone v. Summers*, 942 F.3d 415, 419 (8th Cir. 2019) (en banc)). Meanwhile, "a permanent injunction requires the moving party to show actual success on the merits." *Id.* (quoting *Miller v. Thurston*, 967 F.3d 727, 735 (8th Cir. 2020)). "The decision to grant or deny permanent injunctive relief is an act of equitable discretion by the district court, reviewable on appeal for abuse of discretion." *Id.* (quoting *eBay Inc. v. MercExchange, L.L.C.*, 547 U.S. 388, 391, 126 S.Ct. 1837, 164 L.Ed.2d 641 (2006)). A Court abuses its discretion when it "rests its conclusion on clearly erroneous factual findings or erroneous legal conclusions." *Brandt*, 147 F.4th at 878 (quoting *Oglala Sioux Tribe v. C & W Enterprises, Inc.*, 542 F.3d 224, 229 (8th Cir. 2008)).

SUMMARY OF THE ARGUMENT

The District Court reached two erroneous conclusions. The first was that the South Dakota Legislature has no interest in enhancing the integrity of the petition and referendum process by better assuring the pre-election litigation of challenges. JApp. 466-67; R. Doc. 68, at 14-15; Add. 17-18. The second was that even if the State had such an interest, that the change to the petition filing deadline found in HB 1184 did not advance that interest. *Id*. The District Court erred because it failed to recognize the Legislature's important regulatory interest in allowing meaningful challenges to petition signatures and discounted the benefits of a court challenge of a petition to the public even if a final decision on appeal is not achieved. The State's important regulatory interest in permitting the statutory challenge process to take place outweighs any burden or inconvenience sustained by Appellees. *SD Voice IV*, 60 F.4th at 1080.

ARGUMENT

I. The district court erred in finding that the State does not have an interest in allowing citizens more time to litigate petition challenges prior to an election.

The District Court concluded that Appellant failed to demonstrate that the State, rather than the citizens, had an important regulatory interest in establishing a deadline to submit petition signatures for initiated measures and constitutional amendments nine months prior to an election. JApp. 466-67; R. Doc. 68, at 14-15;

Add. 17-18. The District Court continued that, even if the State demonstrated an important regulatory interest, the filing deadline under HB 1184 did nothing to further that interest. *Id*. As Appellant argued below, the South Dakota Legislature has an important regulatory interest in ensuring that a policy and procedure that it set forth can be implemented effectively. *SD Voice IV*, 60 F.4th at 1080. HB 1184 served that purpose in the most narrow manner possible under the constitutional constrains set forth in *SD Voice IV*. As such, the District Court should be overturned and HB 1184 upheld.

A. First Amendment jurisprudence surrounding petition circulation.

The citizen initiative process is a creature of state law rather than the United States Constitution, so the state has "considerable leeway to protect the integrity and reliability of the initiative process ...." *SD Voice IV*, 60 F. 4th at 1077 (quoting *Buckley v. Am. Const. Law Found., Inc.*, 525 U.S. 182, 191, 119 S.Ct. 636, 142 L.Ed.2d 599 (1999)). But the statutory requirements of the process may implicate the First Amendment. *Id*. The responsibility of this Court is to "guard against undue hindrances to political conversations and the exchange of ideas." *Id*. at 1078 (quoting *Buckley*, 525 U.S. at 192).

Petition circulation has been frequently classified as "core political speech" because the process encompasses both "expression of a desire for political change and a discussion of the merits of the proposed change. *Id*. (quoting *Meyer v.*

Grant, 486 U.S. 414, 421, 108 S.Ct. 1886, 100 L.Ed.2d 425 (1988)). *See also Buckley*, 525 U.S. at 189-87 (reaffirming that petition circulation is "core political speech" because it involves "interactive communication concerning political change.") First Amendment protection is "at its zenith" when such interactions are involved. *Id*.

