No. 25-3389

United States Court of Appeals
for the Eighth Circuit

LEAGUE OF WOMEN VOTERS OF ARKANSAS, et al.,
Plaintiffs-Appellees,

PROTECT AR RIGHTS, et al.,
Intervenor Plaintiffs-Appellees,

v.

COLE JESTER, in his official capacity as the
Secretary of State of Arkansas,
Defendant-Appellant.

On Appeal from the United States District Court
for the Western District of Arkansas
No. 5:25-cv-5087 (Hon. Timothy L. Brooks)

Defendant-Appellant's Brief

TIM GRIFFIN
Arkansas Attorney General

AUTUMN HAMIT PATTERSON
Solicitor General

NOAH P. WATSON
Deputy Solicitor General

OFFICE OF THE ARKANSAS
ATTORNEY GENERAL
101 West Capitol Avenue
Little Rock, Arkansas 72201
(501) 682-1019
noah.watson@arkansasag.gov

SUMMARY OF THE CASE AND STATEMENT REGARDING ORAL ARGUMENT

For years, Arkansas has enacted laws to further its paramount, compelling interests in protecting the integrity of the initiative process—including combatting fraud and corruption, preventing unintentional mistakes, promoting transparency and accountability, and securing public confidence in the system. Yet Plaintiffs challenged a myriad of those initiative-integrity laws, some of which are over a decade old. They obtained preliminary relief preventing enforcement of eight provisions, including laws that promote sponsor transparency and voter comprehension and that hinder bad actors by requiring petitioners to present photo-identification and requiring canvassers to file an affidavit confirming they complied with Arkansas law. For several of their claims, Plaintiffs lack standing, and other claims are not ripe or moot. In any event, none of the laws violate the First Amendment, either facially or as applied to the Plaintiffs. The district court concluded otherwise by making arguments no party pressed, misinterpreting Arkansas law, misapplying facial-challenge standards, overlooking the paucity of Plaintiffs' evidence, and undervaluing Arkansas's evidence.

Given the number of issues and their importance, Arkansas respectfully requests 30 minutes for oral argument.

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Jurisdictional Statement

The district court had jurisdiction under 28 U.S.C. § 1331 and issued a preliminary injunction on November 19, 2025, Add. 76; App. 344; R. Doc. 50, at 76. On December 1, 2025, Arkansas timely appealed. App. 346; R. Doc. 53. This Court has jurisdiction over the appeal under 28 U.S.C. § 1292(a)(1).

Statement of Issues

1. Did the district court err by concluding that Plaintiffs have standing for all their claims, all Plaintiffs' claims are ripe, and none of Plaintiffs' claims are moot?

Apposite Authority: *McCarthy v. Ozark Sch. Dist.*, 359 F.3d 1029 (8th Cir. 2004); *Bio Gen LLC v. Sanders*, 142 F.4th 591 (8th Cir. 2025); *Animal Legal Def. Fund v. Reynolds*, 89 F.4th 1071 (8th Cir. 2024); *FEC v. Cruz*, 596 U.S. 289 (2022).

2. Did the district court err by concluding Plaintiffs are likely to succeed on eight separate challenges to Arkansas citizen-initiative laws?

Apposite Authority: *Miller v. Thurston*, 967 F.3d 727 (8th Cir. 2020); *Dakotans for Health v. Noem*, 52 F.4th 381 (8th Cir. 2022); *Initiative & Referendum Inst. v. Jaeger*, 241 F.3d 614 (8th Cir. 2001); *United States v. Sineneng-Smith*, 590 U.S. 371 (2020).

3. Did the district court err by concluding the irreparable-harm, balance-of-equities, and public-interest factors necessitated injunctive relief?

Apposite Authority: *Powell v. Noble*, 798 F.3d 690 (8th Cir. 2015); *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7 (2008); *Purcell v. Gonzalez*, 549 U.S. 1 (2006); *RNC v. DNC*, 589 U.S. 423 (2020) (per curiam).

Statement of the Case

A. Arkansas's Constitution provides for direct democracy, subject to the Arkansas Legislature's regulations.

For over a century, Arkansas has allowed citizen-led constitutional amendments and legislation and has permitted referendums on legislation (collectively, "initiatives"). *See* S.J. Res. 1, 37th Gen. Assemb., Reg. Sess. (Ark. 1909). Since initiatives were first allowed, Arkansans have used the process somewhat sparingly, with fewer than one citizen-initiated constitutional amendment on the ballot per election on average. R. Doc. 39, at 2. Over that time, the Legislature has routinely regulated the initiative process, *see* Ark. Act 2 of 1911, § 8 (1st Ex. Sess.), updating it as necessary to promote integrity and confidence in the process.

For example, after the 2012 initiative process, three of four statewide initiative petitions were marked by "widespread" irregularities, including "apparent fraud, forgery, and false statements in the signature-gathering process." Ark. Act 1413 of 2013, § 1(a)(6). Tens of thousands of signatures were removed as potentially fraudulent. App. 203; R. Doc. 39-1. About 70% of signatures were invalid. Act 1413, § 1(a)(5); *see* App. 212; R. Doc. 39-2. Multiple Arkansas law-enforcement agencies investigated the misconduct. App. 214; R. Doc. 39-3. And although many types of canvassers were to blame, paid canvassers were particularly blameworthy. Act 1413, § 1(a)(3), (b)(1); *cf.* Jocelyn Friedrichs Benson, *Election Fraud & The Initiative*

Process: A Study of the 2006 Michigan Civil Rights Initiative, 34 Fordham Urb. L.J. 889, 923 (2007) (noting the "consensus" that certain paid canvassers are "directly linked to high levels of fraud").

In response, the Legislature enacted a package of reforms in 2013 to restore public trust and make sponsors and canvassers more accountable. *Id.* § 1(d). This package sought to limit the "incentive[s] to submit" "forged and otherwise facially invalid signature and [to] make false statements to the Secretary of State." *Id.* § 1(a)(3), (d). It created a new statutory subchapter governing paid canvassers and added new requirements aimed at preventing the submission of fraudulent signatures. *Id.* §§ 18, 21. The Legislature has continued to refine the statutory framework to address new forms of evasion and improve accessibility and efficiency.

B. Arkansas law regulates canvasser eligibility and requires certain disclosures to deter bad actors.

Since 2013, Arkansas has required sponsors to provide the Secretary of State with a list of all paid canvassers' names and current residential addresses before collecting signatures. Ark. Code Ann. § 7-9-601(a)(2)(C). This paid-canvasser list (or "pre-collection disclosure requirement") provides the backbone for many Arkansas initiative-integrity laws. For example, paid canvassers certify that they have not been convicted of a "disqualifying offense," which is provided to the Secretary simultaneously with the paid-canvasser list. *Id.* § 7-9-601(a)(2)(D). "To verify" that paid

canvassers' disqualifying-offense certification is truthful, sponsors must obtain a "state criminal history and criminal record search on every paid canvasser." *Id.* § 7-9-601(b)(1). And to increase the effectiveness of that requirement, after realizing people continued to canvass "without first passing the required criminal history and criminal record searches," which was a "threat" to Arkansans' "personal information," Ark. Act 951 of 2021, § 9,[1] the Legislature required all canvassers to be Arkansas residents, Ark. Code Ann. § 7-9-103(a)(6).

In 2024, paid canvassers attempted to evade that residency requirement by listing a sponsor-funded Arkansas hotel address as their residence. App. 226-42; R. Doc. 39-4 to -5. That sponsor had petitioned at the state and local levels, *id.*, but that conduct was not limited to one group; it was apparently the norm for canvassers to "com[e] from out of state," "get[] [a temporary] residence[,] and then leave after the campaign was over," Tr. 55:9-11. In response, the Legislature enacted Act 453 of 2025, reiterating the residency requirement for paid canvassers, adding a domicile requirement, and imposing liability on sponsors who knowingly hire nonresident, nondomiciled paid canvassers. Ark. Code Ann. § 7-9-103(a)(8), (d).

[1] See R. Doc. 39, at 5, for a more detailed legal history, including Arkansas caselaw and responsive enactments.

C. Arkansas law promotes compliance and uniformity through a post-circulation affidavit and by providing all sponsors equal time to collect signatures for a cure period.

Before 2025, canvassers were required to verify compliance with a few petition laws, *see id.* § 7-9-109; they did not confirm compliance with all applicable constitutional and statutory requirements governing canvassing, fraud, and signature collection. Thus, Act 241 of 2025 requires canvassers to submit an affidavit after collecting signatures that certifies compliance with Arkansas law while collecting signatures. *Id.* § 7-9-111(j)(1).

Act 241 also prohibits canvassers who filed a post-circulation affidavit from "collect[ing] additional signatures" while the Secretary "determines [if] the sponsor … is eligible for" a 30-day window to make certain "amendment[s] to the" petition. *Id.* § 7-9-111(d), (k). That 30-day window is commonly called a "cure period," *e.g.*, *Roberts v. Priest*, 20 S.W.3d 376, 382 (Ark. 2000), and the Secretary has up to 30 days from the day the sponsor files the petition to determine if the sponsor is cure-period eligible, *id.* § 7-9-111(a). Before Act 241, nothing prevented sponsors from collecting signatures during the Secretary's review. Add. 63; App. 331; R. Doc. 50, at 63. But that continued collection meant some sponsors could have up to 60 extra days to collect signatures, while others would have less time if the Secretary finished reviewing their petitions first. Act 241 is thus an Equal-Time Provision that

promotes uniformity among sponsors and prevents disparities in the amount of time available to collect additional signatures.

D. Arkansas law promotes petition integrity through a criminal-offense notice and photo-identification verification.

In addition to the safeguards against bad actors collecting signatures, Arkansas law also protects the initiative process from bad actors signing petitions. To ensure that potential signers, or petitioners, know the legal consequences associated with fraudulent signatures, Act 218 of 2025 requires canvassers to disclose to petitioners that "petition fraud is a criminal offense" before obtaining a signature. Ark. Code Ann. § 7-9-103(a)(7). And Act 240 of 2025 requires canvassers to view a potential petitioner's photo identification to verify the petitioner's identity before accepting a signature. *Id.* § 7-9-109(g)(1). This identification verification is the modern method of requiring canvassers to verify a petitioner's identity, which has long been required. *See* Ark. Act 2 of 1911, § 8 (1st Ex. Sess.).

