No. 25-3389

IN THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

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

and

PROTECT AR RIGHTS, et al. Intervenor Plaintiffs-Appellees

v.

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

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

Brief of Plaintiffs-Appellees and Intervenor Plaintiffs-Appellees

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SUMMARY OF THE CASE

Arkansans have reserved for themselves the right to propose laws and constitutional amendments through citizen-led initiatives. In 2025, Arkansas passed a set of laws burdening speech related to citizen-initiated petitions. These laws mandate that canvassers read the entire ballot title to every potential signer or observe the signer read it to herself; inspect every potential signer's photo ID; and inform them that "petition fraud is a criminal offense." The laws control sponsors' communication by requiring that citizen-initiated ballot titles be written at an eighth-grade reading level—though legislatively initiated ballot titles are not held to the same standard. They further impede speech by requiring paid canvassers to be domiciled in Arkansas and imposing a "cool-off" period requiring canvassers to submit an affidavit and stop canvassing for thirty days. These new laws follow an older law requiring canvassers to publicly identify themselves. Each law is unconstitutional, and the district court preliminarily enjoined each.

Appellees agree that 30 minutes of argument is warranted.

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CORPORATE DISCLOSURE STATEMENT

Pursuant to Federal Rule of Appellate Procedure 26.1, the undersigned counsel for League of Women Voter of Arkansas ("LWVAR") certifies as follows:

LWVAR is a nonprofit public benefit corporation organized and existing under Arkansas law.

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STATEMENT OF ISSUES

1. Does a ballot-initiative sponsor have standing to challenge laws that interfere with canvassers' speech?
    - *Dakotans for Health v. Noem*, 52 F.4th 381 (8th Cir. 2022)
2. Does Appellant enforce Act 602, and did the Attorney General moot Protect AR Rights' claim by modifying and then approving its ballot title?
    - *FBI v. Fikre*, 601 U.S. 234 (2024)
    - *Bio Gen LLC v. Sanders*, 142 F.4th 591 (8th Cir. 2025)
3. Do laws that dictate the way canvassers communicate with potential petition signers implicate speech?
    - *Meyer v. Grant*, 486 U.S. 414 (1988)
4. Did the district court correctly determine that the laws at issue here severely burden speech and are inadequately tailored?
    - *Buckley v. Am. Const. L. Found., Inc.*, 525 U.S. 182 (1997)
    - *Miller v. Thurston*, 967 F.3d 727 (8th Cir. 2020)
    - *SD Voice v. Noem*, 60 F.4th 1071 (8th Cir. 2023)

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5. Are petitioning restrictions that apply only to citizen-initiated measures content-based?

   - *Reed v. Town of Gilbert*, 576 U.S. 155 (2015)

6. Does requiring canvassers to provide a vague warning to every potential signer about petition fraud compel speech?

   - *Riley v. Nat'l Fed'n of the Blind of N.C., Inc.*, 487 U.S. 781 (1988)
   - *Sanderson v. Hanaway*, 163 F.4th 1101 (8th Cir. 2026)

7. Is the Pre-Collection Disclosure Requirement distinguishable from similar laws this Court has found unconstitutional?

   - *Dakotans for Health*, 52 F.4th 381

8. Did the district court correctly sustain Appellees' facial challenges?

   - *Moody v. NetChoice*, 603 U.S. 707 (2024)
   - *Sanderson*, 163 F.4th 1101

9. Did the district court correctly apply the other preliminary-injunction factors?

   - *Phelps-Roper v. Nixon*, 545 F.3d 685 (8th Cir. 2008)
   - *RNC v. DNC*, 589 U.S. 423 (2020) (per curiam)

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STATEMENT OF THE CASE

A. The ballot-initiative process in Arkansas.

The Arkansas Constitution guarantees the right to present constitutional amendments and initiated acts (or "ballot initiatives") to the people directly. Ark. Const. art. 5, § 1. Over the past quarter century, Arkansans have exercised this right nearly every election cycle, referring measures on topics as diverse as gay marriage, tobacco settlements, minimum wage, lotteries, casinos, and medical marijuana.

Sponsors of statewide ballot initiatives must first obtain the Arkansas Attorney General's approval of a ballot title. Ark. Code Ann. § 7-9-107. Sponsors then must submit a prescribed number of signatures from registered Arkansas voters to the Arkansas Secretary of State ("Secretary"). The Secretary reviews and validates each signature to ensure, among other things, that it belongs to a registered voter who only signed the petition once. *See id.* §§ 7-9-111, 7-9-126.

During the 2026 election cycle, sponsors of initiated constitutional amendments, like Plaintiffs and Intervenor-Plaintiffs (collectively, "Appellees"), are required to present 90,704 valid signatures (which is ten percent of the total number of voters in the last gubernatorial

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election). *See* Ark. Sec'y of State, *2026 Initiatives and Referenda Handbook* 2 (2026) ("Handbook"), https://tinyurl.com/zsxu26a. Sponsors meet this requirement through volunteer or paid canvassers who engage with Arkansas voters and attempt to persuade them to support placement of the measure on the ballot. Signatures must be submitted four months before the election (in 2026, by July 3). Ark. Const. art. 5, § 1; Handbook 2. Failure to submit enough valid signatures by the initial deadline is not necessarily fatal. If a sponsor submits enough unverified signatures, and if the Secretary then validates 75 percent of those signatures, the sponsor has a final thirty-day period to obtain additional valid signatures sufficient to satisfy the threshold for ballot certification (the "cure period"). Ark. Const. art. 5, § 1.