The protection of "core political speech" is balanced against the Court's recognition that "there must be a substantial regulation of elections if they are to be fair and honest and if some sort of order, rather than chaos, is to accompany the democratic processes." *Id*. at 187. *See also Storer v. Brown,* 415 U.S. 724, 730, 94 S.Ct. 1274, 39 L.Ed.2d 714 (1974); *Timmons v. Twin Cities Area New Party,* 520 U.S. 351, 358, 117 S.Ct. 1364, 137 L.Ed.2d 589 (1997); *Anderson v. Celebrezze,* 460 U.S. 780, 788, 103 S.Ct. 1564, 75 L.Ed.2d 547 (1983). "Common sense, as well as constitutional law, compels the conclusion that government must play an active role in structuring elections," *Sarvis v. Judd*, 80 F. Supp. 3d 692, 697 (E.D. Va. 2015), *aff'd sub nom. Libertarian Party of Virginia v. Alcorn*, 826 F.3d 708 (4th Cir. 2016) (quoting *Burdick v. Takushi,* 504 U.S. 428, 433, 112 S.Ct. 2059, 119 L.Ed.2d 245 (1992)).

Upon concluding that a statute implicates the First Amendment, the Court must determine the proper level of scrutiny to apply. *SD Voice IV*, 60 F. 4th at 1079-80. Strict scrutiny is not automatically applied to when a petition statute

implicates First Amendment rights. *Id*. at 1080. Rather, the Eighth Circuit applies the *Anderson/Burdick* sliding standard. *Id*. (citing *Miller*, 967 F.3d at 739). Under the sliding standard, the Court "weigh[s] the character and magnitude of the burden the State's rule imposes on First Amendment rights against the interest the State contends justif[ies] that burden, and consider[s] the extent to which the State's concerns make the burden necessary." *Id*. *See also Timmons*, 520 U.S. at 358.

Where the burden imposed by the regulation surpasses the "merely inconvenient", it is considered a "severe burden", and strict scrutiny applies. *Id*. If the burden is not severe, the law is reviewed "to ensure it is *reasonable*, *nondiscriminatory*, and *furthers an important regulatory interest*." *Id*. (quoting *Miller*, 967 F.3d at 740) (emphasis added). After opining that HB 1184 might create a significant enough burden to necessitate strict scrutiny, the District Court ultimately analyzed the statute under the lower level of scrutiny to determine whether the burden imposed by the filing deadline was "reasonable, nondiscriminatory, and [in furtherance of] an important regulatory interest." JApp. 462-63; R. Doc. 68, at 10-11; Add. 13-14. As shown below, HB 1184's regulation does not constitute a severe burden, and the District Court selected the correct lens through which to analyze the statute.

B. Appellants set forth an important regulatory interest that was furthered by the February petition filing deadline.

The question before the Court is whether the "character and magnitude" of the burdens alleged by Appellees supersedes the interests proffered by the State. *SD Voice IV*, 60 F. 4th at 1080. As shown below, Appellees alleged burdens amount to mere inconveniences while the state's interest in protecting the integrity of the petition process by allowing for meaningful challenges to petition signatures is compelling, even though it need only be important. *Id*.

Appellees list HB 1184's alleged burdens as limiting the number of voices who will convey their message; effectively prohibiting circulating petitions for an additional three months; limiting their opportunities to speak with voters and train circulators; reducing the likelihood they will obtain sufficient signatures; and overall limiting their ability to obtain political change. JApp. 108-09; R. Doc. 8, at 6-7. Appellees further alleged that harsher weather during November, December, and January hampers their ability to obtain signatures during those months. JApp. 15; R. Doc. 1, at 7. Appellees assert that voters are less interested in an upcoming election in February than they are in May, diluting the effectiveness of their speech when gathering signatures. JApp. 15-16; R. Doc. 1, at 7-8. Appellees contend that they have less time to gather signatures under the new deadline and that circulators work harder towards the circulation deadline. JApp. 19; R. Doc. 1, at 11. Finally, financial contributions are allegedly harder to come by in February rather than May before an election. JApp. 20; R. Doc. 1, at 12.

The District Court concurred with Appellees' stated concerns. The District Court found that HB 1184 limited the number of voices that will convey a message related to a ballot initiative by pushing back the deadline. JApp. 462; R. Doc. 68, at 10; Add. 13. As the District Court noted, petition circulation "is effectively banned" nine months prior to the election pursuant to HB 1184. *Id*. According to the District Court, the new deadline would also reduce the number of signatures that a circulator was likely to obtain. *Id*. According to the Court, these factors taken together resulted in more than a "mere inconvenience", rising to the level of a severe burden. JApp. 463; R. Doc. 68, at 11; Add. 14.