E. Arkansas law increases accessibility and promotes integrity through the Readability Requirement and the READ Act.

In 2025, the Legislature enacted Act 602, requiring proposed ballot titles read at an eighth-grade level, under the Flesch-Kincaid Grade Level formula. Ark. Code Ann. § 7-9-107(l)(1). That formula is used by other States for assessing the readability of public, medical, and insurance documents. *E.g.*, R.I. Gen. Laws 27-74-11(c)(1);

Minn. Stat. § 142A.08(a); S.C. Code Ann. § 37-4-201(2). Although the average U.S. adult "reads at an eighth-grade level," App. 265-66; R. Doc. 39-8, at 1-2, recently initiated ballot titles for complex regulatory regimes have far exceeded that reading level: the casino-gaming amendment was at a 25.1 grade level, *see* Ark. Att'y Gen. Op. 2018-029 (providing the ballot title), and the medical-marijuana amendment was at 18.1, *see id.* 2017-007 (providing the ballot title). Act 602's Readability Requirement allows Arkansans greater access to the initiative process.

The Legislature also enacted the READ Act to ensure petitioners knew what they were signing. Ark. Act 274 of 2025, § 1. That Act requires petitioners—in a canvasser's presence—to either "read[]" or hear "the ballot title … read aloud." Ark. Code Ann. § 7-9-103(a)(1)(A). For canvassers, the READ Act only prohibits them from "knowingly accept[ing] a signature" from a petitioner who did not comply with the READ Act in their presence. *Id.* § 7-9-103(c)(11).

F. Plaintiffs and Intervenors moved to preliminarily enjoin multiple petition laws, including ones enacted years earlier.

In April 2025, League of Women Voters of Arkansas and others sued the Arkansas Secretary of State, challenging several statutes governing the initiative process, including laws enacted over a decade ago. App. 11, 16-17; R. Doc. 2, at 2, 7-8. In July 2025, the district court allowed Protect AR Rights ("AR Rights") and For AR Kids to intervene as plaintiffs ("Intervenors"), over original plaintiffs' and the

Secretary's objections, suing the Secretary and the Arkansas Attorney General. R. Doc. 22.[2] Also in July, the original plaintiffs and Intervenors (collectively, "Plaintiffs") moved to preliminarily enjoin numerous Arkansas's initiative-integrity laws on First Amendment grounds. App. 34; R. Doc. 20; App. 90; R. Doc. 24.

Opposing both preliminary-injunction motions, Defendants argued that, as a threshold matter, several claims were nonjusticiable. R. Doc. 39, at 19-22. Defendants further argued that, even setting aside those defects, a preliminary injunction was unwarranted because the challenged statutes do not violate the First Amendment and advance substantial and legitimate state interests in protecting the initiative process's integrity—preventing fraud, promoting transparency, and ensuring administrative efficiency. *Id.* at 33. Defendants also explained that, to the extent the requirements implicate the First Amendment, they impose, at most, reasonable, nondiscriminatory regulations, not severe burdens on speech. *Id.* at 24-33; 39-46.

Defendants also emphasized that Plaintiffs could not establish irreparable harm because their alleged injuries were speculative, contingent on future events, or fully remediable through the ordinary course of litigation. *Id.* at 54-55. Finally, Defendants argued that the balance-of-the-equities and public-interest factors weigh a preliminary injunction, because "[a]ny time a state is enjoined by a court from

[2] The district court subsequently dismissed the Attorney General.

effectuating statutes enacted by representatives of its people," the State "suffers a form of irreparable injury," and because altering election rules midstream risks voter confusion and undermines public confidence in the democratic process. *Id.* at 55-57. Defendants thus urged the district court to deny the preliminary-injunction motions. *Id.* at 73.

G. The district court issued a preliminary injunction.

On November 19, 2025, the district court partially granted the preliminary-injunction motions. Add. 76; App. 344; R. Doc. 50, at 76. The district court first addressed jurisdictional issues raised by Defendants, including whether Plaintiffs had standing to challenge Act 602 and the Pre-Collection Disclosure Requirements, and whether certain claims were moot or unripe. Add. 28-33; App. 296-301; R. Doc. 50, at 28-33. Rejecting Defendants' argument that any harm stemmed from the Arkansas Freedom of Information Act ("FOIA") rather than from the challenged statutes themselves and were not "fairly traceable" to the provisions at issue, the district court concluded that Plaintiffs had standing to proceed on those claims and that the challenges were not moot or unripe, Add. 31-32; App. 299-300; R. Doc. 50, at 31-32. But the district court never addressed Defendants' related argument that Plaintiffs had not shown a concrete enforcement-based injury tied to § 7-9-601 itself. *Compare* R. Doc. 39, at 19-20, *with* Add. 31-32; App. 299-300; R. Doc. 50, at 31-32.

The district court next turned to the merits, concluding that Plaintiffs were likely to succeed on most of their constitutional claims, Add. 38-68; App. 306-36; R. Doc. 50, at 38-68, including the following:

- Pre-Collection Disclosure Requirement (Ark. Code Ann. § 7-9-601);
- Readability Requirement (Act 602);
- Post-Collection Affidavit (Act 241);
- Equal-Time Provision (Act 241);
- Residency and Domicile Provisions (Act 453);
- Criminal-Offense Warning (Act 218);
- Photo-Identification Requirement (Act 240); and
- READ Act (Act 274).

The district court concluded that preliminary relief was warranted for those provisions. *Id.*

Although the district court mostly analyzed likelihood of success on the merits on a provision-by-provision basis (except for its analysis of the Criminal-Offense Warning, the Photo-Identification Requirement, and the Readability Requirement), it analyzed the remaining preliminary-injunction factors in a consolidated, general discussion. Add. 73-76; App. 341-44; R. Doc. 50, at 73-76. The district court concluded that the alleged constitutional deprivations themselves constituted

irreparable harm. Add. 74-75; App. 342-43; R. Doc. 50, at 74-75. The district court also concluded the remaining factors favored injunctive relief. Add. 75-76; App. 343-44; R. Doc. 50, at 75-76.

Ultimately, the district court preliminarily enjoined the Secretary from enforcing the Pre-Collection Disclosure Requirement (Ark. Code Ann. § 7-9-601); Readability Requirement (Act 602); Post-Collection Affidavit (Act 241); Equal-Time Provision (Act 241); Residency and Domicile Provisions (Act 453); Criminal-Offense Warning (Act 218); Photo-Identification Requirement (Act 240); and READ Act (Act 274), pending a final disposition on the merits. Add. 76-77; App. 344-45; R. Doc. 50, at 76-77.

Summary of the Argument

The preliminary injunction should be reversed. The district court erred at every turn, from jurisdictional issues to every preliminary-injunction factor.

Several of Plaintiffs' claims are nonjusticiable. For example, Plaintiffs complied with the Readability Requirement, so that claim is moot. Plaintiffs also have no Article III injury to challenge the READ Act because they have not alleged any desire to engage in conduct proscribed by it. And their challenge to the paid-canvasser lists under § 7-9-601 is unrelated to their alleged harm and dependent on speculative action by third parties. The district court nonetheless sidestepped justiciability issues by invoking theories Plaintiffs never advanced and by attributing enforcement power to the Secretary that Arkansas law expressly withholds. Those threshold errors require reversal.

Even if Plaintiffs had standing, they failed to demonstrate likely success on their claims. The district court repeatedly misapplied the First Amendment framework for petition-related regulations. Many challenged laws—such as the photo-identification requirement, the READ Act, and the post-circulation affidavit—do not implicate the First Amendment at all. And those laws that do implicate speech do not impose a severe burden and thus are evaluated under a flexible framework, which they easily satisfy: Arkansas's longstanding and well-documented

interests in preventing fraud, deterring corruption, avoiding signature-collection mistakes, promoting transparency, and ensuring uniformity are paramount, and the challenged statutes are reasonable and nondiscriminatory means of furthering those interests. The district court erred by demanding empirical proof of actual fraud, which precedent expressly does not require; disregarding legislative findings and historical evidence; and collapsing separate statutory schemes into a single First Amendment analysis.

The district court further erred by relieving Plaintiffs of their heavy burden on facial challenges. Plaintiffs were required to show that each statute's unconstitutional applications substantially outweigh its constitutional ones, but they didn't sufficiently identify real-world unconstitutional scenarios—only hypotheticals unsupported by the statutory text. Instead of enforcing Plaintiffs' burden, the district court improperly shifted that burden to Arkansas, faulting it for not disproving facial invalidity. That analytical inversion is incompatible with precedent.

Plaintiffs likewise failed to establish irreparable harm. Some challenged statutes have existed for more than a decade, and Plaintiffs' substantial delay in seeking relief undermines any claim of imminent, irreparable injury. Their alleged harms are speculative, hypothetical, or disconnected from the challenged provisions. In contrast, Arkansas suffers immediate and irreparable harm whenever it is prevented

from enforcing duly enacted statutes designed to protect the integrity of its initiative process. The district court disregarded these sovereign and institutional injuries while improperly collapsing the remaining injunction factors into its likelihood-of-success analysis.

Finally, the district court ignored the *Purcell* principle, even though the initiative process for the 2026 election is already underway. Enjoining multiple election-related statutes mid-cycle destabilizes the regulatory framework, risks voter and canvasser confusion, complicates administration, and undermines public confidence in the integrity of the ballot-initiative process. Those harms reinforce why preliminary relief was inappropriate.

Argument

Preliminary injunctions are "extraordinary remed[ies] never awarded as of right." *Cigna Corp. v. Bricker*, 103 F.4th 1336, 1343 (8th Cir. 2024) (quoting *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 24 (2008)). Thus, plaintiffs must make a "clear showing" they are entitled to preliminary relief. *Winter*, 555 U.S. at 22. Courts weigh the following: (1) plaintiffs' likelihood of success on the merits, (2) the likelihood plaintiff will "suffer irreparable harm in the absence of preliminary relief," (3) "the balance of the equities," and (4) the public interest. *Cigna*, 103 F.4th at 1342 (citation omitted). The last two factors "merge" when a State opposes the injunction. *Eggers v. Evnen*, 48 F.4th 561, 564-65 (8th Cir. 2022). And where, as here, plaintiffs wish to enjoin enforcement of state statutes, their burden is greater: they must clearly show they are "likely to prevail on the merits." *Bio Gen LLC v. Sanders*, 142 F.4th 591, 600 (8th Cir. 2025) (citation modified).

Because the issues in this appeal are predominately "pure[] legal questions," the Court "owes no special deference to the district court" and reviews "its legal conclusions de novo." *Powell v. Noble*, 798 F.3d 690, 697 n.1 (8th Cir. 2015) (citation omitted). Clear-error review applies to fact findings. *Bio Gen*, 142 F.4th at 600.

