IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
FAYETTEVILLE DIVISION

LEAGUE OF WOMEN VOTERS OF ARKANSAS, et al.,

Plaintiffs,

and

PROTECT AR RIGHTS, et al.

Intervenor Plaintiffs,

v.

COLE JESTER, in his official capacity as Secretary of State of Arkansas; and

TIM GRIFFIN, in his official capacity as Attorney General of Arkansas,

Defendants.

CIVIL ACTION NO. 5:25-CV-5087

DEFENDANTS' COMBINED RESPONSE IN OPPOSITION TO THE PRELIMINARY-INJUNCTION MOTIONS

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Introduction

States have compelling interests in protecting the integrity of their citizen-initiative process, including combatting fraud and corruption, preventing unintentional mistakes, and promoting transparency and accountability. *See Dakotans for Health v. Noem*, 52 F.4th 381, 389 (8th Cir. 2022). So it is no surprise that Arkansas adopted laws to protect the integrity of the citizen-initiative process. Yet Plaintiffs[1] and Intervenors[2] challenge a slew of those laws, such as laws that prohibit paid canvassers from being convicted fraudsters, require canvassers to affirm that they followed the law when collecting signatures, and prohibit canvassers from being paid in ways that are "directly linked to high levels of fraud." 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).

Plaintiffs and Intervenors cannot show that they are likely to succeed on any of their claims, much less satisfy the other factors to warrant the extraordinary remedy of a preliminary injunction. On top of that, many of their claims face insurmountable threshold issues that deprive this Court of jurisdiction to even consider them. Their motions for preliminary injunction should be denied.

Facts

For over 100 years, the Arkansas Constitution has allowed for citizen-led constitutional amendments and legislation; it has also permitted referendums on

[1] In this brief, "Plaintiffs" refers to the original Plaintiffs: League of Women Voters of Arkansas, Save AR Democracy, Bonnie Heather Miller, and Danielle Quesnell.

[2] In this brief, "Intervenors" refers to the Intervenor Plaintiffs: Protect AR Rights and For AR Kids.

legislation enacted by the General Assembly. *See* S.J. Res. 1, 37th Gen. Assemb., Reg. Sess. (Ark. 1909). Since then, Arkansans have judiciously invoked the initiative and referendum. For example, between 1910 (when initiatives were first allowed) and 2004, the ballot has averaged less than one citizen-initiated proposed amendment each election. *See* Jerald A. Sharum, *Arkansas's Tradition of Popular Constitutional Activism & the Ascendancy of the Arkansas Supreme Court*, 32 U. Ark. Little Rock L. Rev. 33, 53 (2009). That trend has largely held, with one citizen-initiated proposed amendment appearing on every statewide ballot since 2014, except 2020. *See List of Arkansas ballot measures*, Ballotpedia, https://ballotpedia.org/List_of_Arkansas_ballot_measures (last visited Aug. 26, 2025).

While the Arkansas Constitution's direct-democracy provisions provide a framework, they leave much to legislative discretion. *See Wells v. Purcell*, 592 S.W.2d 100, 105 (Ark. 1979) (explaining that the legislative power is "subject only to restrictions and limitations fixed by the constitutions of the United States and this state"). Thus, since the Arkansas Constitution first allowed for the initiative and referendum, the General Assembly has regulated the process. *See* Act 2 of 1911, § 8 (1st Ex. Sess.). And it has routinely updated the process to protect its integrity—combatting fraud and corruption, preventing unintentional violations, and promoting transparency and accountability.

For example, during the 2012 petition-gathering cycle, there were "widespread instances of apparent fraud, forgery, and false statements in the signature-gathering process" for three of four initiated petitions. Act 1413 of 2013, § 1(a)(6). For one of

those petitions, "56,000 to 80,000 signatures were removed … as possible frauds." David Harten, *Ballot initiatives being investigated for possible fraud*, Ark. Democrat-Gazette (Aug. 16, 2012).[3] Among all three, about 70% of the signatures were invalid. Act 1413 of 2013, § 1(a)(5); *see* Roby Brock, *Secretary of State Martin Eyeing Investigation of Petition Signatures*, Talk Business & Politics (July 27, 2012).[4] Although all types of canvassers were to blame, paid canvassers were particularly blameworthy. Act 1413 of 2013, § 1(a)(3), (b)(1). The seriousness of this widespread misconduct led the Arkansas State Police and sheriffs' offices to investigate. *See* Michael R. Wickline, *State police, 2 sheriffs sniff for petition fraud*, Ark. Democrat-Gazette (Aug. 17, 2012).[5]

In 2013, mere months after this widespread misconduct, the General Assembly set out "to restore the confidence and trust of the people in the initiative process" by making "sponsors and canvassers more accountable to the people." Act 1413 of 2013, § 1(d). The Legislature realized that without accountability, sponsors and canvassers "have an incentive to submit" and "will continue to obtain and submit" "forged and otherwise facially invalid signatures and make false statements to the Secretary of State." *Id.* § 1(a)(3), (b). Thus, the General Assembly passed a comprehensive suite of laws during the 2013 session to preserve the integrity of the initiative process: Act

[3] The article is attached as Exhibit 1 and available online here: https://www.arkansasonline.com/news/2012/aug/16/ballot-intiatives-being-investigated-possible-frau/.

[4] The article is attached as Exhibit 2 and available online here: https://talkbusiness.net/2012/07/secretary-of-state-martin-eyeing-investigation-of-petition-signatures/.

[5] The article is attached as Exhibit 3 and available online here: https://www.arkansasonline.com/news/2012/aug/17/state-police-2-sheriffs-sniff-petition-fr-20120817/.

312, Act 1085, Act 1413, and Act 1432. Among these petition-integrity provisions, the General Assembly added a new subchapter to the Arkansas Code to address issues with paid canvassers and a new section to address invalid signatures submitted to the Secretary of State. Act 1413 of 2013, §§ 18, 21. It also adjusted various other petition-related provisions in the Code.

But the revised system still had areas for improvement. So since 2013, the Arkansas legislature has continued to finetune the petition process to rehabilitate trust in and increase the integrity of the system.

I. Protecting the process from bad actors.

Many of the challenged laws were enacted as direct responses to sponsors and canvassers acting in bad faith.

A. Disqualifying offenses: § 7-9-601(d) — Residency, Domicile: § 7-9-103(a)(6); Act 453 of 2025 — Pre-collection Disclosure: § 7-9-601(a)(2)(C); -126(b)(4)(A)

Since 2013, Arkansas law has required sponsors to "[p]rovide a complete list of all paid canvassers' names and current residential addresses to the Secretary of State." Act 1413 of 2013, § 21 (codified at Ark. Code Ann. § 7-9-601(a)(2)(C)). But this wasn't enough. During the next general session, the General Assembly added Arkansas Code Annotated § 7-9-601(d)(3), requiring paid canvassers to certify that they have not been convicted of, pleaded guilty to, or pleaded nolo contendere to certain disqualifying offenses, *see* Act 1219 of 2015, § 4, a certification that is ultimately provided to the Secretary of State. Ark. Code Ann. § 7-9-601(a)(2)(D). Over time the list of "disqualifying offense[s]" has ebbed and flowed, but it has generally included a variety of crimes of moral turpitude—including fraud, forgery, counterfeiting,

identity theft—and crimes of violence, election-law violations, drug-law violations, and sex offenses. Ark. Code Ann. § 7-9-601(d)(3)(B).

"To verify" that the paid canvassers were being truthful in their certifications, sponsors were required to "obtain, at [their] cost, from the Department of Arkansas State Police, a current state and federal criminal record search on every paid canvasser." *Id.* (codified at Ark. Code Ann. § 7-9-601(b)(1)). But because the State Police can only perform "Arkansas background checks," it was "impossible" for sponsors to obtain *federal* criminal background checks, so the Arkansas Supreme Court held that this provision was likely unconstitutional. *Thurston v. Safe Surgery Ark.*, 619 S.W.3d 1, at 15–16, 19 (Ark. 2021). Because of this, canvassers were "approaching Arkansas voters without first passing the required criminal history and criminal record searches," which was a "threat" to Arkansans' "personal information." Act 951 of 2021, § 9.

As soon as possible, the Arkansas legislature patched the hole to "protect voters from criminal canvassers." *Id.* It removed the impossible requirement at issue in *Safe Surgery*. Act 951 of 2021, § 4. And it added that a canvasser must be an Arkansas resident. *Id.* § 1 (codified at Ark. Code Ann. § 6-9-103(a)(6). This made the Arkansas-only background check more effective at "verify[ing]" whether a paid canvasser had a disqualifying offense. Ark. Code Ann. § 7-9-601(b)(1).

In 2024, paid canvassers again attempted to skirt Arkansas law—this time by trying to avoid the residency requirement and by extension deluding the efficacy of the Arkansas background check. Out-of-state canvassers who temporarily spent

nights in a Conway, Arkansas hotel—paid for by the petition sponsor—submitted certifications with their out-of-state residences "blacked out" and replaced with "the address of the … hotel in Conway." Tess Vrbin, *Arkansas law makers ask AG, ethics commission to investigate altered paper ballot petitions*, Ark. Advocate (Oct. 21, 2024).[6] The canvassers "claim[ed] that [they] were residents of the state while they … remained at the hotel." Lena Miano, *Paper ballot petition advocacy group spends thousands on labor and lodging*, Ark. Democrat-Gazette (Oct. 23, 2024).[7]

In response, the General Assembly again immediately acted. During this past session, the legislature responded to the attempt to evade the residency requirement by requiring "paid canvassers" to also be "[d]omiciled in the state." Act 453 of 2025, § 1 (to be codified at Ark. Code Ann. § 7-9-103(a)(7)(B)). And to hold sponsors (like the ones in 2024) accountable, sponsors will also be criminally liable if they "knowingly hire" a non-resident, non-domiciled paid canvasser. *Id.* § 2.

B. Commissions Ban: § 7-9-601(g)(1)

In the 2013 push to address petition fraud, Arkansas did not regulate compensation of paid canvassers. As time went by, however, it recognized the "consensus among scholars, practitioners, and even some courts that the practice of paying canvassers based on the number of signatures they collect is directly linked to high levels of fraud in the signature-gathering process." Benson, *Election Fraud & The Initiative*

[6] The article is attached as Exhibit 4 and available online here: https://arkansasadvocate.com/2024/10/21/arkansas-lawmakers-ask-ag-ethics-commission-to-investigate-altered-paper-ballot-petitions/.

[7] The article is attached as Exhibit 5 and available online here: https://www.arkansasonline.com/news/2024/oct/23/paper-ballot-petition-advocacy-group-spends/.

Process: A Study of the 2006 Michigan Civil Rights Initiative, 34 Fordham Urb. L.J. at 923. Thus, as part of the 2021 updates, the General Assembly made it illegal to pay canvassers on a per-signature basis ("Commissions Ban"). Ark. Code Ann. § 7-9-601(g)(1). "Paying canvassers per hour instead of for every signature is a policy that goes a long way in preventing fraud …." Ashley Lopez, *The price of a ballot signature is way up, and experts worry it's encouraging fraud*, NPR (Apr. 6, 2023).[8] And it's no wonder when canvassers get "upwards of $20 to $30" per signature. *Id.*

C. Post-circulation Affidavit, Cool-off Period: Act 241 of 2025

Before Act 241 of 2025, canvassers were required to verify to the Secretary of State that they had followed *some* laws but not all laws. *See* Ark. Code Ann. § 7-9-109; *see also id.* § 7-9-601(d)(4) (requiring a signed statement that the canvasser understands the relevant Arkansas law). For example, canvassers were not required to verify that they:

- Are 18 years old or older, *id.* § 7-9-103(a)(3);
- "[R]ead and underst[oo]d the Arkansas law applicable to obtaining signatures," *id.* § 7-9-601(d)(4); and
- Had not been convicted of election-law violations, fraud, or other disqualifying offenses. *Id.* § 7-9-601(d)(3).