The District Court's analysis not only entirely disregarded the State's asserted important regulatory interest but also overemphasized the burden imposed by HB 1184. While the law set an earlier deadline for the completion of petition circulation, it added a short period of time of three months relative to the entire process. JApp. 100-102; R. Doc. 7-2, at 1-3; Add. 1-3. Additionally, the February deadline has no effect on Appellees' ability to continue to lobby for or against a particular initiative. *Id*. It limits only the time during which signatures may be gathered. *Id*. Moreover, gathering of signatures in the winter, while certainly an inconvenience, does not rise to the level of a severe burden. JApp. 15; R. Doc. 1, at 7. Appellees suffer no severe burden under HB 1184, and the law is properly considered "to ensure it is *reasonable*, *nondiscriminatory*, and *furthers an*

important regulatory interest." *SD Voice IV*, 60 F. 4th at 1079-80.

Every citizen of South Dakota has an interest in ensuring that the state's elections are conducted fairly. SDCL Ch. 2-1 sets forth the procedures for initiated measures, initiated constitutional amendments, and referendums. This Chapter contains criminal penalties against an unqualified individual who signs a petition or a circulator who provides false verification. Further, SDCL 2-1-15 requires the Secretary of State to verify the signatures by random sample before turning the petitions over to the public. But the statutes leave it up to the citizens to verify the veracity of each individual signature, and every interested citizen is specifically empowered with the statutory authority to challenge petition signatures in circuit court. SDCL 2-1-18. In South Dakota, every citizen has the right, and corresponding duty, to investigate and challenge compliance with the state's initiative process; and citizen challenges are the sole mechanism for questioning petitions in their entirety.

Further, South Dakota citizens take significant interest in the integrity of their elections as is clear from the sheer number of bills addressing election integrity that were introduced during the 2025 South Dakota Legislative Session. Under the subject of Elections, the South Dakota Legislative Research Council

records that approximately 48 bills or joint resolutions were introduced.[3] As to the subject of ballot measures, approximately 17 bills or joint resolutions were introduced.[4]

In furtherance of their duty and commitment to transparency, South Dakota citizens take it upon themselves to review petition signatures submitted by proponents of ballot initiatives. Speaker Hansen, as a private citizen, took up this duty as to a constitutional amendment that Appellees sponsored for South Dakota's 2024 ballot, Amendment G. JApp. 758; R. Doc. 79, at 174; MT 174. Through an investigation that he conducted in coordination with a Ballot Question Committee that he helped form, Life Defense Fund, Speaker Hansen developed evidence indicating that the laws were not being followed with regard to the circulation of the petitions in support of Amendment G. JApp. 756-60; R. Doc. 79, at 172-76; MT 172-76. These concerns were reported to the South Dakota Attorney General's Office who sent a letter to Appellees alerting them to complaints that had been made. JApp. 183-84; R. Doc. 25-1, at 21. The letter asserted that the Attorney General's Office had received evidence of unattended petitions in violation of SDCL 2-1-10. *Id*. Additional video evidence indicated that

[3] *See* https://sdlegislature.gov/Session/Subject/6953 (last visited November 18, 2025).
[4] *See* https://sdlegislature.gov/Session/Subject/6892 (last visited November 18, 2025).

signatories signed the petition more than once. *Id*. Finally, the letter referred to evidence of circulators of Amendment G providing misleading information to the public. *Id*.