I. SEVERAL CLAIMS ARE NONJUSTICIABLE.

The Court lacks jurisdiction over several claims due to standing, ripeness, and mootness issues.

A. The challenge to the Readability Requirement is moot.

Because AR Rights complied with the Readability Requirement after filing suit and the Secretary cannot enforce it against AR Rights, the challenge to Act 602's Readability Requirement is moot. Only AR Rights sought to enjoin that provision because it had a ballot title pending before the Attorney General when it sued. Add. 10; App. 278; R. Doc. 50, at 10. Soon after, the Attorney General certified AR Rights' submission, including compliance with Act 602. Add. 11; App. 279; R. Doc. 50, at 11. Thus, there is "no further relief that might be appropriate or available." *McCarthy v. Ozark Sch. Dist.*, 359 F.3d 1029, 1036 (8th Cir. 2004).

Although the district court conceded the claim "may be moot as to the Attorney General,"[3] it attempted to avoid mootness by enjoining the Secretary from enforcing Act 602. *Id.* But the Secretary does not enforce Act 602, which does not even mention the Secretary. And if there were any doubt, Act 602's codification makes clear that a sponsor's "fail[ure] to comply with" the Readability Requirement

[3] For some reason, the district court ascribed a sovereign-immunity argument to Defendants that they never made and then (more oddly) faulted them for not strongly making that (unmade) argument. *See* Add. 28-29; App. 296-97; R. Doc. 50, at 28-29.

"shall not contribute in any way to a determination by the Secretary … that the proposed measure … is insufficient for any reason." Ark. Code Ann. § 7-9-107(h). Indeed, AR Rights appropriately declined to bring this claim against the Secretary. *See, e.g.*, R. Doc. 23, at 38 (bringing the claim only "against Defendant Griffin"); *see also* R. Doc. 25, at 20 (requesting an injunction against the Attorney General).[4]

Despite the clear indications that the Secretary does not enforce Act 602, the district court erroneously relied on *Roberts*, 20 S.W.3d 376 (Ark. 2000), and *Paschall v. Thurston*, 699 S.W.3d 352 (Ark. 2024)—neither of which were raised by the parties—to find the claim was not moot as to the Secretary. R. Doc. 28. It is true that *Roberts* indicates the "Attorney General[] and the Secretary" reviewed a ballot title for misleading tendencies in 2000. 20 S.W.3d at 382. But the district court overlooked that the Secretary's review in that case was under a *now-repealed* statute. *Compare* Ark. Act 877 of 1999, § 2 (allowing "[a]ny Arkansas taxpayer and voter" to ask "the Secretary …, after consultation with the Attorney General, … [w]hether the popular name or ballot title of the measure are fair and complete"), *with* Act 1413, § 20 (repealing authority). The district court's citation to *Paschall* is more confusing. *Paschall* compares only the Arkansas Supreme Court's authority to the Attorney

[4] Here lies another error: AR Rights sued only the Attorney General, but the district court artificially expanded AR Rights' complaint. *See infra* pp. 36-38 (discussing the party-presentation principle).

General's; it says nothing about the Secretary's authority. *See* 699 S.W.3d at 355 n.1.

The Secretary has no authority to perform a readability determination, and the district court's citations do not show differently. *See* Ark. Code Ann. § 7-9-107(h). The district court's conclusion thus runs into the very sovereign-immunity issue it *sua sponte* raised and rejected related to the Attorney General. *See supra* note 4. Because the Secretary has no "method[] of enforcement," he is not a proper *Ex parte Young* defendant. *Bio Gen*, 142 F.4th at 605 (citation omitted). To the extent this claim was raised against the Secretary, it should be dismissed.

B. Plaintiffs have not alleged they want to violate the READ Act, so they have not alleged an Article III injury.

Plaintiffs lack standing to challenge the READ Act, which penalizes canvassers only if they "knowingly accept[] a signature" from a petitioner who did not read or hear a petition's ballot title before signing. Ark. Code Ann. § 7-9-103(c)(11). When plaintiffs "have shown no desire to" engage in the proscribed conduct, they are "not injure[d]" and thus "lack Article III standing to challenge" the law. *Animal Legal Def. Fund v. Reynolds*, 89 F.4th 1071, 1079 (8th Cir. 2024). Thus, unlike for laws where "intent is not an element," *281 Care Comm. v. Arneson*, 638 F.3d 621, 629 (8th Cir. 2011), when a law includes a knowledge requirement, plaintiffs have standing only if "they plan to 'knowingly'" engage in the proscribed conduct. *Tex.*

State LULAC v. Elfant, 52 F.4th 248, 256 (5th Cir. 2022); *see Reynolds*, 89 F.4th at 1079 (proscribed conduct included a knowledge requirement).

Here, Plaintiffs alleged only that they were "unsure" about the READ Act's applicability, *see, e.g.*, App. 49; R. Doc. 20-3, ¶ 6; App. 117; R. Doc. 24-6, ¶ 31—a reference to their vagueness claim, *see* R. Doc. 23, at 44. They did not allege any desire to violate the Act. Plaintiffs never disputed that they failed to allege an intent to violate the READ Act; they only disputed the legal relevance of that failure. *See* R. Doc. 42, at 6-7; R. Doc. 43, at 5-6. Nevertheless, in an unsupported sentence, the district court stated that Plaintiffs "alleged that they want to accept signatures" in violation of the READ Act. Add. 32; App. 300; R. Doc. 50, at 32. Neither the district court nor Plaintiffs have identified evidence supporting that conclusion, and Arkansas is unaware of any.

Because Plaintiffs have not alleged a desire to violate the READ Act, they have not alleged an injury in fact from enforcement of that Act, so the courts lack Article III jurisdiction over this claim.

C. Plaintiffs lack an injury from § 7-9-601's paid-canvasser list because their alleged injury is public disclosure, which § 7-9-601 does not require, and their claim is unripe.

Plaintiffs cannot establish an Article III injury caused by Arkansas Code § 7-9-601(a)(2)(C) because that statute does not cause the alleged injury. Plaintiffs

assert the *public* disclosure of paid-canvasser information as the alleged injury. *E.g.*, App. 20; R. Doc. 2, ¶ 32 ("public disclosure"); R. Doc. 23, ¶ 80 (same). And they admit that the public disclosure is caused, not by § 7-9-601(a)(2)(C), but by FOIA. *See, e.g.*, App. 20; R. Doc. 2, ¶ 32 (identifying FOIA as the source of public disclosure); R. Doc. 23, ¶ 80 (same). Plaintiffs, however, did not challenge FOIA, even though it is what causes their alleged injury. But "[a] litigant cannot, 'by virtue of his standing to challenge one government action [responding to a FOIA request], challenge other governmental actions [like § 7-9-601's paid-canvasser lists] that d[o] not injury him." *FEC v. Cruz*, 596 U.S. 289, 301 (2022) (citation omitted).

Plaintiffs' challenges to the paid-canvasser lists are also unripe. As Plaintiffs note, their alleged injury will occur only if a nonparty makes a FOIA request for the lists and then subsequently publicizes the paid canvassers' information. *See* App. 20; R. Doc. 2, ¶ 32; *see also* R. Doc. 23, ¶ 82. But they have offered no evidence that some third party will make a FOIA request to the Secretary for the paid-canvasser lists. All they mustered is a single instance over the last 13 years. *See* App. 20; R. Doc. 2, ¶ 32; *see also* R. Doc. 23, ¶ 82. Thus, they have not shown that they "face an injury that is 'certainly impending,'" so their claims are not "ripe for adjudication." *Pub. Water Supply Dist. No. 8 of Clay Cnty. v. City of Kearney*, 401 F.3d 930, 932 (8th Cir. 2000) (citation omitted).

II. PLAINTIFFS FAILED TO SHOW A CLEAR LIKELIHOOD OF SUCCESS.

Plaintiffs have also failed to show that they will likely succeed on the merits of their claims. For initiative laws like those here (with one exception[5]), Plaintiffs must show they are likely to succeed on two questions. First, do the challenged laws implicate the First Amendment? *SD Voice v. Noem*, 60 F.4th 1071, 1077 (8th Cir. 2023). Petition laws implicate the First Amendment if they "affect 'the communication of ideas associated with the circulation of petitions.'" *Miller v. Thurston*, 967 F.3d 727, 737 (8th Cir. 2020) (quoting *Dobrovolny v. Moore*, 126 F.3d 1111, 1113 (8th Cir. 1997)). They do not implicate the First Amendment if they "only make the process 'difficult,'" such as by raising signature thresholds or requiring the culling of certain signatures from a petition. *Id.* at 737-38 (citation omitted). Even regulating how a petition is signed—"core political speech"—is not a "First Amendment problem on its face." *Id.* at 738.

Second, if the First Amendment is implicated, which legal standard applies? *Id.* at 739. To answer that, the Court considers the burden's "character and magnitude." *Id.* (quoting *Timmons v. Twin Cities Area New Party*, 520 U.S. 351, 358 (1997)). If the burden is "severe," strict scrutiny applies, requiring "narrow tailor[ing]" and "a compelling state interest." *Id.* (citation omitted). If a burden is not

[5] *See infra* pp. 50-54 (analyzing § 7-9-601's paid-canvasser lists).

severe—such as there being "relatively simple ways" to comply with the law—a "lesser scrutiny applies," requiring only that the law "is reasonable, nondiscriminatory, and furthers an important regulatory interest." *Id.* at 739-40. States need not "present elaborate, empirical verification" to support their interests and may foresee and "respond to potential deficiencies." *Id.* at 740 (citation omitted).

A. Requiring petitioners to present photographic identification does not violate the First Amendment.

Act 240 requires petitioners, before signing, to present photographic identification to canvassers "to verify the [petitioner's] identity." Ark. Code Ann. § 7-9-109(g)(1). Without identification, a person cannot sign the petition. *Id.* § 7-9-109(g)(2). Among the many options that qualify as valid photo identification is a free voter identification card. *Id.* §§ 7-9-109(g)(4), 7-1-101(40)(C)(viii), 7-5-324(c)(1). The district court erred in three ways by holding Plaintiffs are likely to succeed on this claim.