Even if the Secretary certifies that a sponsor has submitted enough valid signatures, there is no guarantee the measure will make the ballot. Any registered Arkansas voter may file a suit in the Arkansas Supreme Court to challenge either the Secretary's determination that the sponsor submitted sufficient signatures or the Attorney General's determination that the ballot title is adequately worded. Ark. Code Ann. § 7-9-112 (signatures); *Wilson v. Martin*, 500 S.W.3d 160, 162

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(Ark. 2016) (ballot titles). These challenges are typically litigated in the weeks before the election. *See, e.g.*, *Wilson*, 500 S.W.3d at 162 (invalidating ballot title on October 13, 2016).

This case concerns one kind of petitioning—for citizen-proposed statewide ballot initiatives—that the Arkansas General Assembly ("General Assembly") has singled out for disfavored treatment. Arkansans also engage in other types of petitioning for ballot access. Sponsors may present local measures to voters for consideration. *See, e.g.*, Ark. Code Ann. § 14-14-914 (county-wide initiatives). Candidates and upstart political parties may petition for ballot access. *See id.* §§ 7-7-103, 7-7-205. And the General Assembly may refer constitutional amendments to the people. *Id.* §§ 7-9-201 *et seq.*

B. The laws in question.

The Arkansas Constitution prohibits the General Assembly from passing laws that "in any manner interfer[e] with the freedom of the people in procuring petitions." Ark. Const. art. 5, § 1. It allows only laws that prohibit and penalize types of fraud and felonies in the securing of signatures or filing of petitions. *Id.*

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In the early 2010s, the General Assembly began passing laws regulating citizen-proposed statewide ballot initiatives. A steady flow became a gusher in 2025, when the General Assembly passed over a dozen new restrictions. This appeal concerns the following laws.[1]

Eighth-Grade Requirement (Act 602 of 2025). This law prevents a ballot sponsor from circulating a statewide petition unless the ballot title is expressed in exceedingly simple language: "The Attorney General shall not certify a proposed ballot title with a reading level above eighth grade as determined by the Flesch-Kincaid Grade Level formula as it existed on January 1, 2025." Ark. Code Ann. § 7-9-107(*l*)(1). The referenced formula produces a grade level based on word and sentence length, such that sentences with more words, or multisyllabic words, drive up the score. *See* App. 123; R. Doc. 24-7, at 3. For example, while "I like golden retrievers" produces a grade-level score of 7.2, "I like Labrador retrievers" produces a score of 9.6. App. 128; R. Doc. 24-7, at 8. The Eighth-Grade Requirement applies only to citizen-initiated measures, not to legislatively referred amendments.

[1] The district court declined to preliminarily enjoin other laws challenged by Appellees.

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Pre-collection Disclosure Requirement (Ark. Code Ann. § 7-9-601(a)(2)(C)). This law, passed in 2013, requires sponsors to provide a list of all paid canvassers' names and current residential addresses to the Secretary before petition circulation. Canvassers' identifying information is publicly available through Arkansas's Freedom of Information Act, Ark. Code Ann. § 25-19-101 *et seq.* The public availability of this information has led to targeting and harassment of paid canvassers. For example, during the 2024 election cycle, opponents of certain ballot measures disseminated the information and used it to harass canvassers. *See* App. 173–75; R. Doc. 24-15, at 2–4.

Domicile Requirement (Act 453 of 2025). Under a 2021 law not at issue in this appeal, Arkansas bars any non-Arkansas resident from acting as a paid or volunteer canvasser. Ark. Code Ann. § 7-9-103(a)(6). In 2025, the General Assembly added the requirement that paid canvassers be "[d]omiciled in the state if acting as a paid canvasser for a statewide initiative petition," further narrowing the pool of available canvassers. *Id.* § 7-9-103(a)(8)(B).

Canvassing Regulations (Acts 218, 240, and 274 of 2025). Three additional laws—collectively, the "Canvassing Regulations"—newly

impede qualified canvassers from speaking with the public as they attempt to collect signatures for ballot measures.

First, under Act 218 ("Criminal-Offense Warning"), canvassers must tell each potential signer that "petition fraud is a criminal offense." Ark. Code Ann. § 7-9-103(a)(7). The canvasser must convey this statement verbally unless that is "impossible," in which case it must be conveyed in writing. *Id.* A canvasser who fails to convey the warning commits a Class A misdemeanor. *Id.* § 7-9-103(c)(10). Canvassers for candidates or political parties are not required to make this statement.

Second, under Act 240, canvassers must "verify the identity" of a potential signer by inspecting the signer's photo identification ("Photo-Identification Requirement"). *Id.* § 7-9-109(g). A canvasser who attests to the validity of signatures without having inspected photo ID "makes a false statement on a petition verification form," which is a criminal offense. *Id.* §§ 7-9-103(c)(7), 7-9-09(d), 7-9-109(g)(3). Canvassers for candidates or political parties are not required to inspect ID.