To address this gap, Act 241 of 2025 requires canvassers to verify by affidavit that they have "complied with the Arkansas Constitution and all Arkansas law regarding canvassing, perjury, forgery, and fraudulent practices in the procurement of

[8] The article is attached as Exhibit 6 and available online here: https://www.nprillinois.org/2023-04-06/the-price-of-a-ballot-signature-is-way-up-and-experts-worry-its-encouraging-fraud.

petition signatures." Act 241 of 2025, § 1 (to be codified at Ark. Code Ann. § 7-9-111(j)(1)).

Act 241 also creates a cool-off period, prohibiting canvassers who submitted an affidavit to the Secretary of State from collecting signatures after a sponsor submits a petition to the Secretary and before the Secretary determines the sponsor is entitled to a 30-day cure period. Act 241 of 2025, § 1 (to be codified at Ark. Code Ann. § 7-9-111(k)). This provision creates uniformity among sponsors, who will each be allowed equal time to cure the petition. Without this uniformity, some sponsors will have more time (possibly significantly more time) to collect additional signatures, based solely on when the Secretary of State finishes the initial signature count. This serves several vital interests.

For one, it prevents confusion among petitioners. Without the cool-off period, canvassers for petitions that do not receive additional time may mislead petitioners into believing that their signature matters if they sign during the liminal period between petition submission and the Secretary's notification that a sponsor may submit additional signatures. For another, it limits a hypothetical election official's ability to manufacture additional time for sponsors of a favored measure to collect signatures. For example, a statewide initiative petition must be submitted four months before the election. Ark. Const. art. 5, § 1. Then, the Secretary of State has a 30-day window to determine the petition's sufficiency. Ark. Code Ann. § 7-9-111(a). Before the cool-off period, any petition that was entitled to an additional 30 days to collect signatures but that had its sufficiency determined near the start of the Secretary's

window, would have less time to collect signatures than a similarly situated petition whose sufficiency was determined at the end of the Secretary's window.

D. Criminal-Offense Notice: Act 218 of 2025 — Photo-ID Requirement: Act 240 of 2025

Although canvassers are now required to verify that they are following the law, petitioners are not. Thus, the General Assembly determined that there should be additional guardrails that apply to petitioners. It enacted Act 218 of 2025, which requires canvassers, before obtaining a signature from a potential petitioner, to "disclos[e] to the potential petitioner that petition fraud is a criminal offense." Act 218 of 2025, § 1 (to be codified at Ark. Code Ann. § 7-9-103(a)(7)). A person—canvasser or petitioner—engages in "petition fraud" if he "knowingly" does one of several specific actions, including "[s]ign[ing] a name other than his or her name to a petition" or "[s]olicits or obtains a signature to a petition knowing that the person signing is not qualified to sign the petition." Ark. Code Ann. § 5-55-601(b)(1)(A), (2)(C). And the concern that there are potential fraudsters isn't illusory: the Secretary of State's Office has seen signatures that violate multiple prohibited actions in § 5-55-601 and that thus could have been petition fraud. *See House State Agencies – Governmental Affairs Committee, February 17, 2025*, at 6:06:30 p.m. – 6:06:50 p.m.[9]

To further protect the process, potential petitioners must now also provide photographic identification before signing a petition. *See* Act 240 of 2025, § 1 (to be codified at Ark. Code Ann. § 7-9-109(g)(1)). But this is only a new iteration of an old

[9] Available at https://www.arkleg.state.ar.us/Bills/Detail?id=sb207&ddBienniumSession=2025%2F2025R&Search=.

requirement. Since 1911, when Arkansas enacted its first laws governing the initiative-and-referendum process, canvassers have been required to verify petitioners' identity to the best of the canvasser's knowledge. *See* Act 2 of 1911, § 8 (1st Ex. Sess.) ("I believe that each [petitioner] has stated his name, residence, postoffice [sic] address and voting precinct correctly, and that each signer is a legal voter of the State of Arkansas ...."). Since then, Arkansas has reduced this burden on canvassers who no longer need to verify a slew of personal information about the petitioner. *See* Ark. Code Ann. § 7-9-109(a).

Now with Act 240, canvassers have authority to require petitioners to provide proof of their identity. To sign a petition, petitioners must allow canvassers to "view a copy of a potential petitioner's photo identification to verify the identity of the potential petitioner before obtaining the signature." Act 240 of 2025, § 1 (to be codified at Ark. Code Ann. § 7-9-109(g)(1)). Verification by photo ID is common throughout Arkansas life. *See, e.g.*, Ark. Const. amend. 51, § 13(b)(1) (requiring photo identification to "verify" a person's voting registration); Ark. Code Ann. § 5-27-503(b)(2) (acknowledging "sellers of alcoholic beverages ... [may] attempt[] to verify the age of the person attempting to purchase an alcoholic beverage by way of photographic identification"); *id.* § 5-27-227(k)(3) (providing that it is less likely a business illegally sold tobacco products to a minor if "[t]he business has required employees to verify the age of ... [the] customer by way of photographic identification"); *see also Frank v. Walker*, 768 F.3d 744, 748 (7th Cir. 2014) (detailing how a photo ID is required for numerous purposes). When a canvasser "view[s]" the petitioner's photo ID and

confirms (that is, "verif[ies]") that the petitioner appears to be the person whose ID is presented, the canvasser has no further duty to review the photo ID. Act 240 of 2025, § 1 (to be codified at Ark. Code Ann. § 7-9-109(g).

II. Promoting efficiency by increasing accessibility and saving taxpayer dollars.

The laws Plaintiffs and Intervenors challenge not only combat bad actors, they also promote transparency, accountability, and fiscal and administrative efficiency, not to mention increase confidence in the citizen-initiative process.

A. Sponsor Reimbursement: § 7-9-113(a)(2)(A)

To help potential voters know about proposed ballot measures, the Secretary of State must publish notice of proposed measures that will be on the ballot "in two (2) weekly issues of some newspaper in each county as is provided by law." Ark. Code Ann. § 7-9-113(b)(1). Before 2017, the State bore the cost of these notices, whether or not the measure became law. The costs to the State were significant. In 2016, "[t]he Secretary of State's Office paid more than $1.7 million" to publish notices. *New Law Requires Ballot Issue Groups to Pay Back State*, Pub. Pol'y Ctr., Univ. of Ark. (May 17, 2017).[10] The costs similarly broke $1 million in both 2012 and 2014. *Id.* And it comprised over 8.5% of the Secretary of State's budget. *Id.*

To save taxpayer money, the General Assembly amended Arkansas Code Annotated § 7-9-113 in 2017 to require "petition sponsors [to] reimburse the cost of the

[10] The article is attached as Exhibit 7 and available online here: https://www.uaex.uada.edu/business-communities/voter-education/newsletter-and-voter-guide-archive/docs/2017/PPC%20News%20May 2017.pdf.

publication to the Secretary of State." *Id.* § 7-9-113(a)(2)(A). Based on previous numbers, this has saved the State millions of dollars.

B. Readability Requirement: Act 602 of 2025 — READ Act: Act 274 of 2025

The average U.S. adult "reads at an eighth-grade level." Ex. 8, at 1–2 (Readability of Patient Education Materials). But in past cycles, ballot titles for proposed initiated measures with complex regulatory schemes have been far above the average U.S. adult's reading level. For example, the ballot title for the Arkansas Medical Marijuana Amendment of 2016 had a grade level of 18.1.[11] Considering this, the General Assembly created the Readability Requirement for ballot titles when it enacted Act 602 of 2025, making the initiative process "fair, transparent, and uniform" for all Arkansans. Act 602 of 2025, § 1. The Readability Requirement prohibits the Attorney General from "certify[ing] a proposed ballot title with a reading level above eighth grade as determined by the Flesch-Kincaid Grade Level formula." Act 602 of 2025, § 2 (to be codified at Ark. Code Ann. § 7-9-107(g)(1)).

Because of the Flesch-Kincaid Grade Level formula's reliability, other States use it too. For example, some States require the formula to be used in certain medical documents, *see* R.I. Gen. Laws 27-74-11(c)(1) (eighth-grade level), government documents prepared for the public, *see* Minn. Stat. § 142A.08(a) (seventh-grade level), and

[11] Microsoft Word includes a function to identify the Flesch-Kincaid Grade Level. First, open the "Editor" side bar, which is usually in the "Review" ribbon. Second, click on "Document stats," which opens a window with the Flesch-Kincaid Grade Level.

insurance documents, *see, e.g.*, S.C. Code Ann. § 37-4-201(2) (seventh-grade level); Colo. Rev. Stat. § 10-4-633.5(1)(a) (tenth-grade level).

Putting the readability requirement to use, the General Assembly also enacted Act 274 of 2025, known as the "Require Examining of Authoritative Documents Act" ("READ Act"). Act 274 of 2025, § 1. The READ Act requires either (1) the petitioner to read the ballot title in the canvasser's presence or (2) the ballot title to be "read aloud to" the petitioner in the canvasser's presence. Act 274 of 2025, § 2 (to be codified at Ark. Code Ann. § 7-9-103(a)(1)(A)). If a canvasser allows a petitioner to sign, even though the canvasser "know[s]" the petitioner did not read the ballot title (or have it read to him) is guilty of a misdemeanor. Act 274 of 2025, § 3 (to be codified at Ark. Code Ann. § 7-9-103(c)(10)). Although the READ Act coincides with the readability requirement, the READ Act also promotes the integrity of the petition process as a prevention against fraud. It allows potential petitioners to confirm that the canvasser is representing the petition accurately, and it dissuades bad actors from misrepresenting what is on the petition.

C. 50-County Minimum: § 7-9-126(e)

When enacting Arkansas Code Annotated § 7-9-126(e), the General Assembly identified a major concern. Despite initiated statewide measures "apply[ing] to all Arkansans," there was insufficient "participation from all parts of Arkansas in the process of obtaining signatures on initiative petitions and referendum petitions." Act 236 of 2023, § 3. Thus, there was a "need to enhance and protect Arkansans' voices in the ballot initiative and referendum process." *Id.* To "[e]nsur[e]" the necessary "broad participation," *id.* §§ 1, 3, sponsors must now file the requisite number of

signatures "from at least fifty (50) counties of the state." Ark. Code Ann. § 7-9-126(e)(1)(A); *cf.* Ark. Const. art. 5, § 1 (setting the Arkansas constitutional minimum as obtaining signatures "from at least fifteen of the counties of the State"). To meet its stated goal, the General Assembly necessarily had to adjust the regulation at the petition-circulation stage because it would be too late at the general election, when the outcome is based on the result of a statewide direct-democracy vote. *See* Ark. Const. art. 5, § 1 (providing a majority-vote requirement).

III. Plaintiffs and Intervenors move to preliminarily enjoin multiple petition laws.

Plaintiffs and Intervenors now try to challenge each of the laws discussed above. Some of these challenges come over a decade after the law was enacted. Below is a chart identifying the laws attacked in Plaintiffs' and Intervenors' motions for preliminary injunction,[12] which party is making the challenge, and the party's underlying claim:

[12] Plaintiffs mention Acts 153, 154, and 273 of 2025 one time in their preliminary-injunction brief, but they neither make an argument about why those laws are unconstitutional nor identify them in their preliminary-injunction motion. Doc. 21, at 2. Thus, Defendants presume Plaintiffs are not asking the Court to preliminarily enjoin those laws. To the extent they are, they have forfeited any argument that they are likely to succeed on those claims or that they have satisfied the remaining factors, so they have necessarily failed to show entitlement to a preliminary injunction that prevents enforcement of those provisions.

On the other hand, Intervenors specifically identify which laws it asks the Court to preliminarily enjoin and which it does not. Doc. 24, at 2 & n.1. Defendants therefore only respond to those relevant to the Intervenors' preliminary-injunction motion.