First, the photo-identification requirement does not implicate the First Amendment; it regulates who may sign a petition. In *Hoyle v. Priest*, plaintiffs challenged a requirement that "only signatures of registered voters" counted towards the required signature threshold to be placed on the ballot. 265 F.3d 699, 703 (8th Cir. 2001). This Court upheld that requirement because it "merely regulate[d] who

qualifies to legally sign an initiative petition," *id.* at 704, and thus "did not implicate the First Amendment," *Miller*, 967 F.3d at 738 (characterizing *Hoyle*).

The photo-identification requirement is analogous: it regulates who qualifies to lawfully sign a petition based on the ability to photographically verify their identity. *See* § 7-9-109(g)(2). The district court disagreed because "Act 240 does not change the definition of qualified petitioners." Add. 55; App. 323; R. Doc. 50, at 55. But Arkansas law does not use the term "qualified petitioner" or have a unified legal provision specifying who is qualified to sign petitions. It instead regulates who may sign through a variety of provisions. *E.g.*, Ark. Const. art. 5, § 1; Ark. Code Ann. § 7-9-103(a)(1)(A). Even if there were a unified definition before Act 240, there is no reason Arkansas is prohibited from codifying a new regulation elsewhere. Nor does the fact that "it's hard to imagine how a canvasser would" view identification unless he "asked" change things. Add. 55; App. 323; R. Doc. 50, at 55. If it did, *Hoyle* would have implicated the First Amendment because the canvassers there similarly had to "verif[y]" their belief that petitioners truthfully provided their "name" and "residence" and were "legal voter[s]," Ark. Act 197 of 1991, § 1, when completing the "canvasser's affidavit," *Hoyle*, 265 F.3d at 702. Verifying photographic identification under Act 240 no more implicates the First Amendment than requesting names, residences, and voter status did in *Hoyle*. In short, Act 240 prohibits a person

from being a petitioner, unless he photographically verifies his identity. This falls squarely within laws that "regulate[] who qualifies to legally sign" and thus does not implicate the First Amendment. *Hoyle*, 265 F.3d at 704.

Second, the photo-identification requirement is not content based. The district court concluded otherwise because people can sign candidate-access petitions for "independent candidates and new political parties" without presenting photographic identification. Add. 58; App. 326; R. Doc. 50, at 58. That conclusion erroneously conflates constitutionally permissible speaker-based distinctions with content-based distinctions and fails to apply this Court's decision in *Wellwood v. Johnson*, 172 F.3d 1007 (8th Cir. 1999).

Speaker-based regulations do not "automatically" make a law content based. *Reed v. Town of Gilbert*, 576 U.S. 155, 170 (2015). Indeed, States may regulate different speakers engaged in different processes in different ways without engaging in content-based regulation. That is why a law distinguishing between speakers "roam[ing] the fairgrounds and discuss[ing] their beliefs" and speakers "ask[ing] for donations for their cause" is "content neutral." *City of Austin v. Reagan Nat't Advert. of Austin, LLC*, 596 U.S. 61, 72-73 (2022) (discussing *Heffron v. Int'l Soc. for Krishna Consciousness, Inc.*, 452 U.S. 640 (1981)). Such procedure- and speaker-based laws trigger strict scrutiny only if they "reflect[] a content preference," *Reed*,

675 U.S. at 170 (citation omitted), which the photo-identification requirement does not do. Instead, it is "agnostic as to [the] content" or "substantive message" of the speaker, looking only to the process in which the speaker is engaged. *City of Austin*, 596 U.S. at 68, 71.

If that were not enough, *Wellwood* confirms the First Amendment is not implicated. There, Arkansas increased the signature threshold for petitions on local-option election (*i.e.*, whether a county will be "wet" or "dry"), while the threshold for other issues was not similarly increased. *Wellwood*, 172 F.3d at 1008-10. This Court held that, when petitioning laws differentiate between types of issues—rather than viewpoint—within the *same* process, First Amendment claims fail, *id.* at 1010, because such laws "d[o] not implicate the First Amendment," *Miller*, 967 F.3d at 738 (characterizing *Wellwood*). That reasoning applies even more here, where Arkansas has treated two *different* processes—initiatives and candidate access—in different ways.

Third, even assuming the photo-identification requirement implicates the First Amendment, the district court incorrectly concluded that it imposes a severe burden. As the Supreme Court's decision in *Crawford v. Marion County Election Board* demonstrates, obtaining and presenting photographic identification in voting "surely does not qualify as a substantial burden." 553 U.S. 181, 198 (2008)

(plurality); *see id.* at 209 (Scalia, J., concurring) ("simply not severe"). The district court sidestepped *Crawford* by concluding that Arkansas requires a fee for photographic identification. Add. 57; App. 325; R. Doc. 50, at 57. But Plaintiffs never made that argument, and for good reason: valid photographic identification is free. Petitioners may use identification listed "under § 7-1-101(40)." Ark. Code Ann. § 7-9-109(g)(4). That list includes "[a] voter verification card," *id.* § 7-1-101(40)(C)(viii), for which the relevant official "shall not require or accept payment," *id.* § 7-5-324(c)(1). *Crawford*'s holding thus controls: the photo-identification requirement is not a severe burden.

In addition to the district court's misinterpretation of Arkansas law, its severity findings are deficient. It asserted that people (1) "may not have an ID" at "the farmers market or university campus" and (2) "may not feel comfortable showing their ID to a canvasser." Add. 57; App. 325; R. Doc. 50, at 57. But as *Crawford* noted, a photo-identification requirement does not become unconstitutional because people may not have identification with them for reasons "arising from life's vagaries." 553 U.S. at 197 (plurality). The possibility that some petitioners may go places without identification—something for which Plaintiffs provided no empirical evidence—does not suddenly convert the requirement into a facially severe burden. Nor does theoretical discomfort with showing identification "represent a significant

increase over the usual burdens of" signing a petition, *id.* at 198, which includes providing personal information: "name, address, birth date, and" signature, Ark. Code Ann. § 7-9-103(a)(1)(A).

Because the photo-identification requirement is not a severe burden, it need only be reasonable, nondiscriminatory, and further an important government interest. The requirement satisfies this lower scrutiny (though it would survive strict scrutiny for the same reasons) because Arkansas's interest in preventing fraud and promoting petition integrity is "paramount," *Dakotans for Health v. Noem*, 52 F.4th 381, 389 (8th Cir. 2022), and requiring photographic identification is an "eminently reasonable" way to accomplish those goals, *Crawford*, 553 U.S. at 209 (Scalia, J., concurring). The law is also nondiscriminatory. *See* Ark. Code Ann. § 7-9-109.

The district court therefore erred by holding that Plaintiffs are likely to succeed on their claims against Act 240.

B. Requiring petitioners to know what they are signing does not violate the First Amendment.

Under the READ Act, before signing a petition, petitioners must—in a canvasser's presence—either "read[]" or hear "the ballot title … read aloud." Ark. Code Ann. § 7-9-103(a)(1)(A). For canvassers, the READ Act only prohibits them from "knowingly accept[ing] a signature" from a petitioner who did not comply with the READ Act in their presence. *Id.* § 7-9-103(c)(11). As explained above, Plaintiffs

do not have standing to challenge this provision. *See supra* pp. 19-20. The district court also erred on the merits by (1) holding the READ Act implicates the First Amendment; (2) indistinguishably analyzing the READ Act with two other, unrelated laws; and (3) concluding the READ Act violates the First Amendment.

First, the READ Act does not implicate the First Amendment. Instead, it directs *petitioners* to read or hear the ballot title before signing; it does not direct *Plaintiffs* to alter their communication. Ark. Code Ann. § 7-9-103(a)(1). To avoid this legal reality, the district court speculated about "the real world" in a few hypotheticals concerning canvassers not "engag[ing] in their desired speech" because they would not want to "talk[] over someone." Add. 56; App. 324; R. Doc. 50, at 56. But speculation that social mores might increase "the difficulty of the process is insufficient to implicate the First Amendment." *Dobrovolny*, 126 F.3d at 1113.

Second, the district court muddled its analysis of the READ Act with Act 241's photo-identification requirement and Act 218's criminal-offense warning. Although in justifying its collapsed analysis, the district court said the three laws are "unconstitutionally burdensome when considered individually," Add. 54; App. 322; R. Doc. 50, at 54 n.23, its order shows it never actually did that individualized analysis, *see* Add. 57; App. 325; R. Doc. 50, at 57 (analyzing only the photo-identification requirement's burden). Instead, the burden analysis was based on the district court's

view that "together" the "laws … impose a severe burden." Add. 56-57; App. 324-25; R. Doc. 50, at 56-57.[6]

The district court offered no legal authority allowing it to collapse these disparate acts together, *id.*, and caselaw indicates each must be analyzed separately. For example, in *Initiative & Referendum Institute v. Jaeger*, this Court analyzed two canvasser regulations—a residency requirement and a commissions ban—independently, even though both directly regulated canvassers and plaintiffs asserted that both imposed the same burden of making it more difficult to "collect signatures." 241 F.3d 614, 617-18 (8th Cir. 2001); *see Miller*, 967 F.3d at 738-39 (independently analyzing laws at step one: whether they implicate the First Amendment). Independent analysis also aligns with Plaintiffs' burden to show Article III standing "with respect to each provision they challenge." *Reynolds*, 89 F.4th at 1076 (citation omitted). The district court erred by not independently analyzing these disparate laws.

Third, even if the First Amendment were implicated, the READ Act does not impose a severe burden because "one can imagine relatively simple ways" to comply. *Miller*, 967 F.3d at 740. Because it only penalizes *knowing* violations, a canvasser

[6] To the extent the district court similarly collapsed its analysis of the criminal-offense warning and photo-identification requirement, that is another reason to find Arkansas is likely to succeed on those claims.

could, for example, simply ask a petitioner to confirm they read or heard the ballot title. That simple question is less burdensome than multi-step procedures this Court has held are not severe. *See Miller*, 967 F.3d at 740 (simple to "advertise" on "traditional and social media," to "bring the sterilized petition" to private homes, and to "safely transfer[]" the sterilized petition "with little to no contact"). Lesser scrutiny therefore applies.

Applying that scrutiny, the READ Act is nondiscriminatory because it applies to all topics. It furthers Arkansas's paramount interest in protecting the integrity of the process against fraud, corruption, and unintentional mistakes. And it is a reasonable way to achieve those goals, allowing petitioners to confirm they are not accidentally signing the wrong petition (after all, petitions are circulated together, *see* App. 44; R. Doc. 20-2, ¶ 4) or being tricked by bad actors into signing the wrong petition (indeed, Arkansas has a history of fraud in the initiative process, *see supra* pp. 3-5). Moreover, even if strict scrutiny applied, the READ Act would survive for the same reasons.