Finally, under Act 274, a canvasser may not collect a signature without reading the entire ballot title of the petition aloud to the potential signer or having the potential signer read it in the canvasser's

presence ("Reading Requirement"). *Id.* § 7-9-103(a)(1)(A). That can take up to three minutes for Appellees' petitions. App. 114; R. Doc. 24-6, at 6.

True affidavit and "cool off" period (Act 241 of 2025). Existing law requires canvassers to submit an "affidavit" and a "verification" that attest (1) to the canvasser's residence, (2) that a registered voter signed in the canvasser's presence, and (3) that required materials were affixed to the signature sheet during circulation. Ark. Code Ann. §§ 7-9-108(b), 7-9-109(a). Under Act 241, a canvasser must submit a third attestation—a "true affidavit"—of compliance with "the Arkansas Constitution" and "all Arkansas law regarding canvassing, perjury, forgery, and fraudulent practices." *Id.* § 7-9-111(j). *All* the canvasser's signatures are excluded if this true affidavit is not submitted. *Id.*

Act 241 further mandates that after submitting the true affidavit, a canvasser "shall not collect additional signatures unless the Secretary of State determines that the sponsor of the initiative petition or referendum petition is eligible for [the cure period]." *Id.* § 7-9-111(k). Act 241 thus completely prevents experienced canvassers from collecting additional signatures in anticipation of a cure period—the very time when sponsors most need canvassers' aid.

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C. The litigation.

Plaintiffs are a membership organization (League of Women Voters of Arkansas), an Arkansas ballot question committee (Save AR Democracy), and two individuals. Two other Arkansas ballot question committees, Protect AR Rights and For AR Kids, intervened.

When it filed its complaint, Intervenor-Plaintiff Protect AR Rights had submitted its proposed ballot title to the Attorney General three times. The Attorney General had rejected its first two submissions, and the third submission was pending. Protect AR Rights thus named the Attorney General as defendant on its Act 602 claim. Four days after Protect AR Rights filed suit, the Attorney General responded to its third submission. Though it was written at grade level 9.2, the Attorney General rewrote it to grade level 8.9 and certified this rewritten version.[2] *See* R. Doc. 43-2; R. Doc. 43-3.

[2] Intervenor-Plaintiff For AR Kids was not required to satisfy the Eighth-Grade Requirement because the Attorney General approved its ballot title before the effective date of Act 602. *See* App. 098–099; R. Doc. 24-1, at 2–3. The Attorney General approved Plaintiff Save AR Democracy's ballot title on May 21, 2025, after finding that it had been submitted at grade level 8.5. Atty Gen. Op. 2025-033.

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Appellees each sought a preliminary injunction and submitted significant evidence showing how the challenged laws impeded and would continue to impede their ability to communicate with voters and advocate for their proposals during the petitioning process.

In particular, Appellees submitted declarations exhibiting that the Canvassing Regulations hindered individuals from canvassing on their behalf and restricted the speech of those who decided to canvass despite the risk of criminal sanction. *See* App. 036–080, 086–089, 109–20, 134–67; R. Doc. 20-1–20-10, 20-12, 24-6, 24-8–24-13. A survey of Intervenor-Plaintiffs' past volunteers quantified the loss: 19.1 percent of canvassers reported that they would probably not volunteer to canvass because of the new laws, and another 29.3 percent were not sure whether they would. App. 137; R. Doc. 24-8, at 4. Some canvassers were understandably frightened by the new criminal penalties, some found it too physically demanding to repeatedly read the ballot title aloud given their age or infirmities, and some were generally deterred from associating with Appellees because they feared the new laws would impede signature collection. *See* App. 074; R. Doc. 20-9, at 3; App 088;

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R. Doc. 20-12, at 3; App. 115–16; R. Doc. 24-6, at 7–8; App. 148–49; R. Doc. 24-10, at 4–5.

The fears proved warranted when canvassers began collecting signatures. Whereas in previous years canvassers could collect a signature after spending two to three minutes with a voter, the new laws upped the time to six to ten minutes, if not more. *See* App. 143; R. Doc. 24-9, at 3 (six to ten minutes); App. 147; R. Doc. 24-10, at 3 (ten); App. 153; R. Doc. 24-11, at 4 (eight); App. 158; R. Doc. 24-12, at 3 (ten to fifteen). This is not surprising, because reading an entire ballot title consumes nearly three minutes. App. 114; R. Doc. 24-6, at 6. The result is predictable—because the new laws lengthen the time canvassers spend with each signer, sponsors communicate with fewer voters and collect fewer signatures. *See, e.g.*, App. 158; R. Doc. 24-12, at 3. Moreover, many voters who might otherwise be interested in signing refused because of the delays imposed by the new laws. *See, e.g.*, App. 159; R. Doc. 24-12, at 4.