PARTY	CHALLENGED LAWS	CLAIMS
Plaintiffs	Ark. Code Ann. § 7-9-103(a)(6)	First Amendment
Plaintiffs	Act 453 of 2025	First Amendment
Plaintiffs	Ark. Code Ann. § 7-9-601(a)–(g)[13]	First Amendment
Plaintiffs	Act 241 of 2025	First Amendment
Plaintiffs	Ark. Code Ann. § 7-9-113(a)(2)(A)	First Amendment
Plaintiffs	Ark. Code Ann. § 7-9-103(a)(4)	First Amendment
Intervenors	Act 602 of 2025	First Amendment Equal Protection Clause
Intervenors	Ark. Code Ann. § 7-9-126(e)	First Amendment
Both Sets	Act 218 of 2025	First Amendment
Both Sets	Act 240 of 2025	First Amendment Due Process (vagueness)*
Both Sets	Act 274 of 2025	First Amendment Due Process (vagueness)*
Both Sets	Ark. Code Ann. § 7-9-601(a)(2)(C); *id.* § 7-9-126(b)(4)(A)	First Amendment

*only Intervenors bring this cause of action

[13] Plaintiffs only directly challenge the following provisions in § 7-9-601: subdivision (a)(2)(C)–(D), subsection (d), and subdivision (g)(1). Plaintiffs, however, argue that because these provisions are allegedly unconstitutional, "the remainder of Ark. Code Ann. § 7-9-601 … should be stricken." Doc. 21, at 15.

Legal Standard

The Court must, when "considering requests to preliminarily enjoin duly enacted state or federal laws, … proceed with the greatest caution, greatest humility, and greatest respect for the democratic process." *Roth v. Jones*, No. 4:25-cv-733, 2025 WL 2414160, at *1 (E.D. Ark. Aug. 20, 2025) (citing *Planned Parenthood Minn., N.D., S.D. v. Rounds*, 530 F.3d 724, 732 (8th Cir. 2008) (en banc)). Thus, because preliminary injunctive relief is an "extraordinary remedy," the plaintiff must make a "clear showing" of four factors: "[1] he is likely to succeed on the merits, [2] he is likely to suffer irreparable harm in the absence of preliminary relief, [3] the balance of the equities tips in his favor, and [4] an injunction is in the public interest." *Winter v. Nat. Res. Def. Council*, 555 U.S. 7, 20, 22 (2008). Plaintiffs and Intervenors, here, must make that showing for each provision of Arkansas law they challenge.

Moreover, "[t]he balance-of-harms and public-interest factors 'merge when the Government … is the [nonmoving] party.'" *Eggers v. Evnen*, 48 F.4th 561, 564–65 (8th Cir. 2022) (quoting *Nken v. Holder*, 556 U.S. 418, 435 (2009)). And "[w]hen seeking to enjoin the implementation of a state statute, the plaintiff must show 'more than just a "fair chance" that it will succeed on the merits.'" *Bio Gen LLC v. Sanders*, 142 F.4th 591, 600 (8th Cir. 2025) (quoting *Rounds*, 530 F.3d at 731–32). Instead, "[i]t must show that it 'is likely to prevail on the merits.'" *Id.* (quoting *Doran v. Salem Inn, Inc.*, 422 U.S. 922, 931 (1975)). Under these circumstances, whether a plaintiff is more likely than not to prevail on the merits of a particular claim is a threshold determination. *Rounds*, 530 F.3d at 732. The result is that, even if the other three

factors weigh heavily in favor of the plaintiff, the plaintiff still cannot justify preliminary relief if it cannot show that it is more likely than not to prevail on the merits of any particular claim. *Eggers*, 48 F.4th at 566. Indeed, a plaintiff's "failure to carry [its] burden on the likelihood-of-success factor is fatal to [its] case." *Id.*

Argument

Plaintiffs and Intervenors are not entitled to preliminary injunctive relief for a variety of reasons. They are not likely to succeed on the merits on any of their claims. For some of those claims, Plaintiffs and Intervenors lack standing, and another claim is moot. But even if Plaintiffs and Intervenors clear those hurdles, the public interest and balance of the equities falls uniquely against granting a preliminary injunction in the initiative-petition context.

I. The Court lacks jurisdiction over several of Plaintiffs' and Intervenors' claims.

The Court lacks jurisdiction over several of Plaintiffs' and Intervenors' claims. For some of the claims, Plaintiffs and Intervenors lack standing. One of Plaintiffs' claims is not ripe. And one of Intervenors' claims is moot. Plaintiffs and Intervenors are thus not likely to succeed on the merits of these claims.

Whether a plaintiff has Article III standing to raise a constitutional challenge is "an inescapable threshold question." *Advantage Media, L.L.C. v. City of Eden Prairie*, 456 F.3d 793, 799 (8th Cir. 2006). "Each plaintiff must establish standing for each form of relief sought." *Miller v. Thurston*, 967 F.3d 727, 734 (8th Cir. 2020). To establish standing, Plaintiffs "must have (1) suffered an injury in fact, (2) that is fairly traceable to the challenged conduct of the defendant, and (3) that is likely to be

redressed by a favorable judicial decision." *McNaught v. Nolen*, 76 F.4th 764, 768–69 (8th Cir. 2023) (quoting *Spokeo, Inc. v. Robins*, 578 U.S. 330, 338 (2016)). Standing is "[t]he requisite personal interest that must exist at the commencement of the litigation," and it "must continue throughout [the litigation's] existence." *Id.* at 769 (quoting *Sisney v. Kaemingk*, 15 F.4th 1181, 1194 (8th Cir. 2021)). If, "during the course of litigation, the issues presented in a case lose their life because of the passage of time or a change of circumstances … and a federal court can no longer grant effective relief," the case becomes moot. *Id.* (citation modified).

Similar to standing, ripeness is grounded in "the jurisdictional limits of Article III of the Constitution" and concerns about issuing advisory opinions based on "a hypothetical state of facts." *Pub. Water Supply Dist. No. 8 of Clay Cnty. v. City of Kearney*, 401 F.3d 930, 932 (8th Cir. 2005). A determination of ripeness "requires examination of both the fitness of the issues for judicial decision and the hardship to the parties of withholding court consideration." *Neb. Pub. Power Dist. v. MidAmerican Energy Co.*, 234 F.3d 1032, 1038 (8th Cir. 2000) (internal quotation marks omitted). "[T]he plaintiff must face an injury that is 'certainly impending'"; otherwise, the claim is not ripe and exceeds "the jurisdictional limits of Article III." *City of Kearney*, 401 F.3d at 932. If plaintiffs cannot show that they "face an injury that is certainly impending,'" their claim is not "ripe for adjudication." *Id.* (quoting *Pennsylvania v. West Virginia*, 262 U.S. 553, 592 (1923)).

A. Neither Plaintiffs nor Intervenors' alleged injuries are traceable to the pre-circulation disclosures in Arkansas Code Annotated §§ 7-9-601(a)(2)(C), 7-9-126(b)(4), and 7-9-103(a)(4).

Neither Plaintiffs nor Intervenors can establish an injury caused by Arkansas Code Annotated §§ 7-9-601(a)(2)(C), 7-9-126(b)(4), and 7-9-103(a)(4)[14] because those statutes do not cause the alleged injury. To do so, they must show that there is "a causal connection between the injury and the law." *Rodgers v. Bryant*, 942 F.3d 451, 454 (8th Cir. 2019).

Both identify the *public* disclosure of canvassers' information as the sources of the alleged injury. *See, e.g.*, Pls.' Br. 6 ("The names and address[es] of the canvassers and the signed statement are now public records and subject to public disclosure pursuant to the Arkansas Freedom of Information Act."); *see also* Intervenor-Pls.' Br 7–8 ("During past campaigns, opponents of ballot measures have obtained this information through the Arkansas Freedom of Information Act and used it to harass and intimidate canvassers.").

Section 7-9-601(a)(2)(C), however, does not require *public* disclosure; it requires disclosure to a *specific government official*. *See* Ark. Code Ann. §§ 7-9-126(b)(4), 7-9-103(a)(4). Instead, it is the Arkansas Freedom of Information Act ("FOIA") that causes Plaintiffs' and Intervenors' alleged injuries, as they briefly admit. *See, e.g.*, Pls.' Br. 6 (identifying the FOIA as requiring public disclosure); Intervenor-Pls.' Br 7–8 (same).

[14] Intervenors do not challenge Arkansas Code Annotated § 7-9-103(a)(4), which prohibits a person from "act[ing] as a paid canvasser … if the sponsor has not provided the information required under § 7-9-601 before the person solicits signatures on a petition." Plaintiffs, however, do. *See* Doc. 21, at 13.

Plaintiffs and Intervenors do not challenge the FOIA, but it is that law that necessitates public disclosure, not § 7-9-601(a)(2)(C). That section merely requires disclosure to the Secretary of State, not that these disclosures become publicly available records. The injury they allege is tied to another statute altogether. Plaintiffs and Intervenors therefore have failed to allege facts sufficient to establish standing the necessary causal connection between the alleged injuries (public disclosure of information) and the challenged law (which does not require public disclosure).

B. Plaintiffs have not alleged an injury to challenge the cost-of-publication requirement codified at Arkansas Code Annotated § 7-9-113(a)(2)(A), and their claim is not ripe.

Nor does the Court have jurisdiction over Plaintiffs' challenge to sponsors being required to reimburse the Secretary of State the costs of publishing notice of their own petition. Ark. Code Ann. § 7-9-113(a)(2)(A). Plaintiffs assert that "[t]hese publication costs will inhibit the publication of petitions when the petition's sponsor is unable to afford the significant added costs." Pls.' Br. 19–20. But Plaintiffs do not allege that they have been required to reimburse those costs. Instead, they point to other groups who *successfully* reimbursed the Secretary. *Id.* at 19. That does not constitute a concrete and particularized injury for Plaintiffs. Much less the necessary "'concrete and particularized' and 'actual or imminent'" injury. *Huyer v. Van de Voorde*, 847 F.3d 983, 986 (8th Cir. 2017) (quoting *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560 (1992)).

Nor do Plaintiffs even try to speculate about whether they will obtain sufficient signatures to appear on the ballot next cycle, and such speculation would be insufficient to support standing in any event. *E.g.*, *Wallace v. ConAgra Foods, Inc.*, 747 F.3d

1025, 1030 (8th Cir. 2014) (explaining that "speculation" does not satisfy the injury-in-fact requirement). Similarly, Plaintiffs' claim is not ripe. The only potential injury will occur if Plaintiffs' petitions appear on the ballot, but there is no evidence that they will. Thus, they cannot show that they "face an injury that is certainly impending,'" so their claim regarding the cost-of-publication requirement is not "ripe for adjudication." *City of Kearney*, 401 F.3d at 932 (quoting *Pennsylvania*262 U.S. at 593).

C. Intervenors' challenge to the Readability Requirement, established by Act 602 of 2025, is moot.

As Intervenors acknowledge, Plaintiffs "are in different positions in terms of their ability to canvass under the current laws." Doc. 25, at 9. For example, only AR Rights seeks to preliminarily enjoin the Attorney General from enforcing the Readability Requirement. *See* Doc. 25, at 20. That is because AR Rights was the only Plaintiff whose popular name and ballot title had not been certified by the Attorney General when Intervenors submitted their brief on July 24, 2025. Doc. 24-7, ¶ 27.

But the circumstances have changed. On July 28, 2025, the Attorney General certified AR Rights' submission, in compliance with the Readability Requirement. *See* Ark. Att'y Gen. Op. 2025-056. There is no longer any Plaintiff against whom the Attorney General can enforce the requirement. 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).

Because their claim is moot, Intervenors are not likely to succeed on their challenge to the Readability Requirement.