The district court discredited Arkansas's interest, insinuating that it must wait to suffer the specific harm the READ Act seeks to prevent before having a sufficient interest. *See* Add. 60; App. 328; R. Doc. 50, at 60 (implying Arkansas—not Plaintiffs—was required to "offer[] evidence" of fraudulent conduct). But as this

Court previously explained, "Arkansas need not allow itself to be harmed by such ills before enacting appropriate measures to prevent harm." *Miller*, 967 F.3d at 740 (citation omitted). By enacting the READ Act, the Arkansas Legislature "respond[ed] to potential deficiencies … with foresight." *Id.* (quoting *Timmons*, 520 U.S. at 365). It did not need "to present elaborate, empirical verification of the weightiness of [the] asserted justifications," especially considering the undisputed history of fraud and the practical concerns of distributing multiple petitions together. *Id.* (citation modified).

C. It does not violate the First Amendment to require paid canvassers to reside and be domiciled in Arkansas.

Under Act 453, a paid canvasser must both (1) reside in Arkansas and (2) be domiciled in Arkansas. Ark. Code Ann. § 7-9-103(a)(8); *see id.* § 7-9-103(d)(1) (prohibiting sponsors from knowingly hiring paid canvassers who are not Arkansas residents and domiciliaries). Although the district court held a separate provision requiring canvassers to be Arkansas residents was likely constitutional, it concluded that Act 453's paid-canvasser residency and domicile requirements were unconstitutional because it was "skeptical" of Arkansas's "reason for Act 453's enactment." Add. 45; App. 313; R. Doc. 50, at 45. In doing so, it relied on *Jaeger* to uphold one residency requirement, while holding the other residency was likely unconstitutional

without addressing *Jaeger*. Indeed, it did not engage in the sliding-scale analysis required by this Court's precedents at all.

Act 453 does not impose a severe burden. As Plaintiffs conceded, the number of canvassers available before and after Act 453 is "pretty much the same"; canvassers are now "just … all from Arkansas." Tr. 53:12.[7] Thus, Plaintiffs themselves have "demonstrate[d] that no severe burden has been placed on those wishing to circulate petitioners." *Jaeger*, 241 F.3d at 617. Lesser scrutiny applies.

Next, because there is no severe burden, *Jaeger* controls the means-ends analysis. Residency and domicile requirements serve Arkansas's "compelling interest in preventing fraud" without "unduly restrict[ing] speech." *Id.* at 615-16. Limiting paid canvassers to people who will remain in Arkansas after circulating, "ensur[es] that circulators [can] answer to [potential] subpoena[s]" afterwards. *Id.* at 616. These requirements also promote "grass-roots support" and prevent "moneyed, out-of-state special interest groups" from dominating the process. *Id.* at 617. Having

[7] The district court implied Plaintiffs' concession as limited to "the residency requirement." Add. 45; App. 313; R. Doc. 50, at 45. But as Plaintiffs' counsel began his argument, he explained he was discussing the residency and domicile requirements together. *See* Tr. 50:12 ("combin[ing]" the discussion). And immediately after the concession, counsel linked it to "the residence requirement and the domicile requirement." Tr. 53:15-16. And toward the colloquy's end, the district court confirmed counsel had "covered the domicile requirement [and] the requirement that … [canvassers be] residents." Tr. 54:22-55:2.

Arkansas-based canvassers also helps sponsors obtain effective Arkansas background checks. *See supra* pp. 4-5.

Although the district court implied otherwise, Arkansas is not required to wait until it is harmed by the specific issue Act 453 seeks to prevent. *See Miller*, 967 F.3d at 740. Regardless, Plaintiffs' counsel conceded that before Act 453 "canvassers were coming from out of state," "getting [a temporary] residence[,] and then leaving after the campaign was over." Tr. 55:9-11; *see supra* p. 5. Arkansas constitutionally enacted Act 453 to prevent continuing harm to the interests approved in *Jaeger*.

D. Requiring canvassers to affirm that they followed the law while canvassing does not violate the First Amendment.

Under Act 241, after collecting signatures, a canvasser must file an affidavit "certifying that [he] has complied with the Arkansas Constitution and all Arkansas law regarding canvassing, perjury, forgery, and fraudulent practices in the procurement of petition signatures." Ark. Code Ann. § 7-9-111(j)(1). Generally, signatures collected by a canvasser cannot be counted until the affidavit is filed. *Id.* § 7-9-111(j)(2). The district court erred by holding that this requirement (1) implicates the First Amendment and (2) fails constitutional scrutiny.

First, the post-circulation affidavit implicates free-speech rights only if it affects "the communication of ideas associated with the circulation of petitions." *Miller*, 967 F.3d at 737-38 (citation omitted). The affidavit requirement, however, does

not regulate any communication, much less communication during petition circulation. It is an after-the-fact confirmation that canvassers complied with the law. Plaintiffs never responded to Arkansas's argument that the affidavit requirement does not implicate the First Amendment. *See* R. Doc. 42, at 12-13. The district court, however, *sua sponte* concluded that Plaintiffs' First Amendment rights were implicated because canvassers' failure to file an affidavit would "nullif[y]" the "core political speech" of nonparty petitioners who "*sign*[] a petition." Add. 61-62; App. 329-30; R. Doc. 50, at 61-62 (quoting *SD Voice*, 60 F.4th at 1078). The district court's reliance on nonparties to find a First Amendment right (raised for the first time in its order) is flawed for two reasons.

For one, it raises third-party standing problems that Plaintiffs cannot overcome. Usually, plaintiffs "may only assert [their] own injury in fact and cannot rest [their] claim to relief on the legal rights or interests of third parties." *Hodak v. City of St. Peters*, 535 F.3d 899, 904 (8th Cir. 2008) (citation modified). As this Court has explained, third-party standing requires the plaintiff to show the third party cannot assert his own right and to "actually assert the rights of the third party, supported by allegations in the record." *Id.* at 904-06. Plaintiffs satisfied neither requirement here. After all, it was the district court that devised the nonparty-petitioner-rights theory. *See* Add. 61-62; App. 329-30; R. Doc. 50, at 61-62. Perhaps the district court

was trying to analogize to *Dakotans for Health*, where this Court held that sponsors may have standing to challenge canvasser regulations when sponsors' and canvassers' legal "interests are highly intertwined, if not inseparable." 52 F.4th at 387. But here, there is no statutory scheme that intertwines sponsors' interests with petitioners' interests in such a way that they are "inseparable." *Id.* That's even truer where Plaintiffs have not alleged—or even tried to allege—either the requisite relationship with petitioners or petitioners' inability to assert their own rights. *See Kowalski v. Tesmer*, 543 U.S. 125, 130 (2004).

For another, because Plaintiffs never advanced the district court's position, and it did not arise during the hearing, Arkansas was deprived of any opportunity to address it. The district court thus violated the essence of "our adversarial system" by ignoring "the principle of party presentation." *United States v. Sineneng-Smith*, 590 U.S. 371, 375 (2020). Under that principle, the district court was required to "rely on the parties to frame the issues for decision" and then act as a "neutral arbiter of matters the parties present." *Id.* (citation omitted). But the district court decided to stop "call[ing] balls and strikes" and take its own "turn at bat." *Clark v. Sweeney*, No. 25-52, 2025 WL 3260170, at *1 (U.S. Nov. 24, 2025) (citation omitted).

Not only did the district court violate that bedrock principle related to Plaintiffs' challenge to the post-circulation affidavit, it also did so throughout its order:

from making factual findings without support,[8] to relying on passing sentences in Arkansas caselaw based on now-repealed statutes,[9] to ignoring statutory lists to claim Arkansans must pay for valid photographic identification.[10] The district court decided that it should "sally forth … looking for wrongs to right" in Arkansas's initiative laws—presumably because of its barely contained skepticism of Arkansas's democratically elected representatives. *Compare* Add. 62; App. 330; R. Doc. 50, at 62 (asserting without evidence that the Legislature's true purpose is "to make disqualifying citizen petitions easier and more efficient"), *with Alexander v. S.C. State Conf. of the NAACP*, 602 U.S. 1, 6 (2024) (requiring courts to "start with a presumption that the legislature acted in good faith"). That's not the courts' role and is reversible error. *See Sineneng-Smith*, 590 U.S. at 780 (vacating and remanding); *Clark*, 2025 WL 3260170, at *2 (same).

Second, even if the First Amendment were implicated, the district court incorrectly held the post-circulation affidavit fails "any level of scrutiny." Add. 62, App. 330; R. Doc. 50, at 62.

[8] *See supra* p. 20.

[9] *See supra* pp. 18-19.

[10] *See supra* p. 27.

As a threshold matter, the post-circulation affidavit is not a severe burden; the district court's contrary conclusion was based on a misapplication of the "character and magnitude" analysis. *Miller*, 967 F.3d at 739 (citation omitted). The district court was concerned about the supposedly "draconian" measure of "invalidat[ing] … signatures collected by a canvasser" who does not affirm he followed the law. Add. 62, App. 330; R. Doc. 50, at 62. But the burden inquiry is about a party's *ability* to comply—not the downstream effects of a failure to comply. Or as this Court has put it, the inquiry is focused on "imagin[ing] relatively simple ways … [to] comply," *Miller*, 967 F.3d at 740, not forecasting the later effects of not complying. *Cf. Ams. for Prosperity Found. v. Bonta*, 594 U.S. 595, 610 (2021) (distinguishing between "the severity of any demonstrated burden" and "the scope of the challenged restrictions"). Complying with the affidavit requirement is simple: canvassers need only sign a short affidavit confirming they followed the applicable law. Ark. Code Ann. § 7-9-111(j)(1). The lower level of scrutiny applies.

Next, the district court's means-ends analysis contains factual and legal errors. For one, it said "petition part affidavits" already serve any interest Arkansas has. Add. 62, App. 330; R. Doc. 50, at 62. But those affidavits do not require canvassers to affirm their compliance with *all* Arkansas law; they require only verification that a canvasser complied with the READ Act, circulated correct copies of

certain documents, and believes petitioners provided some truthful information. *See* Ark. Code Ann. § 7-9-109(a). The post-circulation affidavit provides far greater coverage, requiring all canvassers to verify compliance with *all* applicable laws. *Id.* § 7-9-111(j)(1). The district court did not acknowledge the different purposes and scopes of those laws.