Other aspects of the law likewise interfered with sponsors' ability to communicate and associate with voters: canvassers found that people either were not carrying ID or did not want to provide it to a stranger,

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and the Criminal-Offense Warning spooked potential signers. *See* App. 148; R. Doc. 24-10, at 4; App. 153–54; R. Doc. 24-11, at 4–5; App. 158–59; R. Doc. 24-12, at 3–4; App. 164-66; R. Doc. 24-13, at 4–6.

The district court preliminarily enjoined the laws. It rejected the State's position that there was no case or controversy as to the Reading Requirement, the Pre-Collection Disclosure Requirement, and the Eighth-Grade Requirement. The Reading Requirement chilled Appellees' speech by forcing them to read the ballot title or wait as the potential signer read it to herself. App. 300–01; Add. 32-33; R. Doc. 50, at 32–33. The Pre-Collection Disclosure Requirement likewise chilled speech by leading to disclosure of canvasser identities through its interaction with the Arkansas FOIA. App. 299; Add. 31; R. Doc. 50, at 31. And the court found that Protect AR Rights could sue the Secretary over the Eighth-Grade Requirement, notwithstanding the intervening approval of its ballot measure. Protect AR Rights had standing at the commencement of the lawsuit because the Attorney General had not yet approved its measure at that time. Because there is "no reason to conclude that [the Eighth-Grade Requirement] simply dissolves as soon as the Attorney General pre-certifies a ballot title," and because the

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Secretary could still redress Protect AR Rights' injury, the claim was not moot. App. 298; Add. 30; R. Doc. 50, at 30.[3]

The district court then correctly found Appellees likely to succeed on their First Amendment claims.

The court found that the Canvassing Regulations trigger strict scrutiny for several reasons. First, applying this Court's precedents, it concluded that the Canvassing Regulations implicate speech and that Appellant "has not attempted to rebut the evidence of the severe burden these laws impose on sponsors and canvassers," both individually and collectively. App. 324; Add. 56; R. Doc. 50, at 56. Second, the court determined that the Criminal-Offense Warning and Photo-Identification Requirement are content-based restrictions on speech because they apply only to sponsors advocating for initiatives' ballot access, not to sponsors advocating for candidates' and parties' ballot access. App. 325–26; Add. 57–58; R. Doc. 50, at 57–58. Third, the court found that the Criminal-Offense Warning compels speech. App. 326–27; Add. 58–59; R. Doc. 50, at 58–59.

[3] The district court found that the claim was moot as to the Attorney General and dismissed him from the case. App. 344; Add. 76; R. Doc. 50, at 76.

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Applying strict scrutiny, the court concluded that the State failed to show that the laws are narrowly tailored. Though the court found that the State's proffered justifications—"protecting the integrity of the petition process against fraud and promoting public confidence"—were compelling, it identified less restrictive means of meeting those interests. App. 327–28; Add. 59–60; R. Doc. 50, at 59–60. For example, the State could require written notices attached to the petition concerning fraud or could prosecute what actual petition fraud exists (though the court found no evidence that it had). *Id.*

Addressing Act 241, the district court found that the additional affidavit requirement could not survive *any* level of scrutiny. Disqualifying *all* signatures for omission of the true affidavit "burdens far more speech than the existing petition part affidavits," and there is "no legitimate, let alone important, countervailing state interest to justify imposing it on top of the existing affidavit requirements." App. 330–31; Add. 62–63; R. Doc. 50, at 62–63. For the "cool off" period, the court found that total preclusion of canvassers' speech is a severe burden that no state interest justifies. App. 332; Add. 64; R. Doc. 50, at 64.

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The district court also found that Appellees are likely to show that the Pre-Collection Disclosure Requirement violates the First Amendment, given the State's inability to distinguish this Court's decision striking down a similar law in *Dakotans for Health v. Noem*, 52 F.4th 381 (8th Cir. 2022). Nevertheless, the court did not preclude the State from collecting this information; its injunction merely precludes the Secretary from releasing it publicly. App. 345; Add. 77; R. Doc. 50, at 77.

The district court likewise found no basis for the State to add a domicile requirement for paid canvassers on top of the existing requirement—which it declined to enjoin—that all canvassers be Arkansas residents. It found Act 453 "likely unconstitutional under any level of scrutiny" because it is "completely inapplicable to the bad conduct that ostensibly precipitated its enactment"—namely, the use of hotels as residence addresses in a *local* initiative campaign. App. 313–14; Add. 45–46; R. Doc. 50, at 45–46.

Finally, the court applied strict scrutiny to the Eighth-Grade Requirement. Even if it is "easy" to comply with the requirement (which the court found unsupported), the law severely burdens sponsors'

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speech by "dictating what kind[s] of words and sentences a petition sponsor can use to describe a ballot measure." App. 307; Add. 39; R. Doc. 50, at 39. And it is content-based because it applies only to statewide initiatives—not to local measures or legislatively referred constitutional measures. App. 308; Add. 40; R. Doc. 50, at 40. Nor could Appellant satisfy strict scrutiny, because the State does not have a "legitimate, let alone compelling, interest in limiting citizen petitions to the simple and straightforward," and the law is not tailored to any valid interest because it excludes understandable citizen-initiated ballot titles while allowing the legislature to refer densely worded measures. App. 310–11; Add. 42–3; R. Doc. 50, at 42–43.