D. Plaintiffs and Intervenors lack standing to challenge the READ Act's requirement that petitioners read or hear a ballot title before signing a petition.

The READ Act only regulates Plaintiffs and Intervenors if their canvassers allow a person to sign a petition, even though the canvasser "know[s]" the petitioner did not read the ballot title (or have it read to him) is guilty of a misdemeanor. Act 274 of 2025, § 3 (to be codified at Ark. Code Ann. § 7-9-103(c)(10)). It is true that, "at least when intent is not an element of a challenged statute," a "likelihood of inadvertent or negligently" violating a law can be "sufficient to establish a reasonable fear of prosecution." *281 Care Comm. v. Arneson*, 638 F.3d 621, 629 (8th Cir. 2011). But to establish an injury in fact to challenge statutes with knowledge requirements, a plaintiff must assert an intent to knowingly engage in the proscribed conduct. *See Tex. State LULAC v. Elfant*, 52 F.4th 248, 256 (5th Cir. 2022).

Neither Plaintiffs nor Intervenors have an injury in fact because they have not alleged an intent to knowingly allow a person to sign a person without the person having read or heard the ballot title. Instead, they merely expressed "[u]ncertainty," which does not confer Article III injury. *Id.*; *see* Doc. 20-3, ¶ 6; Doc. 20-7, ¶ 9; Doc. 20-9, ¶ 6; Doc. 20-10, ¶ 13; Doc. 20-12, ¶ 6; Doc. 24-6, ¶ 31.

II. Plaintiffs and Intervenors are not likely to succeed on the merits.

Plaintiffs and Intervenors have combined to ask the Court to preliminarily enjoin two different sets of Arkansas laws (with little overlap), challenging a total of 15 different provisions through 15 different causes of action. This does not even include the provisions and claims in their complaints that have not been raised in their preliminary-injunction motions. Despite Plaintiffs' and Intervenors' everything-and-

the-kitchen-sink approach, none of their challenges are likely to succeed on the merits.

A. Plaintiffs' and Intervenors' facial challenges fail.

Intervenors "bring a facial challenge" to every law they dispute in their preliminary-injunction motion. Doc. 25, at 18. Intervenors have raised only two as-applied challenges. One is to the Readability Requirement. *Id.* at 31. The other is to the requirement that canvassers allow petitioners to read the ballot title before signing. *Id.* at 33 n.15. And although Plaintiffs do not explicitly state whether they bring facial or as-applied challenges, they have indicated that they bring only facial challenges. Doc. 13, at 6.

Plaintiffs' and Intervenors' decisions to bring facial challenges "come[] at a cost"—namely, they cannot show they are likely to succeed when the Supreme Court has "made facial challenges hard to win." *Moody v. NetChoice, LLC*, 603 U.S. 707, 723 (2024). In the free-speech context, Plaintiffs and Intervenors must attempt to show that "the law's unconstitutional applications substantially outweigh its constitutional ones." *Id.* at 724. Although this is "less demanding" than the no-set-of-circumstances standard, it is "still rigorous." *Id.* at 723; *see United States v. Hansen*, 599 U.S. 762, 770 (2023) ("To justify facial invalidation, a law's unconstitutional applications must be realistic, not fanciful, and their number must be substantially disproportionate to the statute's lawful sweep."). But other than a few unsupported, halfhearted statements,[15] neither Plaintiffs nor Intervenors try to make the

[15] *See* Doc. 25, at 19 (declaring without support that all of the challenged laws "severely affects speech or otherwise violates the Constitution regardless of individual application"); *id.* at 30 (stating that the

necessary showing, except for Intervenors' challenge to the ballot-title reading-level requirement. Without more, Plaintiffs and Intervenors cannot show that the unconstitutional applications will "substantially outweigh" constitutional ones. *Moody*, 603 U.S. at 724. They therefore have not shown they will likely succeed on their facial challenges. Thus, the Court can proceed to (and end at) Intervenors' two as-applied challenges: the Readability Requirement and the READ Act.

B. Plaintiffs' First Amendment claims fail on the merits.

The initiative-and-referendum "process is created by state law," so that process is not protected by the U.S. Constitution as a right unto itself. *SD Voice v. Noem*, 60 F.4th 1071, 1077 (8th Cir. 2023) (citing *Dobrovolny v. Moore*, 126 F.3d 1111, 1113 (8th Cir. 1997)). Thus, States have "considerable leeway to protect the integrity and reliability of the initiative process." *Id.* (quoting *Buckley v. Am. Const. L. Found., Inc.*, 525 U.S. 182, 191 (1999)). States interest in protecting all aspects of the process's "integrity"—from preventing "fraud and corruption" to avoiding "mistakes" to promoting "transparency and accountability"—is "paramount." *Dakotans for Health*, 52 F.4th at 389 (quoting *Miller*, 967 F.3d at 740). Confidence in the process is also a compelling state interest. *See Crawford v. Marion Cnty. Election Bd.*, 553 U.S. 181, 197 (2008) ("[P]ublic confidence in the integrity of the electoral process has

applications of the Readability Requirement are "substantial when compared to its constitutional ones," even though every Plaintiff and Intervenor has successfully met the requirement); *id.* at 33 (merely "submit[ting]" without more "that there are few if any constitutional applications of the" requirement that petitioners be able to read a ballot title before signing).

independent significance, because it encourages citizen participation in the democratic process.").

A First Amendment challenge to an initiative-and-referendum law therefore proceeds in two steps.

First, courts "begin with the threshold question of whether [the challenged law] implicates the First Amendment." *SD Voice*, 60 F.4th at 1077. "[P]etition laws that only make the process 'difficult'" do not implicate the First Amendment, while "those that affect 'the communication of ideas associated with the circulation of petitions'" do. *Miller*, 967 F.3d at 737 (quoting *Dobrovolny*, 126 F.3d at 1113). Even laws that dictate how a person may sign a petition—"core political speech"—do not automatically "pose[] a First Amendment problem on [their] face." *Id.* at 738. It is only laws that limit petition proponents' communication of ideas that implicate the First Amendment. *Id.* at 737 (collecting cases). But laws do not implicate the First Amendment if they do not regulate communications by, for example, raising the signature threshold for a petition to make it on the ballot or requiring the culling of certain signatures from a petition. *Id.* at 737–38 (collecting cases).

Second, if a petition law implicates the First Amendment, the Court must toggle the "sliding standard of review" that applies to these cases to the appropriate setting. *Id.* at 739. Courts consider the First Amendment's "'character and magnitude' … against the interest the State contends justify that burden." *Id.* (quoting *Timmons v. Twin Cities Area New Party*, 520 U.S. 351, 358 (1997)). Then, if the First Amendment burden is "severe"—that is, "beyond [a] mere[] inconvenien[ce]"—strict

scrutiny applies. *Id.* (quoting *Crawford*, 553 U.S. at 205 (Scalia, J., concurring in the judgment)). A law that severely burdens First Amendment rights "must be narrowly tailored to serve a compelling state interest." *Id.* (quoting *Initiative & Referendum Inst. v. Jaeger*, 241 F.3d 614, 616(8th Cir. 2001)).

If the burden is not severe, a "lesser scrutiny applies." *Id.* (citing *Jaeger*, 241 F.3d at 616). Under this test, a law will be upheld if "it is reasonable, nondiscriminatory, and furthers an important regulatory interest." *Id.* at 740 (citing *Timmons*, 520 U.S. at 358). To make this showing, "states are not required to present 'elaborate, empirical verification of the weightiness of [their] asserted justifications,'" but instead they may "respond to potential deficiencies in the electoral process with foresight." *Id.* (quoting *Timmons*, 520 U.S. at 364).

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

Start with one of Plaintiffs' easiest challenges to dispel. Section 7-9-103(a)(6) requires all canvassers to be Arkansas residents. Ark. Code Ann. § 7-9-103(a)(6); Act 453, §§ 1–2. Paid canvassers must also be domiciled in Arkansas. Act 453, §§ 1–2. As explained above, the domicile requirement was adopted in the wake of sponsors housing paid canvassers in Arkansas hotels and identifying the paid canvasser's "residency" as a hotel paid for by the sponsor. *See supra* pp. 5–6.

Plaintiffs' claim boils down to the assertion that this "reduces the pool of potential canvassers." Doc. 21, at 16. But Plaintiffs fail to acknowledge that the Eighth Circuit has already rejected First Amendment challenges to residency requirements.

In *Initiative & Referendum Institute v. Jaeger*, plaintiffs challenged a North Dakota law that only "a resident of [North Dakota]" "could circulate initiative petitions." 241 F.3d at 615–16 (citation omitted). Residency requirements—as well as domicile requirements—serve the State's "compelling interest in preventing fraud" without "unduly restrict[ing] speech." *Id.* Limiting canvassers to people who will remain in the state after circulating, "ensur[es] that circulators [can] answer to [potential] subpoena[s]" after circulation ends. *Id.* at 616. These requirements also help "ensure[] that a provision has grass-roots support in [the State] and that the initiative process is not completely taken over by moneyed, out-of-state special interest groups." *Id.* at 617. Similarly, having paid canvassers be Arkansas residents and domiciliaries allows sponsors to obtain an Arkansas background check that will be more effective.

Plaintiffs offer no reason to depart from *Jaeger*. Indeed, they offer no analysis of *Jaeger* at all.

2. The Commissions Ban does not violate the First Amendment.

Just as easily dispatched is Plaintiffs' challenge to the ban on paying canvassers commissions. The Commissions Ban makes it illegal to either pay or receive a commission "on a basis related to the number of signatures obtained on a" petition. Ark. Code Ann. § 7-9-601(g)(1). Again, Plaintiffs' argument is merely that "[m]ost professional paid canvassers are paid by the signature and will not come to States where canvassers are paid by the hour," which "reduce[s] the pool of potential canvassers." Doc. 21, at 15.

Plaintiffs again fail to acknowledge *Jaeger*—a binding, not merely persuasive, case. There, North Dakota "prohibited payment 'on a basis related to the number of signatures obtained.'" 241 F.3d at 616 (citation omitted). The Eighth Circuit noted the "necess[ity] to [e]nsure the integrity of the initiative process" against "signature fraud." *Id.* at 618. Evidence that "some circulators would not work on a flat fee basis" standing alone was insufficient to overcome the State's interest. *Id.* at 617–18. Circuits across the nation have followed *Jaeger*'s lead. *See Person v. N.Y. State Bd. of Elections*, 467 F.3d 141, 143 (2d Cir. 2006) ("We join the Eighth and Ninth Circuits in holding that a state law prohibiting the payment of electoral petition signature gatherers on a per-signature basis does not per se violate the First or Fourteenth Amendments."); *Prete v. Bradbury*, 438 F.3d 949, 963, 970–71 (9th Cir. 2006) (following *Jeager*).

The Court should reach the same conclusion. The Commissions Ban is part of the statutory scheme that is, as explained, directed at preventing widespread misconduct by paid canvassers that once occurred. *See supra* pp. 6–7. In adopting that scheme, the General Assembly specifically noted that the "widespread instances of apparent fraud, forgery, and false statements in the signature-gathering process" in which paid canvassers potentially "have an incentive to knowingly submit forged or otherwise invalid signatures." Act 1413 of 2013, § 1. Thus, Arkansas joined the "consensus" that this type of payment is uniquely problematic. Benson, *Election Fraud & The Initiative Process: A Study of the 2006 Michigan Civil Rights Initiative*, 34 Fordham Urb. L.J. at 923. The Commissions Ban addresses that problem and more

than supports the State's broad interest in petition integrity, including combatting fraud and corruption and securing public confidence in the process. When compared to Plaintiffs' minimal to nonexistence evidence that they are burdened, there claim is doomed.

3. It does not violate the First Amendment to require paid canvassers to have no conviction for fraud, identity theft, or other "disqualifying offenses."