Similarly, as explained above, before Act 241's post-circulation affidavit, paid and volunteer canvassers were not required to verify that they followed all applicable laws *while* canvassing. *See supra* p. 6. The district court rejected this description as "misleading" because *paid* canvassers—not volunteer canvassers—submit "[a] signed statement" *before* collecting signatures "that they read and understand the applicable law and have not been convicted of a disqualifying offense." Add. 24; App. 292; R. Doc. 50, at 24 (citing Ark. Code Ann. § 7-9-601(d)(3)-(4)). The district court's "misleading" accusation overlooks several important distinctions:

1. *The distinction between paid and volunteer canvassers.* The district court ignored that volunteer canvassers are not required to comply with the signed-statement requirement that it cited. *See* § 7-9-601(d) ("paid canvasser"). This is a significant gap in coverage that Act 241's post-circulation affidavit fills: one need look no further than a Plaintiff, who previously organized an "all-volunteer canvassing effort" of "approximately 750

volunteer canvassers" and "expects that volunteers will collect most of its signatures" this cycle. R. Doc. 25, at 16, 18. Without the post-circulation affidavit, volunteer canvassers verify nothing about their understanding of or compliance with the laws identified in paid canvassers' pre-circulation statement.

2. *The distinction between the contents of the pre-circulation statement and the post-circulation affidavit.* Under § 7-9-601, a paid canvasser confirms *before* canvassing that he *understands* what is lawful. Under Act 241, all canvassers affirm *after* canvassing that they *did* what was lawful.

These distinct scopes vindicate different interests.

Finally, after misinterpreting the scope of Arkansas's laws, the district court declared there was "[n]othing in the record" to show the post-circulation affidavit "actually serves any interest." Add. 62, App. 330; R. Doc. 50, at 62. But the district court's requirement that Arkansas present hyper-specific evidence (at the preliminary-injunction stage no less) misunderstands the test: Arkansas is "not required to present elaborate, empirical verification" but may "respond to potential deficiencies" "with foresight." *Miller*, 967 F.3d at 740 (citation omitted); *see Crawford*, 553 U.S. at 194-95 (plurality) (a substantial interest in fraud prevention and election integrity is furthered by addressing "in-person voter impersonation at polling places,"

even without "evidence of any such fraud actually occurring"); *Brnovich v. DNC*, 594 U.S. 647, 672, 685-86 (2021) (legislatures can take proactive, prophylactic measures to deter fraud and increase voter confidence).

Requiring canvassers to confirm they followed the law while collecting signatures reasonably protects the integrity of and public confidence in the initiative process. Not only did Arkansas present significant evidence of the continued presence of bad actors in Arkansas's initiative process, *see supra* pp. 3-5, but also this Court has explicitly recognized "that Arkansas has encountered fraud in the initiative process before, meaning its interest is legitimate as well as important," *Miller*, 967 F.3d at 740. The post-circulation affidavit is nondiscriminatory, *see* § 7-9-111(j)(1), and even if it were not, it would survive strict scrutiny for these same reasons.

E. Providing equal time to sponsors to collect extra signatures after filing a petition does not violate the First Amendment.

Under Act 241, a canvasser who files a post-circulation affidavit may "not collect additional signatures" while the Secretary "determines [if] the sponsor of the … petition is eligible for" a 30-day cure period. Ark. Code Ann. § 7-9-111(d), (k). The Secretary has up to 30 days from the day the sponsor files the petition to determine if the sponsor is eligible for a cure period. *Id.* § 7-9-111(a). Although this provision likely implicates the First Amendment under *SD Voice*, where petition filing deadlines implicated the First Amendment because they regulated the sponsor's

ability to convey a message, *see* 60 F.4th at 1078,[11] it is not a severe burden and passes constitutional scrutiny.

To start, the district court declared that pausing signature collection "for up to thirty days is a severe burden"—without considering that canvassers may continue advocating for a petition in any other way. Add. 64; App. 332; R. Doc. 50, at 64. But alternative methods of expression is the exact type of fact courts must consider when evaluating "the degree of the burden." *SD Voice*, 60 F.4th at 1079. And the district court did not consider that, other than the short time between filing a petition and before the cure period, canvassers are free to collect signatures. Compare those two overlooked facts—that an up-to-30-day pause on signature collection is a limited period within the signature-collection period and that canvassers may advocate for a petition in any other way during that pause—to Plaintiffs' only evidence about the burden: one affidavit's paragraph in stating that only during "[t]he first few days" of the Secretary's 30-day review there would be an undefined

[11] Even so, as *SD Voice* explains, "evidence of successful petitions despite the filing deadline" can show there is no First Amendment burden if the number of successful petitions remains steady before and after the challenged requirement. 60 F.4th at 1079. Here, the evidence shows that the number of initiated petitions that make it to the ballot has remained steady for over a century. *See supra* p. 3. We do not currently know if the initiatives on the November 2026 ballot will remain successful at the same rate.

"disrupt[ion]" in collecting signatures. App. 53; R. Doc. 20-4, at 5. The equal-time provision's burden is not severe.

The equal-time provision is nondiscriminatory, reasonable, and furthers important government interests. First, it provides a level playing field, promoting confidence and integrity in the process, by giving all sponsors an equal time to collect signatures for the cure period. That is because, without the equal-time provision, sponsors could continue collecting signatures during the Secretary's 30-day review window under § 7-9-111(a). Then, because the Secretary's cure-period determination could be made at any time during those 30 days, a sponsor who obtained a cure period on the tenth day of the Secretary's review would have 20 fewer days to collect signatures than a sponsor who obtained a cure period on the thirtieth day of the Secretary's review. Act 241's equal-time provision limits the disparate treatment of sponsors, whether because of happenstance or because a hypothetical Secretary artificially gives a favored petition more time. Second, it avoids petitioner confusion. Without Act 241's equal-time provision, sponsors—even those whose petitions are not entitled to a cure period—"common[ly] … collect signatures" during the Secretary's review. Add. 63; App. 331; R. Doc. 50, at 63. Petitioners who sign petitions that have already failed will be misled into thinking they are engaging in a political act when, in fact, their signatures are futile. Act 241's equal-time provision limits

that confusion. The equal-time provision achieves these interests in reasonable, nondiscriminatory ways. It would also survive strict scrutiny for these reasons and is thus constitutional.

F. Making ballot titles accessible to the average adult does not violate the First Amendment.

Act 602's Readability Requirement prohibits the Attorney General from certifying a ballot title above an eighth-grade reading level. Ark. Code Ann. § 7-9-107(l)(1). As explained above, AR Rights' claim is moot. *See supra* pp. 17-19. But if the Court reaches the merits, the district court erred by finding that the Readability Requirement is severe, is content based, and fails means-end scrutiny.

First, Plaintiffs themselves prove that compliance with the Readability Requirement is not severe. Indeed, all of them have complied with it. *See supra* p. 17. And other States have an eighth-grade *or lower* readability requirement for many documents in complex, technical fields—from medical documents, *see* R.I. Gen. Laws 27-74-11(c)(1) (eighth-grade level); to public government documents, *see* Minn. Stat. § 142A.08(a) (seventh-grade level); and insurance papers, *see, e.g.*, S.C. Code Ann. § 37-4-201(2) (seventh-grade level). If readability requirements are such a severe burden, one may wonder why it appears these other States' readability requirements have never been challenged. It is because the Readability Requirement is not facially

severe, and it is certainly not severe as applied to AR Rights, whose ballot title has been certified. *See supra* p. 17. Lesser scrutiny applies.

Second, the district court erred by holding the Readability Requirement content based in the same ways it erred when holding Act 240's photo-identification requirement is content based. *See supra* pp. 25-26. In short, state laws are not subject to strict scrutiny merely because they treat different speakers engaged in different processes in different ways. Those distinctions only call for strict scrutiny if they "reflect[] a content preference." *Reed*, 675 U.S. at 170 (citation omitted). Here, the district court asserted that the Readability Requirement is content based on "the state versus local distinction"—that is, "the same sponsor … is subject to different regulations … based on whether the petition seeks to change state law or local law." Add. 40; App. 308; R. Doc. 50, at 40. But take the very example the district court used: a sponsor proposed a statewide petition for elections "with hand-marked, hand-counted paper ballots" and then advanced local petitions for "hand-marked, hand-counted paper ballots." App. 226, 231; R. Doc. 39-4, at 1, 6. The Readability Requirement treats these differently, not because of the content (the desirability of hand counting ballots), but because of the speaker (a statewide petition sponsor versus a local petition sponsor). The Readability Requirement is thus "agnostic as to [the] content" or "substantive message" of the speaker, looking only to the process

in which the speaker is engaged. *City of Austin*, 596 U.S. at 68, 71. It is not content based.

Third, the Readability Requirement furthers an important government interest in a reasonable and nondiscriminatory way. Arkansans are entitled to understand what they are voting on, so the Readability Requirement was enacted to ensure a "fair, transparent, and uniform" initiative process for all Arkansans, making sure they would not be misled by ballot titles using technically true language but in a "deficient, confusing, or misleading" way. Ark. Act 602 of 2020, §§ 1, 4. Arkansas's interest in preventing "fraud and corruption" and promoting general "transparency and accountability" is "paramount." *Dakotans for Health*, 52 F.4th at 389. And its interest in securing public confidence in the system is compelling. *Crawford*, 553 U.S. at 197 (plurality). Those goals are reasonably achieved by the narrowly tailored Reading Requirement, which uses an eighth-grade reading level because the average U.S. adult "reads at an eighth-grade level." App. 265-66; R. Doc. 39-8, at 1-2. And the Readability Requirement is nondiscriminatory; in fact, it is inclusionary, allowing more people to understand what they are voting for.

In the end, it appears the district court merely disagreed with the Legislature's goal. After doing some self-guided "experiment[ation]" with the grade-level formula, Add. 43; App. 311. R. Doc. 50, at 43, the district court ignored Arkansas's

interests because the Secretary did not "present any evidence that voters were in fact confused or misled"—other than recent ballot titles with soaring-high reading levels, Add. 42; App. 310; R. Doc. 50, at 42. But Arkansas is not required to "present elaborate, empirical verification" to support its interests and may foresee and "respond to potential deficiencies." *Miller*, 967 F.3d at 740 (citation omitted). As Arkansas explained below, initiated amendments have lately involved complex regulatory regimes. *See, e.g.*, Ark. Const. amend. 98, §§ 1-26 (medical marijuana); *id.* amend. 100, §§ 1-11 (casino gaming). Those ballot titles have risen up to 25.1 and 18.1 grade levels—well above the average adult's reading level. *See supra* p. 8. Not to mention, one section of the medical-marijuana amendment was recently addressed by the Arkansas Supreme Court because it was so poorly drafted that its text was "inoperable," unless the court applied the absurdity doctrine to supply meaning. *Arkansas v. Good Day Farm Ark., LLC*, 725 S.W.3d 1, 15-22 (Ark. 2025). All that provides more than enough basis for the Readability Requirement. The Readability Requirement thus would survive any level of scrutiny.