The district court held that the remaining factors warrant a preliminary injunction. The court declined the State's invitation to withhold relief under *Purcell v. Gonzalez*, 549 U.S. 1 (2009) (per curiam), because, among other reasons, the injunction was issued almost a year before the election. App. 343; Add. 75; R. Doc. 50, at 75. The court then tailored injunctive relief to the parties and their injuries. As noted above, the Court merely enjoined the Secretary from disseminating information collected from Appellees through the Pre-

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Disclosure Requirement—not from collecting that information. *See* App. 345; Add. 77; R. Doc. 50, at 77. As to both Appellees, the district court enjoined the Secretary from enforcing the Canvassing Regulations, "including by invalidating signatures, finding petitions insufficient, or pursuing criminal charges based on noncompliance." *Id.* As to Protect AR Rights, the court enjoined the Secretary from enforcing Act 602, "including by finding its petition insufficient based on the reading level of the petition's ballot title." *Id.* And because only Plaintiffs sought a preliminary injunction on Acts 241 and 453, the court enjoined enforcement of those laws against Plaintiffs alone. *Id.*

The State noticed appeal on December 1, 2025. App. 346; R. Doc. 53. On December 10, 2025, it sought a partial stay, which this Court denied the next day.

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SUMMARY OF THE ARGUMENT

This Court should affirm the district court's preliminary injunction. The district court correctly assessed the merits, and the other factors favor injunctive relief.

First, the Court has jurisdiction over each claim. The Reading Requirement and Pre-Collection Disclosure Requirement harm Appellees by impeding them from spreading their proposals for political change. For similar reasons, they implicate speech under the First Amendment, as does the Photo-Identification Requirement. As for the Eighth-Grade Requirement, the Attorney General rewrote Protect AR Rights' ballot title in a way that causes additional harm, which Appellant can remedy.

Second, most of the laws are subject to strict scrutiny. Application of strict scrutiny here is fatal. Appellant cannot show that the laws are narrowly tailored to the State's asserted interests (even assuming those interests are actually compelling). Even where strict scrutiny does not apply, the laws cannot satisfy lesser scrutiny.

The Canvassing Regulations impose a severe burden by depriving sponsors of canvassers and by reducing the number of voters that

canvassers can reach. Moreover, the Photo-Identification Requirement and Criminal-Offense Warning are content-based, and the Criminal-Offense Warning compels speech.

Act 241 completely bans canvassers' speech—certainly a severe burden—after they submit an affidavit that serves no legitimate purpose.

The Court already held unconstitutional a law that is materially indistinguishable from the Pre-Collection Disclosure Requirement.

The Domicile Requirement fails because it does not cover the type of conduct that purportedly justifies the law.

The Reading Requirement is content-based discrimination against speech that contradicts the legislature's will. It also imposes a severe burden by preventing sponsors from expressing themselves in commonly understood language.

The district court correctly upheld facial challenges to these laws, because each of the laws affects a single category of speakers—sponsors and their canvassers—in the same way.

And the district court correctly applied the other preliminary-injunction factors. Appellees are irreparably harmed by infringements

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on their speech. They timely challenged the measures. And application of the *Purcell* principle makes no sense where the election was a year away and Arkansas permits challenges to ballot titles weeks before an election. The Court should affirm.

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ARGUMENT

Courts consider four factors when evaluating a preliminary injunction: "(1) the threat of irreparable harm to the movant; (2) the state of the balance between this harm and the injury that granting the injunction will inflict on the other parties litigant; (3) the probability that the movant will succeed on the merits; and (4) the public interest." *Wilbur-Ellis Co. v. Erikson*, 103 F.4th 1352, 1355–56 (8th Cir. 2024) (quoting *Home Instead, Inc. v. Florance*, 721 F.3d 494, 497 (8th Cir. 2013)).

The Court reviews the grant of a preliminary injunction for abuse of discretion. *Missouri v. Trump*, 128 F.4th 979, 988–89 (8th Cir. 2025). "A district court abuses its discretion when 'it rests its conclusions on clearly erroneous factual findings or erroneous legal conclusions.'" *Wilbur-Ellis Co.*, 103 F.4th at 1355 (quoting *Miller v. Honkamp Krueger Fin. Servs., Inc.*, 9 F.4th 1011, 1013–14 (8th Cir. 2021)).

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I. Appellees are likely to succeed on the merits.

A. The Canvassing Regulations violate the First Amendment and Appellees have standing.

1. Appellees have standing to challenge the Reading Requirement.

Appellant obfuscates Appellees' challenge to the Reading Requirement. When the claim is correctly described, it is obvious that Appellees have standing.

Appellees want to speak with as many Arkansas voters as possible about their measures to collect the tens of thousands of signatures needed to access the ballot. The Reading Requirement interferes with these communications by elongating the time canvassers must spend with each potential signer, reducing the number of potential signers canvassers can speak with and deterring some from speaking with canvassers at all. This is a First Amendment injury. *See Dakotans for Health*, 52 F.4th at 387 (finding injury because "the ability of DFH to reach its audience and gather sufficient signatures is directly impacted by SB 180"). Precluding Appellant from enforcing the Reading Requirement will redress that injury.