Section 7-9-601(d) requires paid canvassers to submit to the sponsor a signed statement under oath "that the person has not pleaded guilty or nolo contendere to or been found guilty of a disqualifying offense." And § 7-9-601(a)(2)(D) requires the sponsor to submit a copy of that statement to the Secretary of State. Offenses that are "disqualifying offense[s]" include a variety of crimes of moral turpitude—including fraud, forgery, counterfeiting, identity theft—and crimes of violence, election-law violations, drug-law violations, and sex offenses. Ark. Code Ann. § 7-9-601(d)(3)(B). Again, Plaintiffs argue this "reduces the pool of canvassers" and thus violates the First Amendment. Doc. 21, at 14.

Plaintiffs offer evidence of only one person who wants to be a canvasser but cannot because of a disqualifying offense. Doc. 20-8, ¶ 4. And they offer no evidence that they have been forced to hire fewer paid canvassers because they have a disqualifying offense. Compared to the State's "paramount" interest in protecting the "integrity of its initiative processes," *Miller*, 967 F.3d at 740 (quoting *Hoyle v. Priest*, 265 F.3d at 699, 702 (8th Cir. 2001)), in the maintaining confidence in the process itself, *Crawford*, 553 U.S. at 197, and all its other interests, this is not a severe burden subject to strict scrutiny. . The lesser standard applies. And as explained throughout

this brief, the disqualifying offenses are rooted in Act 1413 of 2013, which was enacted after paid canvassers inundated the initiative process with fraud, forgery, and other misdeeds. *See supra* pp. 4–6. Considering this background, the prohibition on people with disqualifying offenses from paid canvassing is more than reasonable to preserve the integrity of the petition process. It allows people with, for example, a fraud conviction to still engage in the political process by volunteer canvassing, while prohibiting them from engaging in paid canvassing, which offers perverse monetary incentives—the very thing that animated the General Assembly's decision to enact the disqualifying-offenses provision. And even if strict scrutiny applied, the law would survive: the State's interests are compelling, and the regulation is narrowly tailored—by applying only to paid canvassers (who have the greatest monetary incentive).

4. It is not a First Amendment violation to require canvassers to affirm that they followed petition laws while canvassing or to provide a uniform time period during which canvassers can collect signatures.

Plaintiffs next challenge two aspects of Act 241 of 2025. Doc. 21, at 17–19. Both fail.

First, they challenge Act 241's requirement that all canvassers submit an affidavit confirming that they followed the law when collecting signatures. *Id.* at 18. Initially, it is unclear that this requirement implicates the First Amendment at all. An after-the-fact affidavit about compliance with the law does not regulate the sponsor's "communication" (through canvassers) "of ideas associated with the circulation of petitions." *Miller*, 967 F.3d at 737 (quoting *Dobrovolny*, 126 F.3d at 1113). Even

assuming it does implicate the First Amendment, Plaintiffs have certainly failed to show they are severely burdened by the affidavit requirement. Again compared to the State's paramount interests in petition integrity and public confidence, Plaintiffs offer no evidence about the degree to which the affidavit requirement decreases the number of potential canvassers willing to canvass. The affidavit requirement is reasonable, requiring a minimal step to confirm compliance with petition laws. It is nondiscriminatory in every possible way, applying to all petitions and canvassers alike. And it furthers important regulatory interests—petition integrity, public confidence, and all their subparts.

Second, Plaintiffs challenge Act 241's cool-off period, which prohibits canvassers who complied with the affidavit requirement from "collect[ing] additional signatures" until "the Secretary of State determines that the sponsor" is entitled to a 30-day cure period "under Arkansas Constitution, Art. 5, § 1." Ark. Code Ann. § 7-9-111(k). Although this provision likely implicates the First Amendment under *SD Voice*, 60 F.4th at 1078 (petition filing deadlines implicate the First Amendment because they regulate the sponsor's ability to convey a message), it is not a severe burden. This provision *at most* would pause signature collection for 30 days. *See* Ark. Code Ann. § 7-9-111(a). Outside of that time, canvassers may continue to collect signatures.

And this law supports the State's interests in integrity and confidence—preventing fraud and confusion in the petition process. *See Dakotans for Health*, 52 F.4th at 389. Without clear guardrails, canvassers could attempt to obtain signatures

during this period, even though they may not even count, and would be incentivized to mislead potential signers that their signature will have effect or be counted. This would incentivize deception and, at the very least, sow confusion among petitioners who believe they have signed a petition, even if the sponsor does not receive additional time to obtain signatures for that petition. It also prevents a hypothetical Secretary of State from manufacturing additional time to collect signatures for favored petitions, while minimizing the additional time for disfavored ones. That is because without the cool-off period, the final 30-day clock to collect signatures will run earlier for a petition that the Secretary of State quickly determines is entitled to additional time to collect signatures than for a petition that the Secretary more slowly determines is entitled to additional time. *See* Ark. Code Ann. § 7-9-111(a) (providing 30 days to review the sufficiency of a petition).

Both portions of Act 241 would also survive strict scrutiny. As noted, the State has undeniably compelling interests in integrity and public confidence. The law is also narrowly tailored. On one hand, the affidavit requirement only necessitates a piece a paper and a signature confirming that a canvasser has followed the law. And the cool-off period creates a neutral set of rules that directly address unfairness, confusion, and fraud.

5. Having petition sponsors who make it on the ballot reimburse the Secretary of State for publishing notices of the sponsor's proposed measure does not violate the First Amendment.

Plaintiffs do not have standing to challenge this provision, *see supra* pp. 20–21, but even if they did, they are not likely to succeed on the merits. Under Arkansas

Code Annotated § 7-9-113, the Secretary of State is charged with publishing notices in newspapers throughout the State of initiated measures that will be on the ballot. Since 2017, petition sponsors have been required to reimburse the Secretary of State for the publication costs. *See* Act 982 of 2017, § 1. It is unclear why Plaintiffs believe this implicates the First Amendment, much less why it violates the First Amendment.

Section 7-9-113 does not implicate the First Amendment. Although sponsors bearing publication costs might make the initiative process more difficult, it does not regulate sponsors' communication of ideas related to their petitions. Plaintiffs are "in no way restricted" from "circulat[ing] petitions or otherwise engag[ing] in political speech." *Dobrovolny*, 126 F.3d at 1112.

Even if the First Amendment were implicated, there would be no constitutional violation. Plaintiffs have not shown that the reimbursement burden is severe; they have shown the opposite. Indeed, Plaintiffs offer multiple examples of sponsors meeting § 7-9-113's requirements. Doc. 21, at 19. There is no evidence that a sponsor has been unable to fulfill its obligations at any point in the last eight years. The lower level of scrutiny applies, though the Reimbursement Requirement survives any level of scrutiny. That is because the State has a legitimate interest in administrative efficiency, like saving taxpayer dollars. *Cf. SD Voice*, 60 F.4th at 1081 (administrative efficiency). The Reimbursement Requirement, which supports public awareness of the ballot measure, also serves the State's paramount integrity interest by making the measures transparent to voters. *Cf. Dakotans for Health*, 52 F.4th at 379. And

its provision for reimbursement is reasonable, saving Arkansas taxpayers money (particularly when a measure may not ever become law) and providing easy access to the ballot measure. And thus it increases public confidence in the system. *Cf. Crawford*, 553 U.S. at 197. It is nondiscriminatory, applying to all sponsors equally. And it furthers the State's interests continuing to make the ballot more accessible though placing the cost of publication on the entities who are attempting to effect legal change.

C. Intervenors' First Amendment claims fail on the merits.

Intervenors bring two unique First Amendment claims. Neither is likely to succeed.

1. The Readability Requirement does not violate the First Amendment.

As explained above, this claim is moot; Intervenors have each had their ballot title certified by the Attorney General. The Court lacks jurisdiction to consider the merits. But if it does, the Readability Requirement is constitutional. It prohibits the Attorney General from certifying a ballot title with a ninth-grade reading level or higher. Act 602 of 2025, § 2. The reading level is "determined by the Flesch-Kincaid Grade Level formula." *Id.* As explained above, this aligns with the average U.S. adult, who "reads at an eighth-grade level." Ex. 8, at 1–2 (Readability of Patient Education Materials). Thus, the General Assembly wanted to make sure the initiative process was "fair, transparent, and uniform" for all Arkansans, who should not be bamboozled by ballot titles that use language that is technically true but

nevertheless "deficient, confusing, or misleading" to a majority of Arkansas voters. Act 602 of 2025, §§ 1, 4.

Despite the prevalence of the Flesch-Kincaid Grade Level formula, *see supra* pp. 12–13, counsel has not found any case in which plaintiffs alleged a free-speech violation because a readability formula was required to be used. That is for good reason here. Arkansas has a paramount interest in maintaining the process's integrity, which includes preventing "fraud and corruption," accidentally "duplicat[ing] signatures," and general "transparency and accountability" concerns. *Dakotans for Health*, 52 F.4th at 389. And a compelling one in securing public confidence in the system. *Crawford*, 553 U.S. at 197. The Readability Requirement prevents subtle forms of fraud and corruption by preventing technically correct but confusingly worded ballot titles, and it promotes transparency through voter accessibility.

Those interests are tied to past cycles, where measures with complex regulatory schemes have had ballot titles that are far above the average U.S. adult's reading level have been on the ballot. For example, the ballot title for the Arkansas Medical Marijuana Amendment of 2016 had a grade level of 18.1. Plaintiffs have not shown a severe burden. In fact, they have all passed the Readability Requirement. Thus, the lower level of scrutiny applies. Requiring ballot titles to be readable by the average U.S. adult is reasonable, furthering Arkansas's interests, democratizing the initiative process for all voters. And it is nondiscriminatory; in fact, it is inclusionary, allowing more people to understand what they are voting for. And, even if strict

scrutiny applies, an eighth-grade reading level is narrowly tailored, tied directly to the average U.S. adult's reading ability.

2. The First Amendment is not violated by requiring a certain number of signatures to come from a certain number of counties.

Intervenors also challenge Arkansas Code Annotated § 7-9-126(e). It requires sponsors to obtain a specific number of signatures "from at least fifty (50) counties of the state." Ark. Code Ann. § 7-9-126(e). According to Intervenors, this violates the First Amendment because it is "time-consuming" to garner support "spread out" through the State, instead of only where canvassers can "more quickly" bolster their signature numbers. Doc. 25, at 38.

This law does not implicate the First Amendment. The 50-county requirement only regulates the number and type of signatures necessary for a petition to make it on the ballot. These types of signature regulations do not implicate the First Amendment. *See Hoyle*, 265 F.3d at 703–04 (upholding Arkansas law that required counting only registered-voter signatures); *Wellwood v. Johnson*, 172 F.3d 1007, 1008 (8th Cir. 1999) (upholding Arkansas law increasing the number of total signatures necessary for certain initiatives); *Miller*, 967 F.3d at 738 (characterizing *Hoyle* and *Wellwood*). True, the law may make circulating petitions more "difficult for [sponsors] to plan … and efficiently allocate their resources," but it does not regulate the "communication of ideas associated with the circulation." *Miller*, 967 F.3d at 737. Sponsors remain free to communicate whatever ideas they please about their petitions during circulation.

Even if the Court were to apply the First Amendment analysis, there is no First Amendment violation. The State's paramount integrity interest extends to making sure that petitions have broad support throughout the State before a measure gets on the ballot. If there were no geographic requirement, sponsors get an issue on the ballot by obtaining signatures from essentially one demographic: urban centers. This would erode trust in the integrity of the system that only one set of Arkansans had the opportunity to get important issues on the ballot. *Cf. Crawford*, 553 U.S. at 197 (public confidence in the process is a compelling interest). Intervenors argue that "it is unclear why *petitions* need widespread geographical support" because "a measure must carry some degree of support throughout the state" at the general election. Doc. 25, at 38. But the general election is a *general* statewide vote and does not have any bearing on geographical interests. *See* Ark. Const. art. 5, § 1 (providing a majority-vote requirement). If the State is going to consider widespread geographical support, it must occur during the petitioning process. Intervenors also claim that the State's interests are shams, arguing the approach is unrelated to geographical support because a measure on the ballot "will garner far more votes than signatures needed" during the circulation. Doc. 25, at 39. Intervenors' line of attack is unclear: it seems almost axiomatic to say that a measure will receive more votes at the general election than signatures it received during canvassing because of the comparatively small number of signatures needed. This will be true for counties of all sizes, not just the more rural ones.