Based on these concerns, Speaker Hansen and his Ballot Question Committee, Life Defense Fund, filed suit against Appellees, challenging their petitions. JApp. 758-60; R. Doc. 79, at 174-76; MT 174-76. *See also* JApp 163-185; R. Doc. 25-1, at 1-51. During his testimony, Speaker Hansen summarized the laborious task of executing a petition challenge. JApp. 758-66; R. Doc. 79, at 174-82; MT 174-82. First, the challenger must review each of the signatures to determine whether it complies with the law. JApp. 759; R. Doc. 79, at 175; MT 175. Then, assuming noncompliant signatures are found, the challenger must bring a challenge in circuit court. JApp. 759-60; R. Doc. 79, at 175-76; MT 175-76. As Speaker Hansen pointed out, other ballot measures have bene found invalid on other bases and struck down after being approved by the voters. JApp. 769; R. Doc. 79, at 185; MT 185. Amendment A, for example, was struck down after passage for violating the single subject rule. *Thom v. Barnett*, 2021 S.D. 65, ¶ 65, 967 N.W.2d 261, 283. As Speaker Hansen noted, "[t]hat's not a good way to handle this." JApp. 769; R. Doc. 79, at 185; MT 185.

In the challenge to Amendment G, Life Defense Fund's Complaint was initially dismissed, and that decision was overturned by the South Dakota Supreme

Court. JApp. 762-66; R. Doc. 79, at 178-81; MT 178-81. Simultaneously, Appellees challenged Life Defense Fund's Complaint in federal court. *Id*. The parties were awaiting a trial date when Amendment G was considered by the voters on November 5, 2024. JApp. 766; R. Doc. 79, at 182; MT 182. Had Dakotans for Health's petitions been due in February rather than May, Life Defense Fund could have filed their challenge in March, or earlier, rather than June. Such a schedule would have potentially allowed the trial in the Amendment G matter to occur in October, prior to the election, rather than after the election.

Sara Frankenstein, a lawyer representing Life Defense Fund with significant experience in election challenges, also testified as to the benefit of the February petition filing deadline found in HB 1184. JApp. 477-579; R. Doc. 73, at 7-9; MTII 7-9. Ms. Frankenstein explained that when litigating petition challenges hundreds of hours were needed to perform all of the tasks necessary to move a case to completion. JApp. 488-90; R. Doc. 73, at 18-20; MTII 18-20. She testified that even under the best circumstances it is difficult to resolve a petition challenge in the brief amount of time available before the ballots must be printed, which is the most significant deadline. *Id*. *See also* JApp. 539; R. Doc. 73, at 69; MTII 69. But it is still extremely difficult to resolve a case before the election. JApp. 539; R. Doc. 73, at 69; MTII 69. Moreover, the current deadlines create additional burdens for individuals challenging the petitions. JApp. 540; R. Doc. 73, at 70;

MTII 70. Finally, Ms. Frankenstein gave examples from the litigation surrounding Amendment G of how slowly the process moves under less-than-ideal circumstances. JApp. 494-517; R. Doc. 73, at 24-47; MTII 24-47.

To allow a meaningful opportunity for investigation into and court challenges of initiative petitions and petition signatures, Speaker Hansen introduced HB 1184. JApp. 758-60; R. Doc. 79, at 174-76; MT 174-76. This bill refrains from creating a deadline of one year prior to the general election as was specifically rejected in *SD Voice IV*. *See SD Voice IV*, 60 F.4th at 1083. Rather, the Legislature split the difference and set the deadline for filing initiative petitions on the first Tuesday of February in the year of the general election. JApp. 100-102; R. Doc. 7-2, at 1-3; Add. 1-3. This compromise respects the concerns raised by the Court and Appellees while accommodating a schedule that would have resulted in a meaningful challenge of the petitions supporting Amendment G prior to the general election had it been in place.

The inconveniences suffered by Appellees are wholly insufficient to outweigh the important regulatory interests underlying HB 1184. First, Appellees functioned under the one year prior to the general election deadline for ballot initiative petitions from 2012 when SDCL 2-1-1.1 and 1.2 were enacted until the Eighth Circuit struct it down in *SD Voice IV*. *Compare* 2012 S.D. Sess. Laws Ch. 18, § 2-3 *with SD Voice*, 60 F.4th at 1076. Overall, fourteen ballot measures were

considered by South Dakota voters during the 2016, 2018, and 2020 elections. JApp. 298-300; R. Doc. 33-5, at 25-27. Given this number of considered ballot initiatives, the one-year deadline for petitions prior to the election does not appear to create a severe burden.