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Appellant's contention that Appellees have no desire to avoid repeatedly reading the ballot title (or waiting for it to be read) comes out of left field. App. Br. 20. Appellees sued precisely because they wish to circulate petitions without being forced to jump through these hoops. *See, e.g.*, App. 109–20; R. Doc. 24-6. To be sure, the criminal penalties associated with the law heighten its chilling effect because they deter canvasser participation. But, regardless, this is a challenge to conditions of interacting with and collecting signatures from voters—conditions that would exist and interfere with Appellees' speech even without criminal penalties. Appellees have standing.

2. Strict scrutiny applies to the Canvassing Regulations because, both individually and collectively, they severely burden political speech.

The Supreme Court and this Court have developed a framework for analyzing burdens on speech associated with ballot petitions. Because Appellant does not squarely present this framework, Appellees explain it here.

The ballot-initiative process involves "core political speech." *Meyer v. Grant*, 486 U.S. 414, 422 (1988). *Meyer* discussed two forms of protected expression at play: "expression of a desire for political change,"

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embodied by the ballot measure itself, and "discussion of the merits of the proposed change," embodied by conversations between canvassers and potential petition signers. *Id.* at 421. When states regulate ballot initiatives, "the importance of First Amendment protections is at its zenith." *Id.* at 425 (internal quotation marks omitted). States thus must adequately justify any restrictions on ballot initiatives. *See id.*

In *Meyer*, the Court struck down a state law making it a felony to work as a paid canvasser. This law implicated the First Amendment in two ways:

> First, it limits the number of voices who will convey appellees' message and the hours they can speak and, therefore, limits the size of the audience they can reach. Second, it makes it less likely that appellees will garner the number of signatures necessary to place the matter on the ballot, thus limiting their ability to make the matter the focus of statewide discussion.

Id. at 422–23 (footnote omitted). The Court then held that the state had failed to justify the law, rejecting its asserted interest in "the integrity of the initiative process." *Id.* at 426. Importantly, "the risk of fraud or corruption, or the appearance thereof, is more remote at the petition stage . . . than at the time of balloting." *Id.* at 427. Moreover, the state already addressed this asserted interest in more tailored ways, such as

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by criminalizing fraud in the process and requiring that each petition page state the criminal penalties associated with fraud. *Id.*

Likewise, in *Buckley v. American Constitutional Law Foundation, Inc.*, 525 U.S. 182 (1997), the Court struck down laws requiring canvassers to be registered voters and to wear badges stating their names. The registration requirement "drastically reduce[d]" the number of petitioners, thus producing "a speech diminution." *Id.* at 193–94. The badge requirement "inhibit[ed] participation in the petitioning process" because canvassers were less willing to work while wearing a badge. *Id.* at 197–98 (citation omitted). The state's justifications of policing fraud and lawbreaking were inadequate because other laws effectively served that function. *See id.* at 196, 198.

Interpreting *Meyer* and *Buckley*, this Court employs a two-step analysis to determine the constitutionality of initiative restrictions. First, the restriction must implicate the First Amendment. Regulations that affect "the communication of ideas associated with the circulation of petitions" do. *Miller v. Thurston*, 967 F.3d 727, 737 (8th Cir. 2020) (citation omitted). So, too, do restrictions that "make it less likely that [a sponsor] will garner the number of signatures necessary to place a

matter on the ballot, thus limiting its ability to make its political causes the focus of statewide discussion." *SD Voice v. Noem*, 60 F.4th 1071, 1078 (8th Cir. 2023) (cleaned up) (quoting *Meyer*, 486 U.S. at 423). However, regulations that concern the "difficulty of the process alone" but "in no way restrict[] the ability to circulate petitions or otherwise engage in political speech" do not implicate the First Amendment. *Miller*, 967 F.3d at 737 (alteration omitted) (quoting *Dobrovolny v. Moore*, 126 F.3d 1111, 1112–13 (8th Cir. 1997))[4]

Second, if a law implicates the First Amendment, the court determines what level of scrutiny applies. For a "severe" restriction, the court applies strict scrutiny. *Id.* at 739. If the restriction is not "severe," it must be "reasonable, nondiscriminatory, and further[] an important regulatory interest." *Id.* at 740. The court must consider "the character and magnitude of the burden the State's rule imposes on First

[4] The Court has found that laws requiring in-person signatures under pandemic conditions and laws restricting the timeframe in which sponsors may collect signatures implicate the First Amendment. *See Miller*, 967 F.3d at 738 (in-person requirement); *SD Voice*, 60 F.4th at 1080 (timeframe). On the other hand, laws that require sponsors to have petitions notarized and that set threshold signature-collection levels do not. *See Miller*, 967 F.3d at 738 (notary requirement); *Dobrovolny*, 126 F.3d at 1112–13 (10-percent threshold).

Amendment rights," and "the burden must go beyond the merely inconvenient" to be deemed severe. *Id.* at 739 (cleaned up).