Although "AR Kids identifies this law as a key reason its measure failed to make the ballot in 2024," Doc. 25, at 38, it provides no evidence of that claim. Instead, the trends in citizen-initiated amendments on the ballot show that little has changed. Between 1910 (when initiatives were first allowed under the Arkansas Constitution) and 2004, the ballot has averaged less than one citizen-initiated proposed amendment. *See* Sharum, *Arkansas's Tradition of Popular Constitutional Activism & the Ascendancy of the Arkansas Supreme Court*, 32 U. Ark. Little Rock L. Rev. at 53. That trend has largely held, with one citizen-initiated proposed amendment appearing on every statewide ballot since 2014, except in 2020. *See supra* p. 2. Intervenors have not offered evidence that indicates Arkansas's 50-county requirement has materially altered that landscape, nor have Defendants found evidence to that effect. In other words, there is no evidence that the burden is severe.

Thus, the 50-county requirement need only be reasonable, be nondiscriminatory, and further an important regulatory interest. It is. It is a reasonable way to ensure broad support throughout the state before putting it to a general election where population centers will dominate. It is nondiscriminatory, applying equally to all. It furthers the State's interests—from integrity to public confidence—in the ballot reflecting statewide interest. And even if it were subject to a higher level of scrutiny, it passes for the same reasons.

D. Plaintiffs' and Intervenors' overlapping First Amendment claims fail on the merits.

Only three of Plaintiffs' and Intervenors' First Amendment petitioning challenges overlap. For each of these First Amendment claims, Plaintiffs and Intervenors cannot show they are likely to succeed on the merits.

1. Canvassers notifying potential petitioners of the legal reality that "petition fraud is a criminal offense" does not violate the First Amendment.

Act 218 requires canvassers, before obtaining a signature from a potential petitioner, to "disclos[e] to the potential petitioner that petition fraud is a criminal offense." Act 218 of 2025, § 1. A person engages in "petition fraud" if he "knowingly" does one of several specific actions, including "[s]ign[ing] a name other than his or her name to a petition" or "[s]olicit[ing] or obtain[ing] a signature to a petition knowing that the person signing is not qualified to sign the petition." Ark. Code Ann. § 5-55-601(b)(1)(A), (2)(C). The Secretary of State's Office has seen signatures that violate multiple of the list actions and that thus could have been petition fraud. *See House State Agencies – Governmental Affairs Committee, February 17, 2025*, at 6:06:30 p.m. – 6:06:50 p.m.[16]

Assuming the First Amendment is implicated, the burden is not severe. The minuscule time it takes to provide Act 218's notice is insignificant compared to the interests Arkansas seeks to protect—the integrity of the process from petition fraud and maintaining public confidence. That is particularly true because Arkansas may

[16] Available at https://www.arkleg.state.ar.us/Bills/Detail?id=sb207&ddBienniumSession=2025%2F2025R&Search=.

use "regulatory authority" to require individuals 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); *see Rounds*, 530 F.3d at 734–35 (requiring physicians to provide abortion-related information to patients). This is just what Act 218 does. Arkansas has used its "considerable leeway" over the regulatory process of petitioning to provide potential signers with the truthful information that "petition fraud is a criminal offense. *SD Voice*, 60 F.4th at 1077 (quoting *Buckley*, 525 U.S. at 191). The connection between the notice and the goal is reasonable and furthers the State's interests, especially its interests in reducing fraud and promoting public confidence, and it does not apply discriminatorily.

And even if the burden were severe, the law is narrowly tailored to Arkansas's paramount interest in integrity and compelling one in public confidence. After all, the law only requires canvassers to say six words: "petition fraud is a criminal offense." It does not get much simpler than that.

2. Verifying petitioner by photographic identification does not violate canvassers' or sponsors' First Amendment rights.

Act 240 of 2025 requires canvassers to "view a copy of a potential petitioner's photo identification to verify the identity of the potential petitioner before obtaining the signature." Act 240 of 2025, § 1. Potential petitioners have a variety of documents in multiple formats to choose from when presenting a photo identification. *Id.* ("'photo identification' means a document or identification care permitted under § 7-1-101(40)"); Ark. Code Ann. § 7-1-101(40).

This does not implicate the First Amendment because it regulates who may sign a petition, not speech related to the petition. *Hoyle v. Priest*, 265 F.3d 699 (8th Cir. 2001), is instructive. There, an Arkansas law limited who could sign a petition to registered voters. *Id.* at 703. The court held that this was "content neutral and merely regulates who qualifies to legally sign an initiative petition," and thus did "not violate the First Amendment." *Id.* at 704. Act 240 is a similar content-neutral regulation of who may sign the petition—not what may be communicated about that petition—so it does not implicate the First Amendment. *Id.*; *see Miller*, 967 F.3d at 738 (characterizing *Hoyle* as holding that Arkansas's laws "did not implicate the First Amendment").

Even if the First Amendment were implicated, Act 240 is subject to the lesser scrutiny. The burden of showing a photo identification "does not qualify as a substantial burden." *Crawford*, 553 U.S. at 198. And the State's interests in petition integrity is paramount and in public confidence is compelling. Again, the connection between the Act 240 requirement and the goal is reasonable and furthers the State's interests, and it does not apply discriminatorily. For these same reasons, Act 240 would survive strict scrutiny if it applied.

3. Requiring petitioners to read a ballot title before signing a petition does not violate canvassers' or sponsors' First Amendment rights.

The READ Act requires either (1) the petitioner to read the ballot title in the canvasser's presence or (2) the ballot title to be "read aloud to" the petitioner in the canvasser's presence. Act 274 of 2025, § 2 (to be codified at Ark. Code Ann. § 7-9-

103(a)(1)(A)). This does not implicate the First Amendment at all, and even if it did, it would not violate the First Amendment.

The READ Act does not implicate the First Amendment rights of sponsors or canvassers because it is directed at the petitioner's actions—the *petitioner* must "read[]" or hear the ballot title before signing. *Id.* While the petitioner performs that duty, a canvasser is free to communicate with the petitioner however he or she would like. True, a canvasser may avoid engaging with a person who is trying to understand what ballot title is at issue, so the canvasser does not annoy the petitioner. But the READ Act does not require the canvasser communicate or not communicate anything. The only obligation on the canvasser is that he cannot allow a person to sign the petition if the canvasser "know[s]" the person did not read or hear the ballot title. Act 274 of 2025, § 3 (to be codified at Ark. Code Ann. § 7-9-103(c)).

Even if it did implicate the First Amendment, the burden on communication is not severe and survives the lower scrutiny (or if severe, it satisfies strict scrutiny). The law does not regulate the canvasser's speech at all. Instead, it regulates the petitioner and any effect on the canvasser is merely incidental to the petitioner complying with the law. And it applies equally (that is, nondiscriminatorily) to all petitions, both reasonably and in a way the furthers the State's interests. The READ Act protects the integrity of the petition process by allowing potential petitioners to confirm that a bad actor has not misrepresented the petition that the potential petitioner has been asked to sign. It also supports the State's goal of making petitions accessible to

every Arkansas elector by requiring ballot titles to meet readability requirements. *See supra* pp. 12–13.

E. Plaintiffs' and Intervenors' overlapping First Amendment challenge to the pre-collection disclosure of canvassers' information fails on the merits.

Plaintiffs' and Intervenors' last overlapping challenge is to the pre-collection disclosure requirements in Arkansas Code Annotated § 7-9-601(a)(2)(C), § 7-9-126(b)(4), and § 7-9-103(a)(4). Like many of their challenges, this claim also fails for a lack of standing. *See supra* pp. 19–20. But even if they did have standing, the pre-collection disclosures do not violate the First Amendment.

In *Dakotans for Health v. Noem*, the Eighth Circuit addressed a canvasser disclosure requirement and did not apply the sliding scrutiny that it did in other petition-circulation regulations. 52 F.4th at 389. Instead, it applied "exacting scrutiny," which "requires 'a substantial relation between the disclosure requirement and a sufficiently important governmental interest.'" *Id.* (quoting *Ams. for Prosperity Found. v. Bonta*, 594 U.S. 595, 607 (2021)). The relation need not "be the least restrictive means of achieving [the State's] ends" but only "narrowly tailored." *Id.* (quoting *Ams. for Prosperity Found.*, 594 U.S. at 607).[17]

As Intervenors concede, *Dakotans for Health* holds that States have an "interest in preventing corruption and protecting the integrity of the ballot-initiative

[17] The court in *Dakotans for Health* assumed that exacting scrutiny was the correct level of scrutiny. 52 F.4th at 389. Plaintiffs do not acknowledge this at all. Doc. 21, at 12–13. And Intervenors' analysis only invokes exacting scrutiny and does not ask this Court to apply any other level of scrutiny. *See* Doc. 56, at 50 (invoking *Dakotans for Health*'s use of exacting scrutiny). Defendants agree that exacting scrutiny is correct under current precedent. If the Court nevertheless applies strict scrutiny, the pre-collection disclosures satisfy strict scrutiny for the same reasons discussed in this section.

process." Doc. 25, at 50. Indeed, it is "paramount" and "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). And confidence in the process is a compelling state interest. *See Crawford*, 553 U.S. at 197.

The fit between § 7-9-601(a)(2)(C) and Arkansas's interests is also appropriate. Since 2013, the statute has required disclosure only to the appropriate election official of "paid canvassers' names and current residential addresses." Ark. Code Ann. § 7-9-601(a)(2)(C). These "disclosures … promote transparency by letting the public know who is circulating petitions." *Dakotans for Health*, 52 F.4th at 390. And they do so by merely "requir[ing] the disclosed information [to] be maintained by … the Secretary of State in case it is needed during the signature verification process," which avoids the tailoring problems that exist with a law that requires "public disclosure of circulators'" information. *Dakotans for Health*, 52 F.4th at 390–91. Acquiring this information on the frontend also allows the Secretary of State to identify whether any paid canvassers have a disqualifying offense before collecting signatures, *see* Ark. Code Ann. § 7-9-601(a)(2)(D), which is not met by post-collection disclosures elsewhere. *Cf.* Ark. Code Ann. § 7-9-109(a).

Thus, § 7-9-601(a)(2)(C) is unlike the laws at issue in *Buckley v. American Constitutional Law Foundation, Inc.*, 525 U.S. 182 (1999), and *Dakotans for Health v. Noem*, 52 F.4th 381 (8th Cir. 2022). The Colorado law in *Buckley* required canvassers to wear a name badge while soliciting signatures. 525 U.S. at 197. Contrasting this

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 "precise moment" of the identification is what created a "heightened" injury. *Id.* at 199. The same is true in *Dakotans for Health*. There, the Eighth Circuit 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 of State. 52 F.4th at 390.

Despite Intervenors' assertions, § 7-9-601 does not provide for any public disclosure of canvassers' information. Instead, Intervenors conflate the requirements of the Arkansas Freedom of Information Act—which they do not seek to enjoin Defendants from enforcing—with the disclosure requirements in § 7-9-601. *See* Doc. 25, at 7 (acknowledging that the alleged harm flows "through the Arkansas Freedom of Information Act). Yet they provide no authority that a government-transparency statute can allow plaintiffs to challenge an election regulation that does not require public disclosure at all.