Appellees retain vast opportunities to share their political message despite the petition filing deadline imposed under HB 1184. Notably, HB 1184 does not limit the number of circulators a proponent can utilize, the amount of money they can be paid, the hours they can work, the number of people they can interact with, the time of day during which they can circulate, or the time periods during which they can circulate prior to the deadline. JApp. 100-102; R. Doc. 7-2, at 1-3; Add. 1-3. Moreover, HB 1184 does not limit a proponent's opportunity to continue to discuss the importance of the initiative that the proponent is supporting after the petitions are filed. *Id*. HB 1184 applies neutrally to all petition circulators and inhibits the process no more than is necessary to allow the state to achieve its important interest of promoting a fair and transparent initiative process. *Id*.

Appellees repeatedly allege that the "significantly harsher weather of November, December, and January" are impediments to travel and outdoor signature drives. JApp. 15; R. Doc. 1, at 7. But Appellees are not alone in their need to brave the elements to gain access to the ballot. For example, candidates who wish to appear on a primary ballot must gather the signatures needed between

January 1 and the first Tuesday in March in the year of the primary election. SDCL 12-6-4. While the number of signatures needed is often less, the timeframe to obtain those signatures is much shorter during the same harsh weather complained of by Appellees. *Compare* SDCL 12-6-7 *with* SDCL 2-1-1.1 and 1.2.

Meanwhile, the State's interest in allowing adequate time for meaningful court challenges to potentially invalid petitions is important, if not compelling. *SD Voice IV*, 60 F.4th at 1080. As shown, it is the responsibility of South Dakota's citizens to ensure the validity of petition signatures beyond the random sampling conducted by the Secretary of State. SDCL 2-1-18. As Speaker Hansen explained, the current timeframe for these challenges between May and November of the election year is insufficient. JApp. 756-66; R. Doc. 79, at 172-82; MT 172-82. He continued that the February filing deadline in HB 1184 strikes a better balance, allowing fifteen months for circulation, "but giving a little more time on the back end to allow for a potential challenge if it comes." JApp. 770; R. Doc. 79, at 186; MT 186. As Speaker Hansen aptly concluded, "I think that's a really important thing, so that we know with certainty… if measures are lawfully before the voters." *Id*. Otherwise, Speaker Hansen observed, voters can feel "disenfranchised" by post-vote judicial nullification of ballot measures that were improperly on the ballot and passed. JApp. 753, 768, 769; R. Doc. 79, at 169, 184, 185; MT 169, 184, 185.

South Dakota's "'interest in protecting the integrity of its initiative process' is not only an important interest, but a 'paramount' one." *SD Voice IV*, 60 F. 4th at 1080. Consequently, "there must be a substantial regulation of elections if they are to be fair and honest." *Buckley*, 525 U.S. at 187. "[S]tates are not required to present elaborate, empirical verification of the weightiness of their asserted justifications. *Timmons*, 520 U.S. at 364. "They can respond to potential deficiencies in the electoral process with foresight" so long as "the response is reasonable and does not significantly impinge on constitutionally protected rights." *SD Voice IV*, 60 F. 4th at 1081.

Through the authority of its "considerable leeway to protect the integrity and reliability of the initiative process ....", the South Dakota Legislature established a mechanism by which individual citizens could challenge petitions. *SD Voice IV*, 60 F. 4th at 1077. *See also* SDCL 2-1-18. The Legislature established this important regulatory mechanism to ensure fair, honest, and orderly elections. *Id*. Just as the Legislature is empowered to establish this challenge process based on this important regulatory interest, it is further authorized to set appropriate deadlines to ensure that the process may be utilized meaningfully. *Id*.

Had the parties in that challenge been afforded the additional three months provided for by HB 1184, it is likely that they would have had the opportunity to share vital information with the public through a trial prior to the election, such as

illegitimate signatures or improper signature gathering practices. JApp. 183-84; R. Doc. 25-1, at 21. As the law currently stands, the voters were required to consider Amendment G without the benefit of knowing whether the proper procedures were followed for it to validly appear on the ballot. This lack of transparency contradicts the State's important regulatory interest in fair, honest, and orderly elections. *SD Voice IV*, 60 F. 4th at 1077. The compromise found in HB 1184 strikes an appropriate balance between the State's concerns and the potential burdens alleged by Appellees.