Finally, signing a petition is itself is "expression of a political view [that] implicates a First Amendment right." *John Doe No. 1 v. Reed*, 561 U.S. 186, 195 (2010); *Nev. Comm'n on Ethics v. Carrigan*, 564 U.S. 117, 128 (2011) ("[A] citizen's signing of a petition" is "core political speech." (citation omitted)).

a. *The Canvassing Regulations implicate speech.*

Appellant's contention that the Reading Requirement and Photo-Identification Requirement do not implicate speech strains credulity. The Reading Requirement dictates how canvassers communicate with potential signers. Canvassers must read the entire ballot title or refrain from communication as the signer reads it to herself. That the law's phrasing focuses on the signer—stating that signers must read the ballot title in the canvasser's presence or have the canvasser read it to them—does not matter. The law regulates canvassers' expression as they attempt to collect signatures and prevents voters from associating with the sponsor by signing the petition until the Reading Requirement's conditions are met.

Similarly, the Photo-Identification Requirement implicates speech because it demands that canvassers interrupt themselves to request that the potential signer produce ID. In arguing otherwise, Appellant relies wholly on *Hoyle v. Priest*, 265 F.3d 699 (8th Cir. 2001), but that case is far afield. *Hoyle* held that the First Amendment does not prevent a state from requiring petition signers to be registered voters, as Arkansas's constitution does. *See id.* at 703. By contrast, the ID requirement does not "regulate[] who qualifies to lawfully sign a petition." App. Br. 24. Rather, it bars otherwise legal voters from signing a petition unless they first produce ID. Whether the potential signer has ID on him or not, the law burdens canvassers' speech by requiring them to ask for and (if the signer has it) review the document.

In short, the laws dictate what the canvasser must do while "engaged in [an] exchange of ideas," which is the essence of a law that implicates speech. *Miller*, 967 F.3d at 738.

b. *The Reading Requirement poses a severe burden.*

The district court correctly concluded that Appellees presented "ample evidence" of the Reading Requirement's severe burdens, which Appellant "has not attempted to rebut." App. 324; Add. 56; R. Doc. 50,

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at 56. Appellant fails to acknowledge that evidence. Instead, he baldly disagrees with the district court's factual findings and proclaims, without evidentiary support, that it is "simple" to comply with the law. App. Br. 29–31.

To the contrary, the evidence shows that nearly 70 percent of canvassers surveyed said that the Reading Requirement would deter their participation. App. 136–37; R. Doc. 24-8, at 3–4. The Reading Requirement extends the interaction for at least as long as the reading takes. Compounded by the need to interact with thousands of signers, those extra minutes add up to hours upon hours during which canvassers could be speaking with and collecting signatures from others—"a speech diminution of the very kind produced by the ban on paid circulators at issue in *Meyer*." *Buckley*, 525 U.S. at 193–94.

Unable to controvert this evidence, Appellant attempts to rewrite the law. He says that compliance is "relatively simple" because canvassers could "simply ask a petitioner to confirm they read or heard the ballot title." App. Br. 30–31. But the law does not say that the canvasser may simply ask the signer if she has read or heard the ballot title. The law requires that the canvasser *actually* read the ballot title aloud or wait

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as the signer reads it to herself "in the signer's presence"—and, assuming an improbable 100 percent read-to-signing rate *and* assuming an improbable 100 percent signature validation rate, this must be done 90,704 times. If it takes about three minutes to read a ballot title, as is the case with For AR Kids' measure, that is 272,112 minutes of reading—equivalent to 4,535 hours, 189 days, or 6 months. In reality, not everyone who has a ballot title read to them will sign a petition, and not every signature will be validated by the Secretary. *See* App. 112, R. Doc. 24-6, at 4 ("[T]he BQCs expect that they will need to collect between 140,000 and 150,000 total signatures to meet the threshold of 90,704 valid signatures."). So the actual reading time will be much longer.

The burden is severe—particularly because the law leads people to disengage from canvassers, causes canvassers to forfeit opportunities to speak with potential signers, and spurs canvassers to abandon campaigns because of the additional burdens. *See, e.g.*, App 148–49; R. Doc. 24-10, at 4–5; App. 153–54; R. Doc. 24-11 at 4–5.

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c. *The Criminal-Offense Warning poses a severe burden.*

Appellant's argument that it takes two seconds to provide the Criminal-Offense Warning wrongly reduces the severity analysis to a stopwatch test. Severity can be found not only by time but also by how onerously the regulation impedes canvasser and signer participation. In *Buckley* the Supreme Court found that a requirement taking *no time at all*—wearing a name badge—violated the First Amendment. *See* 525 U.S. at 198–99 (badge requirement "inhibits participation in the petitioning process" by exposing petitioners to "risk of 'heat of the moment' harassment" (citation omitted)). Imagine a law requiring canvassers to inform potential signers "You shouldn't sign this petition." That may take two seconds, but it would severely burden a sponsor's speech.