The fact that § 7-9-601(a)(2)(C) only applies to paid canvassers does not fail the tailoring prong either. Intervenors inaccurately imply that any disclosure law that applies only to paid canvassers is not narrowly tailored and "thumbs its nose at both *Meyer* and *Buckley*." Doc. 25, at 50 (citing *Dakotans for Health*, 52 F.4th at 390). In those cases, the Supreme Court only said it would not assume—"absent evidence to

the contrary"—that paid canvassers were more likely to erode the integrity of the petition process. *Dakotans for Health*, 52 F.4th at 390 (quoting *Buckley*, 525 U.S. at 203). It was "based on the lack of evidence," that the Eighth Circuit in *Dakotans for Health* and the Supreme Court in *Meyers* and *Buckley* held the laws were not properly tailored. *Id.*

There is abundant evidence that paid canvassers pose a unique threat to the integrity of the petition process. As noted above, Arkansas's 2013 petition-fraud debacle was largely brought on by "paid canvassers." Act 1413 of 2013, § 1(a)(3), (b)(1). That was also true in 2024 when paid canvassers attempted to skirt residency requirements. *See* Tess Vrbin, *Arkansas law makers ask AG, ethics commission to investigate altered paper ballot petitions*, Ark. Advocate (Oct. 21, 2024).[18] And the multidisciplinary "consensus" is that certain types of paid canvassers are "directly linked to high levels of fraud in the signature-gathering process. Benson, *Election Fraud & The Initiative Process: A Study of the 2006 Michigan Civil Rights Initiative*, 34 Fordham Urb. L.J. at 923.

Sections 7-9-601(a)(2)(C), 7-9-126(b)(4), and 7-9-103(a)(4)[19] therefore satisfy exacting scrutiny.

[18] Ex. 4 (https://arkansasadvocate.com/2024/10/21/arkansas-lawmakers-ask-ag-ethics-commission-to-investigate-altered-paper-ballot-petitions/).

[19] Plaintiffs and Intervenors challenge § 7-9-126(b)(4)—and Plaintiffs challenge § 7-9-103(a)(4)—only to the extent it enforces the pre-collection disclosures. *See* Doc. 21, at 12–13; Doc. 25, at 8.

F. Intervenors' various other claims each fail on the merits.

Intervenors also bring multiple claims under various constitutional provisions that Plaintiffs do not. Each claim fails.

1. Neither Act 218's requirement that petitioners be notified that petition fraud is a criminal offense nor Act 240's photo-ID requirement are content-based regulations.

Intervenors assert two First Amendment content-based challenges, alleging that Act 218's requirement that canvassers inform petitioners that "petition fraud is a criminal offense" and Act 240's photo ID requirement are impermissibly content based. Doc. 25, at 40–42. According to Intervenors, these requirements are content based because they apply only to "citizen-proposed measure[s]" and not "to other forms of political petitioning" like petitions to be an independent candidate, Ark. Code Ann. §§ 7-7-103, 7-8-302, or petitions to be a registered political party, *id.* § 7-7-205. *See* Doc. 25, at 41.

A law is content based if it either (1) "applies to particular speech because of the topic discussed or the idea or message expressed" or (2) is content neutral but "cannot be justified without reference to the content of the regulated speech or was adopted … because of disagreement with the message the speech conveys." *TikTok, Inc. v. Garland*, 604 U.S. 56, 70–71 (2025) (citation modified).

But this is a content-neutral, speaker-based regulation, that is not subject to strict scrutiny. *Reed v. Town of Gilbert*, 576 U.S. 155, 170 (2015). Strict scrutiny applies only if the speaker-based distinction "reflects a content preference." *Id.* (quoting *Turner Broadcasting Sys., Inc. v. FCC*, 512 U.S. 622, 658 (1994)). Acts 218 and 240 do not differentiate based on content, but only on speaker—that is, all initiative

speakers, regardless of the petition's content. It is thus "agnostic as to [the] content" or "substantive message" of any ballot measure. *City of Austin v. Reagan Nat'l Advert. of Austin, LLC*, 596 U.S. 61, 69, 71 (2022). That is clear from the Acts' requirements. The crime of "petition fraud" applies only to the process of putting a citizen-led issues on the ballot, both local and statewide. *See* Ark. Code Ann. § 5-55-601(a). As does the photo ID requirement. *See* Ark. Code Ann. § 7-9-109. Thus, the Acts are neutrally regulating all speakers who want to put an issue on the ballot.

Even if the law were subject to a heightened level of scrutiny, it would survive. As explained, the State has a paramount interest in preventing fraud, *see Dakotans for Health*, 52 F.4th at 389, and a compelling interest in maintaining public confidence in the petition process. *Cf. Crawford*, 553 U.S. at 197. And Acts 218 and 240 do so very narrowly. Act 218 requires a mere five words, and Act 240 requires a canvasser to only "view" the photo ID.

2. The Readability Requirement is not discriminatory under either the First Amendment or the Equal Protection Clause.

Next, Intervenors argue that the Readability Requirement discriminates under the First Amendment (as an impermissible content-based regulation) and the Equal Protection Clause (for failure to satisfy rational-basis review) because it applies to citizen-initiated measures under Amendment 7 to the Arkansas Constitution but not legislatively submitted measures under Article 19, § 22 of the Arkansas Constitution. Doc. 25, at 42–43; *see* Doc. 23, ¶¶ 135–40 (content-based claim); *id.* ¶¶ 141–44 (equal protection claim). Again, Intervenors' claim is moot on this point, *see supra* p. 21, but their arguments fail on the merits too.

The Readability Requirement does not violate the First Amendment. Intervenors argue the requirement is content based in two ways: first, because it applies to "statewide ballot initiatives, not local ones"; second, because it applies to "citizen-initiated measures," not legislatively submitted ones. Doc. 25, at 42. But it is content neutral because "[i]t is agnostic as to [the] content" of any ballot measure. *City of Austin*, 596 U.S. at 69. In other words, the proposed measure's "substantive message itself is irrelevant to the application of the provisions." *Id.* at 71. The fact the Readability Requirement applies to one type of initiative and not another, is not a *content* distinction; it is a speaker-based one. Nor does the fact that the Legislature applied this requirement to others and not itself—another speaker-based distinction—"automatically" make the law subject to strict scrutiny. *Reed*, 576 U.S. at 170. Strict scrutiny applies only if the speaker-based distinction "reflects a content preference." *Id.* (quoting *Turner Broadcasting*, 512 U.S. at 658). In both cases, the Readability Requirement says nothing about the content of the initiated measure—that is, the subject of the proposed law. Strict scrutiny does not apply. *Cf. Gresham v. Swanson*, 866 F.3d 853, 856 (8th Cir. 2017) (upholding a law that banned robocalls—a specific speaker—except in limited contexts without basing those exceptions on the content of the robocall).

The Readability Requirement does not violate the Equal Protection Clause. Intervenors only argue that the requirement fails rational-basis review. Doc. 25, at 43. But States are given "'wide latitude' under … rational basis review," and courts will uphold the law if it has a "rational relation to some legitimate end." *United States v.*

Skrmetti, 145 S. Ct. 1816, 1828 (2025) (first quoting *Cleburne v. Cleburne Living Ctr., Inc.*, 473 U.S. 432, 440 (1985), and then quoting *Romer v. Evans*, 517 U.S. 620, 631 (1996)); *see Brandt v. Griffin*, No. 23-2681, 2025 WL 2317546, at *6–7 (8th Cir. Aug. 12, 2025) (similar). As explained above, Arkansas has integrity and public-confidence interests in making ballot measures transparent for all Arkansas adults and preventing sponsors from distracting voters with a craftily worded, complex ballot title. Because the average U.S. adult reads at an eighth-grade level, it is more than rationally related to require ballot titles to be at an eighth-grade level. *Id.*

That is sufficient to uphold the Readability Requirement. Yet Intervenors argue that the rational basis is underinclusive because it does not apply to legislatively submitted measures too. Doc. 25, at 42–43. But "perfection is by no means required," so even a law that "is to some extent both underinclusive and overinclusive" does not necessarily violate equal protection. *Vance v. Bradley*, 440 U.S. 93, 108 (1979) (quoting *Phillips Chem. Co. v. Dumas Sch. Dist.*, 361 U.S. 376, 385 (1960)). For example, 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). Requiring initiated ballot titles to be drafted at the average adult reading level, is thus rationally related to Arkansas's goal of making initiatives accessible to all Arkansas voters. Courts must "accept such imperfection." *Vance*, 440 U.S. at 109.

3. Because of the State's considerable leeway over petition regulations, the required criminal-offense notification does not implicate compelled-speech rights.

Intervenors are also not likely to succeed on their compelled-speech claim against Act 218's requirement that petitioners be warned that "petition fraud is a criminal offense." States have "considerable leeway" to regulate the initiative process. *SD Voice*, 60 F.4th at 1077 (quoting *Buckley*, 525 U.S. at 191). But in contexts like this where the State has "regulatory authority," it can require individuals in certain positions "to provide truthful information relevant to" another's decisions. *B.W.C.*, 990 F.3d at 621 (county health officials required to provide parents vaccine information); *see Rounds*, 530 F.3dat 734–35 (requiring physicians to provide abortion-related information to patients). This does not "implicate[]" the individual's "compelled speech rights" because he "may completely disassociate himself … from the state's ideological message." *B.W.C.*, 990 F.3d at 621 (quoting *Rounds*, 530 F.3d at 736). This is just what Act 218 does: the State has used its leeway over the regulatory process of petitioning to provide potential signers with the truthful information that "petition fraud is a criminal offense." Act 218 of 2025, § 1 (to be codified at Ark. Code Ann. § 7-9-103(a)(7)).

4. Neither the photo-ID requirement nor the READ Act are unconstitutionally vague.

Finally, Intervenors argue that Act 240, which requires a petitioner to provide photo ID before signing a petition, and Act 274, which requires potential petitioners to read or hear the ballot title before signing the petition, are unconstitutionally vague. Neither are. A law is not vague if "a person of ordinary intelligence" has "fair

notice of what is prohibited" and so long as the law does not "authorize[] or encourage[] seriously discriminatory enforcement." *Holder v. Humanitarian Law Project*, 561 U.S. 1, 18 (2010). The law need not give "perfect clarity and precise guidance," even if it "restrict[s] expressive activity." *Id.* at 19. Instead, "the meaning of certain words or phrases … must be drawn from the context in which they are used," not nitpicked "in isolation." *Bush v. State*, 2 S.W.3d 761, 763 (Ark. 1999). Further, laws with "knowledge requirement[s] … reduce[] any potential for vagueness." *Humanitarian Law Project*, 561 U.S. at 21; *see also Duhe v. City of Little Rock*, 902 F.3d 858, 864 (8th Cir. 2018).

Act 240 is not vague. Intervenors argue that Act 240 is vague because it "requires a canvasser 'to verify the identity' of a potential signer." Doc. 25, at 46 (quoting Act 240 of 2025, § 1). But Intervenors' argument ignores both the statutory and real-world contexts. Under Act 240, canvassers need only "view" the "photo identification." Act 240 of 2025, § 1 (to be codified at Ark. Code Ann. § 7-9-109(g)(1)). Viewing a photo ID is common throughout Arkansas—from purchasing alcohol to voting in elections. *See* Ark. Code Ann. § 5-27-503(b)(2) (acknowledging "sellers of alcoholic beverages … [may] attempt[] to verify the age of the person attempting to purchase an alcoholic beverage by way of photographic identification"); Ark. Const. amend. 51, § 13(b)(1) (requiring photo identification to "verify" a person's voting registration); *see also, e.g.*, *Frank*, 768 F.3d at 748. Thus, just like any other context, a canvasser need only "view" the petitioner's photo ID and confirm (that is, "verify") that the petitioner

appears to be the person whose ID is presented. Act 240 of 2025, § 1 (to be codified at Ark. Code Ann. § 7-9-109(g)(1)).