G. A warning that petition fraud is a criminal offense does not violate the First Amendment.

Under Act 218, a canvasser cannot collect a signature from a petitioner, unless the canvasser discloses six words: "petition fraud is a criminal offense." Ark. Code

Ann. § 7-9-103(a)(7). The district court incorrectly held this violates the First Amendment for three reasons.

First, Act 218's burden is not severe. The district court found otherwise because—it claimed—that Arkansas did "not attempt to rebut the evidence of the severe burdens." Add. 56; App. 324 R. Doc. 50, at 56. Not so. In briefing and at the hearing, Arkansas explained the time it takes a canvasser to convey six words is "minuscule," R. Doc. 39, at 39, taking maybe "two seconds," Tr. 106:3. The district court erred; Act 218's two-second compliance is not severe.

Second, because Act 218 is not a severe burden, it need only be reasonable, nondiscriminatory, and further an important government interest. Act 218 protects the integrity of the process from petition fraud and maintains public confidence. After all, Arkansas regularly sees signatures that violate the law and thus could have been petition fraud. R. Doc. 39, at 39; *see* Ark. Code Ann. § 5-55-601(b)(1)(A), (2)(C) (defining "petition fraud"). Act 218 achieves Arkansas's interest in a reasonable, nondiscriminatory way: giving would-be bad actors one last out before committing a crime.

Third, the district court alternatively held Act 218 unconstitutional because it compels speech and is thus subject to strict scrutiny. Add. 58-59; App. 326-27; R. Doc. 50, at 58-59. This conclusion ignored Arkansas's "considerable leeway" to

regulate the initiative process. *SD Voice*, 60 F.4th at 1077 (quoting *Buckley v. Am. Const. L. Found., Inc.*, 525 U.S. 182, 191 (1999)). And when States have such "regulatory authority," they may require people in certain positions "to provide truthful information relevant to" another's decisions. *B.W.C. v. Williams*, 990 F.3d 614, 621 (8th Cir. 2021) (county health officials required to provide parents vaccine information). In those situations, a person's "compelled speech rights are not implicated." *Id.* (citation omitted). This is just what Act 218 does: uses Arkansas's leeway over the regulatory process of petitioning to provide potential petitioners with the truthful information at the time of signing a petition that "petition fraud is a criminal offense." Ark. Code Ann. § 7-9-103(a)(7).

The district court did not explain why that analysis, which relied on recent precedent from this Court, was wrong. Instead, it merely stated that "the Supreme Court has rejected states' general power to impose truthful disclosure requirements in any area where they have regulatory authority," citing *National Institute of Family & Life Advocates v. Becerra*, 585 U.S. 755 (2018) ("*NIFLA*"), and *Riley v. National Federation of the Blind of North Carolina, Inc.*, 487 U.S. 781 (1988). Add. 58-59; App. 326-27; R. Doc. 50, at 58-59. But those cases did not throw out all informed-consent requirements. Instead, *NIFLA* explained that such requirements should be "tied"

to the act the State seeks to provide information about. 585 U.S. at 770. Act 218's requirements are tied directly to the act it intends to inform—signing a petition.

In sum, Act 218 is likely constitutional under the lesser level of scrutiny, and it would survive heightened scrutiny for the same reasons. The district court erred concluding otherwise.

H. Maintaining a list of paid canvassers in the Secretary's Office does not violate the First Amendment.

The paid-canvasser list required by § 7-9-601(a)(2)(C), which has existed for over a decade, requires sponsors to "[p]rovide a complete list of all paid canvassers' names and current residential addresses to the Secretary." Importantly, the requirement does not provide for public disclosure of that information, so Plaintiffs lack standing. *See supra* pp. 21-23. And their claims also fail on the merits.

Under *Dakotans for Health*, challenges to requirements like the paid-canvasser list are reviewed under exacting scrutiny. 52 F.4th at 389.[12] Exacting scrutiny "requires 'a substantial relation between the disclosure requirement and a sufficiently important governmental interest.'" *Id.* (quoting *Bonta*, 594 U.S. at 607). The relation need not "be the least restrictive means of achieving [the State's] ends" but

[12] *Dakotans for Health* left open the possibility that strict scrutiny applies. *See* 52 F.4th at 389. Below, no party asserted that strict scrutiny was appropriate, so the district court applied exacting scrutiny. *See* Add. 46; App. 314; R. Doc. 50, at 46. This Court should do the same.

only "narrowly tailored." *Id.* (citation omitted). In concluding the paid-canvasser list fails exacting scrutiny, the district court erred in three ways.

First, as *Dakotans for Health* held in this same area of regulation, Arkansas has a "paramount" interest in "preventing corruption and protecting the integrity of the ballot-initiative process," which "includes not only combatting fraud and corruption, but also preventing mistakes like duplicate signatures and signatures from ineligible voters." *Dakotans for Health*, 52 F.4th at 389 (quoting *Miller*, 967 F.3d at 740). Public confidence in the process is itself a compelling interest. *See Crawford*, 553 U.S. at 197 (plurality). Although Plaintiffs conceded Arkansas has legitimate interests, *see* R. Doc. 25, at 50, the district court barely touched on them, neither confirming Arkansas had compelling interests nor finding it did not have them, *see* Add. 49; App. 317; R. Doc. 50, at 49. Arkansas appropriately tailored its law to those interests. The requirement has been tailored to paid canvassers, who have been the root of many issues in Arkansas's initiative process. *See supra* pp. 3-5. And it is tailored because it does not provide for public disclosure, only disclosure to the appropriate official. *See Dakotans for Health*, 52 F.4th at 390. The paid-canvasser list is thus unlike the laws at issue in *Buckley* and *Dakotans for Health*. The *Buckley* law required canvassers to wear a name badge while soliciting signatures. 525 U.S. at 197. Contrasting that requirement to documents filed with election officials, the Supreme

Court noted that name badges "force[] circulators to reveal their identities" *while* "deliver[ing] their political message," which "expose[d] the circulator to the risk of 'heat of the moment' harassment." *Id.* at 198-99. The same is true in *Dakotans for Health*. There, this Court noted a problem because the challenged law "required" canvassers' information "to be available for public viewing upon request" before and during circulation, instead of merely being "maintained by" certain individuals like the Secretary. 52 F.4th at 390.

Second, although the law only requires the paid-canvasser list to be maintained by the Secretary—no public disclosure required—Plaintiffs and the district court sidestepped this distinction from *Buckley* and *Dakotans for Health* by importing the requirements of an unchallenged law (FOIA) into § 7-9-601(a)(2)(C), and then the district court faulted Arkansas's tailoring for "fail[ing] to exempt" the paid-canvasser lists from FOIA. Add. 48; App. 316; R. Doc. 50, at 48. But Plaintiffs did not challenge FOIA, and the challenged law does not require public disclosure. That precludes their comparison to *Dakotans for Health*, and circles back to the standing issue: Plaintiffs cannot shoehorn standing as to an unchallenged law to challenge a different one. *See supra* pp. 21-23.

Third, the district court found § 7-9-602(a)(2)(C) is not narrowly tailored because it distinguishes between paid and unpaid canvassers. Add. 48; App. 316; R.

Doc. 50, at 48. To be sure, the Supreme Court and this Court has said "absent evidence to the contrary" States cannot distinguish between paid and unpaid canvassers. *Dakotans for Health*, 52 F.4th at 390 (quoting *Buckley*, 525 U.S. at 203-04). Arkansas, however, presented evidence about the increased risks posed by paid canvassers—from Arkansas's legislative findings in 2013, to a scholarly article written by the sitting Michigan Secretary of State, to more recent incidents that have occurred in Arkansas. *See supra* pp. 3-5. While it acknowledged the evidence's existence, the district court dismissed that evidence, in one conclusory sentence, as not "support[ing] the conclusion" that there is a difference between paid and unpaid canvassers. Add. 49; App. 317; R. Doc. 50, at 49. It's not clear what, if anything, Arkansas could present to satisfy the district court. The district court's analysis flies in the face of this Court's repeated acknowledgement that States are "not required to present 'elaborate, empirical verification.'" *Dakotans for Health*, 52 F.4th at 389 (quoting *Miller*, 967 F.3d at 740).[13]

[13] The district court also stated that, at the hearing, counsel "could not represent to the Court" when the Secretary reviews the paid-canvasser list. Add. 49; App. 317; R. Doc. 50, at 49. The discussion the district court appears to be referring to, however, was related to a different law Plaintiffs challenged that prohibits people being employed as paid canvassers if they have a disqualifying offense. *See* Tr. 69-80. The district court did not enjoin that provision. Add. 52; App. 320; R. Doc. 50, at 52.

I. The district court did not hold Plaintiffs to their burden on their facial challenges.

Plaintiffs facially challenge each law at issue here, and Intervenors also bring as-applied challenges to the Readability Requirement and READ Act. *See* R. Doc. 23, ¶¶ 131, 155; *see also* R. Doc. 13, at 6. That makes their case "hard to win," *Moody v. NetChoice, LLC*, 603 U.S. 707, 723 (2024), because facial challenges are "disfavored," *Brakebill v. Jaeger*, 905 F.3d 553, 558 (8th Cir. 2018). Plaintiffs must show the laws' "unconstitutional applications substantially outweigh [their] constitutional ones." *Id.* at 723-24. Neither the district court nor Plaintiffs applied that analysis, so Arkansas is likely to succeed on all facial challenges.

First, the district court flipped Plaintiffs' burden onto Arkansas. Without mentioning Plaintiffs' burden, the district court suggested in a footnote that it was Arkansas's burden to *dis*prove a law's facial invalidity, stating that Arkansas "d[id] not offer[] any applications of these laws for which the First Amendment analysis would differ." Add. 38; App. 306; R. Doc. 50, at 36 n.17 (citing *Free Speech Coal., Inc. v. Paxton*, 606 U.S. 461, 468 n.7 (2025)). But that pincite to *Paxton* confirms it is Plaintiffs' burden to show that a law's unconstitutional applications "substantially outnumber" its constitutional ones. 606 U.S. at 468 n.7.