II. *The district court erred in finding that House Bill 1184's filing deadline for petition signatures nine months prior to an election does not further that interest.*

According to the District Court, "even if [it] were to agree that the State has a regulatory interest allowing citizens more time to litigate petition challenges prior to an election, the State has not shown that a nine-month filing deadline satisfies that interest." JApp. 466; R. Doc. 68, at 14; Add. 17. This factual conclusion is clearly erroneous and unsupported by the record. For this reason, Appellant asks this Court to reverse the District Court's decision.

The District Court found the nine-month deadline to be ineffective because challenges were still unlikely to be fully completed prior to the election. JApp. 466-67; R. Doc. 68, at 14-15; Add. 17-18. This position ignores two crucial points. First, final resolution on appeal is not the only result of a court challenge to

a petition that would be beneficial to the electorate. And second, the Legislature settled on the nine-month deadline in HB 1184 out of consideration for the First Amendment concerns raised in *SD Voice IV* and that Appellees allege are still being violated. This Court specifically left to the South Dakota Legislature the duty of selecting an appropriate deadline for submission of petition signatures. *SD Voice IV*, 60 F.4th at 1083. The Legislature heeded that call through passage of HB 1184, doing so based on clearly articulated important regulatory interests. *Id*. But now the Legislature is faulted for performing its duty.

The additional three months provided by HB 1184 provides significant opportunities for additional information to come to light. As was the case with Amendment G, investigations by individual interest groups led to the Attorney General's Office opening a dialogue with the sponsors about proper compliance. JApp. 183-84; R. Doc. 25-1, at 21. Publicly available court documents were filed highlighting potential issues with the process, including certain information uncovered by Life Defense Fund's investigation. JApp. 756-60; R. Doc. 79, at 172-76; MT 172-76. A trial would have allowed for evidence to be presented in a public forum for all the voters to hear for themselves. Regardless of whether every legal issue would be fully resolved on appeal, this Court should not completely overlook the value of an adversarial presentation of the evidence in a public forum in advance of a measure being put to a public vote.

Moreover, as explained above, the State has a vested interest in ensuring that its policies are carried out. As this Court held, the Legislature is empowered to set the deadline by which petitions must be submitted. *SD Voice IV*, 60 F.4th at 1083. So long as the deadline in question reasonably serves the state's legitimate interest in the efficacy of and public confidence in the petition process and causes Appellees nothing more than inconvenience, the Legislature is empowered to change the deadline.

Such is the case here, Speaker Hansen identified an important regulatory interest in ensuring that a judicial mechanism put in place by the Legislature, i.e. petition challenges, may be meaningfully utilized. HB 1184 serves that purpose in the least restrictive manner available. As such, HB 1184 survives scrutiny and should be upheld.

CONCLUSION

For these reasons, Appellant respectfully requests that the Order of the District Court granting Appellee's Motion for Preliminary and Permanent Injunction be reversed and Appellee's Petition be denied.

Dated this 21st day of November 2025.

/s/ Grant M. Flynn
Grant M. Flynn
Assistant Attorney General
1302 S.D. Highway 1889, Suite #1
Pierre, South Dakota 57501

Telephone: (605) 773-3215
Email: grant.flynn@state.sd.us

CERTIFICATE OF COMPLIANCE

1. I certify that the Appellant's Brief is within the limitation provided for in Rule 32(a)(7) using Times New Roman Typeface in 14-point type. Appellant's Brief contains 5,709 words.

2. I certify that the word processing software used to prepare this brief is Microsoft Word 365 and it is herewith submitted in PDF Format.

3. I certify that the brief submitted herein has been scanned for viruses and that the brief is, to the best of my knowledge and belief, virus free.

Dated this 21st day of November 2025.

/s/ Grant M. Flynn

Grant M. Flynn
Assistant Attorney General
1302 S.D. Highway 1889, Suite #1
Pierre, South Dakota 57501
Telephone: (605) 773-3215
Email: grant.flynn@state.sd.us

CERTIFICATE OF SERVICE

I hereby certify that on November 21, 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.

/s/ Grant M. Flynn
Grant M. Flynn
Assistant Attorney General