Act 274 is not vague. Intervenors next claim that Act 274 is vague because it does not specify "how long a canvasser must wait for a potential signer to read a measure" or whether a canvasser should not collect a signature "if the potential signer has spent an insufficient amount of time looking at the language of the ballot title." Doc. 25, at 47. But Intervenors' argument again fails to consider the context. First, the Reading Requirement does not require canvassers to do any reading or speaking. Instead, it regulates the potential petitioner, or in the words of the law "a person who is a registered voter of this state." Act 274 of 2025, § 2 (to be codified at Ark. Code Ann. § 7-9-103(a)(1)(A)). It is the petitioner who cannot sign a petition unless he (in a canvasser's presence) either "read[s] the ballot title" or hears it read. *Id.* A canvasser is regulated by Act 274 only to the extent he "know[s]" a petitioner did not follow the law. *Id.* § 3 (to be codified at Ark. Code Ann. § 7-9-103(c)(10)).

Here, the knowledge requirement obviates any claim that the statute is vague. *See Humanitarian Law Project*, 561 U.S. at 21 (holding that knowledge requirements reduce vagueness concerns). Take Intervenors' own affidavit of alleged harm. A petitioner reviewed a ballot title in the canvasser's presence, and although the canvasser did not know whether the petitioner's reading was "thorough," the canvasser thought this "complied with the new laws." Doc. 24-9, ¶ 16. Done. The canvasser complied with the law; she did not "know" whether or not the petitioner actually read the ballot title. This goes to the blackletter distinction between laws that are not

vague, even though "it will sometimes be difficult to determine whether the incriminating *fact*" exists—here, the canvasser's mental state—and laws that are vague because it is unclear "precisely what th[e] fact" to be proved is. *Duhe*, 902 F.3d at 864 (quoting *United States v. Williams*, 553 U.S. 285, 306 (2008)). So, although there may be on-the-ground "close calls," that "does not render [Act 274] unconstitutionally vague." *Edwards v. City of Florissant*, 58 F.4th 372, 378 (8th Cir. 2023).

III. Neither Plaintiffs nor Intervenors will suffer irreparable harm in the absence of a preliminary injunction.

Plaintiffs' and Intervenors' claims fail on the merits. Consequently, there can be no irreparable harm. *See Powell v. Noble*, 798 F.3d 690, 702 (8th Cir. 2015) (holding that a plaintiff who is "unlikely to succeed in showing his First Amendment rights have been violated … has not shown a threat of irreparable harm that warrants preliminary injunctive relief").

And on top of that, Plaintiffs and Intervenors have significantly delayed in challenging laws that have been enacted and effective long before the 2025 Arkansas legislative session. For example, the pre-collection disclosure requirements in § 7-9-601(a)(2)(C) have been on the books for over a decade. *See* Act 1413 of 2013, § 21. The prohibition on paid canvassers having disqualifying offenses has been around for a decade. *See* Act 1219 of 2015. Sponsors began reimbursing the Secretary of State publication costs in 2017. *See* Act 982 of 2017, § 1. The canvassers' Arkansas residency has been required since 2021. *See* Act 951 of 2021, § 1. So has the Commissions Ban. *See id.* § 7. And the 50-county requirement was passed two years ago. *See* Act 236 of 2023, § 2. At the very least, Plaintiffs' and Intervenors' delay in challenging

these laws "vitiates much of the force of their allegations of irreparable harm." *Beame v. Friends of the Earth*, 434 U.S. 1310, 1313 (1977). That fact alone should require denying the preliminary injunction motion. *See, e.g., Ng v. Bd. of Regents of Univ. of Minn.*, 64 F.4th 992, 998 (8th Cir. 2023) ("[A]n unreasonable delay in moving for the injunction can undermine a showing of irreparable harm and is a sufficient ground to deny a preliminary injunction." (internal quotation marks omitted)); *see also Adventist Health Sys./SunBelt, Inc. v. HHS*, 17 F.4th 793, 805 (8th Cir. 2021) ("[T]he Hospitals' *one-year* delay refuted their allegations of irreparable harm." (emphasis in original)).

Plaintiffs' and Intervenors' years-long delay in seeking judicial relief on its own shows their request for a preliminary injunction is unreasonable. There is no irreparable harm.

IV. The balance of the equities and the public interest weigh in the Defendants' favor.

When balancing the equities and public interest, courts consider the alleged "harm against the 'serious[] and irreparabl[e] harm' that an injunction would inflict on the State [and the public] by 'barring the State from'" implementing several validly enacted laws. *Eggers*, 48 F.4th at 567 (quoting *Abbott v. Perez*, 585 U.S. 579, 602 (2018)); see *Nken*, 556 U.S. at 435 (explaining that balance-of-the-equities and public-interest "factors merge when the Government is the opposing party").

An injunction here would immediately inflict irreparable harm on the State. That is because "[a]ny time a state is enjoined by a court from effectuating statutes enacted by representatives of its people"—like the laws challenged here—the State

"suffers a form of irreparable injury." *Trump v. CASA, Inc.*, 145 S. Ct. 2540, 2562 (2025) (quoting *Maryland v. King*, 567 U.S. 1301, 1303 (2012) (Roberts, C.J., in chambers)). Preliminary injunctions often improperly "'short circuit the democratic process' by preventing duly enacted laws from being implemented in constitutional ways." *See Moody*, 603 U.S. at 723 (quoting *Wash. State Grange v. Wash. State Republican Party*, 552 U.S. 442, 451 (2008)). This is a significant harm, especially in comparison to Plaintiffs' "fail[ure] to show any irreparable harm." *MPAY Inc. v. Erie Custom Computer Apps., Inc.*, 970 F.3d 1010, 1020 (8th Cir. 2020).

The balance of the equities weighs in Defendants' favor. "Court orders affecting elections, especially conflicting orders, can themselves result in voter confusion and consequent incentive to remain away from the polls." *Purcell v. Gonzalez*, 549 U.S. 1, 4–5 (2006). "As an election draws closer, that risk will increase." *Id.* "Election rules must be clear and judges should normally refrain from altering them close to an election." *Carson v. Simon*, 978 F.3d 1051, 1062 (8th Cir. 2020). At the heart of *Purcell* "is a presumption against disturbing the status quo." *Id.* And it is "generally the state legislature" that "set[s] the status quo." *Id.*

While the next election in which the Arkansas electorate can vote on ballot initiatives is not until November 2026, the ballot initiative process has already begun. That includes ballot title submissions to the Attorney General and signature-gathering across the state. Enjoining the duly enacted laws surrounding the ballot initiative process will not maintain the status quo; it will upend it. Multiple ballot titles have already been approved by the Attorney General, and sponsors are now presumably

collecting signatures—including the parties here. But if the Court enjoins the challenged laws, there will be mayhem. Plaintiffs and Intervenors will play by one set of petitioning laws, while every other current and future sponsor will not be shielded by a preliminary injunction. And even more curious (as explained further below), Plaintiffs and Intervenors have requested different preliminary relief, so the rules will be different even between them.

The further down the rabbit hole you go, things get curiouser and curiouser. If Plaintiffs and Intervenors obtain preliminary relief, the final judgment may not come until after the next election. But what if Plaintiffs and Intervenors make it on the ballot, their petitions receive the requisite number of votes while the preliminary injunction is in place, and then Defendants are ultimately successful? Did the hypothetical ballot measure make it into the Constitution? How does the State remove an improperly ratified amendment? These are questions without obvious answers—if there even is an answer—and will almost certainly spawn additional litigation and reliance interests. It is in situations like these that the deference to the state legislation rings especially true: "courts should proceed with the greatest caution, greatest humility, and greatest respect for the democratic process." *Roth*, No. 4:25-cv-733, 2025 WL 2414160, at *1.

The public interest and balance of the equities weighs heavily in Defendants' favor.

V. A preliminary injunction is not warranted, but even if it were, the scope of relief must be properly tailored.

Even if the Court concludes that Plaintiffs or Intervenors have shown that they are entitled to some preliminary injunctive relief, the Court must tailor "that injunctive relief [to] be no more burdensome to the defendant than necessary to provide complete relief to the plaintiffs," *Califano v. Yamasaki*, 442 U.S. 682, 702 (1979), and "to remedy specific harm shown." *Rogers v. Scurr*, 676 F.2d 1211, 1214 (8th Cir. 1982); *see Lewis v. Casey*, 518 U.S. 343, 357 (1996) ("The remedy must of course be limited to the inadequacy that produced the injury in fact that the plaintiff has established."). To issue broader relief exceeds "a federal court's authority" because federal courts are "ordinarily constrained by the rules of equity." *Labrador v. Poe*, 144 S. Ct. 921, 923 (2024) (Gorsuch, J., concurring); *see CASA*, 145 S. Ct. at 2551 (explaining the Judiciary Act of 1789 gives courts "equitable authority" that "encompasses only those sorts of equitable remedies 'traditionally accorded by courts of equity' at our country's inception" (quoting *Grupo Mexicano de Desarrollo, S. A. v. Alliance Bond Fund, Inc.*, 527 U.S. 308, 319 (1999))). Here, there are several considerations that require narrow relief if the Court finds that Plaintiffs or Intervenors are entitled to a preliminary injunction, including but not limited to the following three issues.

First, the Court cannot dispense injunctions in gross but must tailor any injunction to the relief Plaintiffs seek and to which they are entitled and to the relief Intervenors seek and to which they are entitled. With little overlap, Plaintiffs have asked the Court to enjoin one set of laws, while Intervenors have asked the Court to enjoin another set. *See supra* p. 15. Thus, any potential injunction can only enjoin a

Defendant from enforcing the law against the Plaintiffs or Intervenors who actually challenge the allegedly unconstitutional law: It cannot enjoin a Defendant from enforcing the law against a Plaintiff or Intervenor who has not requested preliminary relief. *See Rogers*, 676 F.2d at 1214; *Lewis*, 518 U.S. at 357. The same is true regarding nonparties. *See CASA*, 145 S. Ct. at 2552 ("Neither declaratory nor injunctive relief … can directly interfere with enforcement of contested statutes or ordinances except with respect to the particular federal plaintiffs." (citation modified)).

Second, Plaintiffs request overbroad injunctive relief. Even if Plaintiffs establish they are entitled to some injunctive relief, their request goes too far. For example, Plaintiffs ask the Court to "stri[]ke[]" all of Arkansas Code Annotated § 7-9-601 because the few portions Plaintiffs challenge are allegedly unconstitutional. Doc. 21, at 15. But Plaintiffs have not even tried to show they are injured by § 7-9-601 writ large. Thus, the Court has no authority to enjoin enforcement of the entire statute. That is because "when confronting a constitutional problem in a law, courts should limit the solution by enjoining enforcement of any problematic portions while leaving the remainder intact." *Sisney*, 15 F.4th at 1194. Not to mention, the Court has no authority to strike a law from the books. *See generally* Jonathan F. Mitchell, *The Writ-of-Erasure Fallacy*, 104 Va. L. Rev. 933 (2018).

Similarly, in Plaintiffs' preliminary-injunction brief, they request the Court enjoin the Secretary of State from enforcing Arkansas Code Annotated § 7-9-601(d)'s list of disqualifying offenses. Doc. 21, at 13–14. But there is only evidence that Plaintiffs wish to pay canvassers with prior shoplifting and drug convictions. *See* Doc. 20-

8, ¶ 4. There is no evidence that Plaintiffs wish to hire canvassers with convictions for fraud, identify theft, or any other disqualifying offense.

Third, Defendants do not collectively enforce every challenged law. Therefore, the Court cannot enjoin the Secretary of State from enforcing laws he does not enforce or enjoin the Attorney General from enforcing laws that he does not enforce. *See Califano*, 442 U.S. at 702.

Conclusion

For these reasons, the Court should deny Plaintiffs and Intervenors motions for preliminary injunction.

Respectfully submitted,

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