Second, Plaintiffs provided no evidence to satisfy their burden regarding the laws' sweep. The original Plaintiffs failed to even respond to Arkansas's facial-

challenge argument below, *see* R. Doc. 42, and Intervenors did little more than claim facial challenges are proper because "[a]ll canvassers must comply with these requirements in exactly the same way." R. Doc. 43, at 44. But even when laws apply the same way, that does not mean the burdens they impose are the same. Indeed, Intervenors "acknowledge[d]" that at least some of the challenged laws "apply differently to different sponsors based on" facts specific to the sponsor. R. Doc. 25, at 33 n.15. And assuming the challenged laws implicate the First Amendment, Plaintiffs failed to show the laws would impose a facially severe burden, facially subjecting the laws to strict, not lesser, scrutiny.

Because the district court ignored Plaintiffs' burden, *see Brakebill*, 905 F.3d at 558-59, and Plaintiffs failed to assemble evidence to meet their burden, Arkansas is likely to succeed, *see Crawford*, 553 U.S. at 204 (plurality); *id.* (Scalia, J., concurring).

III. PLAINTIFFS DID NOT SHOW THE REMAINING PRELIMINARY-INJUNCTION FACTORS JUSTIFIED INJUNCTIVE RELIEF.

Not only did Plaintiffs fail to show likelihood of success on the merits, they failed to make a "clear showing" that the remaining preliminary-injunction factors merited "extraordinary" preliminary relief. *Winter*, 555 U.S. at 22, 24. The district court wrongly concluded otherwise by placing too much weight on the alleged constitutional violation and undervaluing Arkansas's harms based on an inapposite case that did not involve democratically enacted statutes. Add. 73-76; App. 341-44; R.

Doc. 50, at 73-76 (citing *Mahmoud v. Taylor*, 606 U.S. 522, 569 (2025)). This Court can thus also reverse based on Plaintiffs' failure to show that the irreparable-harm, balance-of-equities, and public-interest factors necessitated injunctive relief.

A. Plaintiffs would suffer no irreparable harm absent injunctive relief.

Plaintiffs failed to establish that they would suffer irreparable harm without extraordinary injunctive relief. The district court concluded that they would be irreparably injured based on only the alleged constitutional deprivation, Add. 73, App. 341, R. Doc. 50, at 73, but as Arkansas explains above, Plaintiffs' constitutional claims fail on the merits. And because of that, Plaintiffs have "not shown a threat of irreparable harm that warrants preliminary injunctive relief." *Powell*, 798 F.3d at 702.

In any event, Plaintiffs' delay in seeking injunctive relief related to laws that were enacted long before the 2025 Arkansas legislative session undermines their claimed irreparable harm. This Court has repeatedly admonished that "an unreasonable delay in moving for the injunction can undermine a showing of irreparable harm and is a sufficient ground to deny a preliminary injunction." *Ng v. Bd. of Regents of Univ. of Minn.*, 64 F.4th 992, 997 (8th Cir. 2023) (citation modified). Indeed, in one case, this Court concluded that a one-year delay was sufficient grounds to deny

a preliminary injunction. *See Adventist Health Sys./SunBelt, Inc. v. HHS*, 17 F.4th 793, 805 (8th Cir. 2021).

Yet here the district court granted a preliminary injunction related to laws that have existed for years. Plaintiffs waited over a decade to challenge the pre-collection disclosure requirements in 7-9-601(a)(2)(C). This delay in challenging these laws vitiates Plaintiffs' claims of irreparable harm stemming from those laws. *See, e.g.*, *Ng*, 64 F.4th at 997; *Adventist Health*, 17 F.4th at 805. The district court insisted it could overlook the delay because the risks of chilling have become heightened over the past decade and Plaintiffs submitted one declaration from a canvasser who reported harassment. Add. 73-74; App. 341-42; R. Doc. 50, at 73-74. But the district court ignored that the declaration explained that (1) the canvasser's address was disclosed due a separate law that Plaintiffs did not challenge (FOIA), R. Doc. 24-15, at 2, and (2) the reported harassment occurred at a canvassing event, not at the canvassers' home, *id.* at 3. Any alleged irreparable harm thus does not stem from the paid-canvasser lists themselves, so it does not justify enjoining enforcement of that law.

Moreover, original plaintiffs waited almost three months after suing to move for preliminary relief. If preliminary relief were truly necessary, they would not have waited so long.

The district court thus erred by concluding that Plaintiffs' irreparable harm weighed in favor of injunctive relief.

B. The balance-of-equities and public-interest factors weigh against injunctive relief, especially when the *Purcell* principle is applied.

The district court also erred by refusing to apply the *Purcell* principle and concluding that the balance-of-equities and public-interest factors justified granting a preliminary injunction.

For starters, the district court ignored that an injunction would inflict immediate irreparable harm on Arkansas and the public. It is well-established that "[*a*]*ny time* a State is enjoined by a court from effectuating statutes enacted by representatives of its people, it suffers a form of irreparable injury." *Trump v. CASA, Inc.*, 606 U.S. 831, 861 (2025) (emphasis added) (quoting *Maryland v. King*, 567 U.S. 1301, 1303 (2012) (Roberts, C.J., in chambers)). But the district court overlooked that irreparable harm occurs "any time" a State cannot implement democratically enacted statutes, *id.*, and seems to have assumed that this harm evaporated with its (incorrect) determination that Plaintiffs would likely prevail on their constitutional claims. But that assumption improperly collapses all the preliminary-injunction factors into the likelihood-of-success prong. All factors are important and must be assessed in more than "a cursory fashion" before granting a preliminary injunction, *see Winter*, 555 U.S. at 26, even when a First Amendment claim is asserted, *see NetChoice, LLC*

v. Fitch, 145 S. Ct. 2658 (2025) (Kavanaugh, J., concurring in denial) (reasoning that even though plaintiff had "demonstrated that it is likely to succeed on the merits" of their First Amendment claim, plaintiff had failed to "sufficiently demonstrate[] that the balance of harms and equities favored it").

Further, Arkansas and the public suffer irreparable harm tied to the enjoined enforcement of each law at issue. After all, the Arkansas Legislature enacted the laws to protect the integrity of the initiative process against fraud, corruption, and mistakes, *see supra* pp. 3-8, so enjoining enforcement of the laws removes that crucial protection. *See, e.g.*, *Purcell v. Gonzalez*, 549 U.S. 1, 4 (2006) ("Confidence in the integrity of our electoral processes is essential to the functioning of our participatory democracy."). Take the photo-identification requirement. Without being able to enforce that requirement, petitioners could sign Plaintiffs' petitions multiple times using different names, never verifying their identities. This risk of fraud is "real" and can "affect the outcome" of whether a petition receives enough signatures to go on a ballot. *Crawford*, 553 U.S. at 196 (plurality). Or consider the post-circulation affidavit and READ Act. If Arkansas cannot enforce those requirement, unscrupulous canvassers do not need to verify under oath that they followed all applicable laws while canvassing—something no other Arkansas law requires, *see supra* pp. 6, 40—and petitioners could easily sign the wrong petition due to mistake (as some petitions

are circulated together, App. 44; R. Doc. 20-2, ¶ 4) or by a canvasser misrepresenting what the petition actually says.

These harms cannot be remedied after the fact. *See Brakebill*, 905 F.3d at 560 (irreparable harm by allowing fraudulent voters to vote, even if after-the-fact prosecution available). For example, how can signatures collected in violation of these laws be perfectly excised from lawfully collected signatures? How is it in the public interest to allow the Plaintiffs to play by a different set of rules than every other sponsor? And how can the injury to Arkansas's sovereignty be undone, especially if a petition improperly makes it to the ballot and is then ratified? These harms are irreparable and certain; the district court erred by failing to consider them when balancing the equities.

The district court also erred by refusing to apply the *Purcell* principle in balancing the equities. The *Purcell* principle "reflects a bedrock tenet of election law: When an election is close at hand, the rules of the road must be clear and settled." *Merrill v. Milligan*, 142 S. Ct. 879, 880-81 (2022) (Kavanaugh, J., concurring in stay). The Supreme Court "has repeatedly emphasized that lower federal courts should ordinarily not alter the election rules on the eve of an election." *RNC v. DNC*, 589 U.S. 423, 424 (2020) (per curiam). Yet the district court concluded *Purcell* was inapplicable because "the 2026 general election is a year away" and Arkansas did not

claim an injunction would incentivize voters from going to the polls. Add. 75, App. 343, R. Doc. 50, at 75. But this analysis reads the *Purcell* principle and the evils it seeks to prevent far too narrowly.

As this Court has explained, "[t]he *Purcell* principle is a presumption against disturbing the status quo" and is "animate[d]" by "concerns over voter confusion, election administration issues, and public confidence in the election." *Carson v. Simon*, 978 F.3d 1051, 1062 (8th Cir. 2020). All these concerns exist here. While the district court focused on the election-day date for the 2026 general election, it overlooked that the initiative process is ongoing. Canvassers are collecting signatures. *E.g.*, R. Doc. 23, ¶ 11. And initiatives could be filed at any moment. Ark. Const. art. 5, § 1 (no later than four months before the election). So the district court's injunction changed the rules midstream and "disturb[ed] the status quo" that the Arkansas Legislature has the "exclusive[]" constitutional power to set in violation of the *Purcell* principle. *Carson*, 978 F.3d at 1062. An injunction creates confusion about what laws are enforceable for what petitions, complicates Arkansas's administration of the ballot-initiative process, and undermines the public's confidence in the process by preventing enforcement of laws that are necessary (and that the public viewed as necessary) to protect the integrity of the ballot-initiative process and deter fraud.

Accordingly, the district court should have applied the *Purcell* principle when balancing the equities.

Regardless, whether the *Purcell* principle applies or not, the balance-of-equities and public-interest factors weigh against injunctive relief, and the district court erred by concluding otherwise.

Conclusion

For these reasons, the Court should reverse the district court's preliminary injunction.

Respectfully submitted,

TIM GRIFFIN
Arkansas Attorney General

AUTUMN HAMIT PATTERSON
Solicitor General

NOAH P. WATSON
Deputy Solicitor General

OFFICE OF THE ARKANSAS
ATTORNEY GENERAL
101 West Capitol Avenue
Little Rock, Arkansas 72201
(501) 682-2700
noah.watson@arkansasag.gov

Counsel for Defendant-Appellant

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