In any case, the burden is also quantitatively severe. Forty-two percent of surveyed canvassers say the Criminal-Offense Warning deters their participation. App. 136; R. Doc. 24-8, at 3. And experience shows that some signers understandably decline to sign petitions when informed vaguely that what they are about to sign could make them a

criminal. App. 164; R. Doc. 24-13, at 4. The law severely burdens speech both qualitatively and quantitatively.

d. *The Photo-Identification Requirement poses a severe burden.*

Appellant's defense of the Photo-Identification Requirement depends entirely on the Supreme Court's statement in *Crawford v. Marion County Election Board*, 553 U.S. 181, 198 (2008) (plurality opinion), that obtaining a photo ID "does not qualify as a substantial burden on the right to vote." But the district court correctly distinguished *Crawford* and found that the Photo-Identification Requirement severely burdens speech in the different context of petitioning.[5] App. 325; Add. 57; R. Doc. 50, at 57.

Elections are set events. Voters know when the election is and have time to obtain photo ID. Petitioning-related speech, on the other hand, mostly involves chance interactions on sidewalks and other public places. Citizens are more likely to be without IDs in these

[5] Appellant makes far too much of the district court's finding that that identification needed to comply with Act 240 is not free. The district court did not base its ruling on this ground alone. Even if *some* forms of acceptable identification are free, Act 240 imposes a severe burden in the petitioning context, as the record here shows.

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circumstances—you do not need ID to buy groceries, eat out, or walk in a park. The evidence bears that out. App. 153; R. Doc. 24-11, at 4 ("[E]ight people wanted to sign the petition but were unable because they did not have any form of identification with them."). Some people will not produce ID to a stranger. App 164; R. Doc. 24-13, at 4. And someone who does not have ID is likely to bypass the canvasser altogether, depriving the sponsor of a chance to convey its message. For those who have ID and are willing to show it, the process impedes the canvasser's delivery of the sponsor's message while they consume time verifying ID. *See, e.g.*, App. 143; R. Doc. 24-9, at 3. As with the other Canvassing Regulations, this one deters canvasser participation, here at a rate of nearly sixty percent. App. 136; R. Doc. 24-8, at 3. Like the badge requirement in *Buckley*, all these factors combine to reduce sponsors' ability to reach voters.

e. *Collectively, the Canvassing Regulations pose a severe burden.*

Appellant argues that the district court insufficiently distinguished between the three Canvassing Regulations and should not have analyzed them collectively. He is incorrect on both points.

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As an initial matter, the district court found correctly that each law, individually, severely burdens speech. App. 322 n.23; Add. 54 n.23; R. Doc. 50, at 54 n.23. (holding that each Canvassing Regulation is "unconstitutionally burdensome when considered individually"). The district court need not have cited the proof in support of this holding chapter and verse. Rather, under the applicable abuse-of-discretion standard, this Court affirms unless the district court rested its conclusions on clearly erroneous factual findings. *Missouri*, 128 F.4th at 989. It did not here.

Moreover, the district court correctly considered the laws' collective burden. Neither *Miller* nor *Initiative & Referendum Institute v. Jaeger* are to the contrary. Neither case says that courts should not analyze speech burdens collectively in appropriate circumstances. It just made no sense to do so in those cases. In *Miller*, the plaintiff challenged two requirements: that a canvasser collect signatures in person and then later present a notarized affidavit. 967 F.3d at 732–33. The regulated events occurred at two different times. So there was no reason to analyze how the two burdens intersected. Likewise, *Jaeger* involved regulations that had little to do with one another and were

implemented independently—a requirement that canvassers be North Dakota residents, and a prohibition on paying petitioners per signature. 241 F.3d 614, 615 (8th Cir. 2001).[6]

Here, by contrast, canvassers must execute all three Canvassing Regulations during every interaction they have with each potential signer. To collect a signature, a canvasser must comply with the Reading Requirement, provide the Criminal-Offense Warning, and check ID—all in the same interaction. The individual burdens of each law are compounded when applied together—adding time needed with each signer, repelling more potential signers, and deterring canvasser participation. *See, e.g.*, App. 153–54; R. Doc. 24-11, at 4–5 ("It took significantly more time to interact with each signer because of the time it took to check their identification and allow them to read the ballot title. . . . [T]wenty-three people were initially interested in signing but walked away after learning how long it would take to complete all of the required steps."). In these circumstances, it is appropriate to assess the collective burden that the laws impose on speech.

[6] Appellees do not disagree that they must have standing to challenge each law, which they do. The standing rules have nothing to do with how the Court should analyze the First Amendment burden.

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Courts do not turn a blind eye to the way that multiple parts of a single, related statutory scheme interact to enhance the burden on speech. For example, in *Murdock v. Pennsylvania*, the Supreme Court considered a licensing scheme applicable to all persons canvassing or selling goods. 319 U.S. 105, 106 (1943). In finding that this scheme unconstitutionally burdened petitioners' First Amendment right to circulate pamphlets, the Court found "that these license taxes either separately *or cumulatively* have restricted or are likely to restrict petitioners' religious activities." *Id.* at 114 (emphasis added). Indeed, courts have applied that same principle to the ballot-initiative context. *Pierce v. Jacobsen*, 44 F.4th 853, 860 (9th Cir. 2022) (severity is assessed "in light of the entire statutory scheme regulating ballot access"). This Court should do the same.

3. Strict scrutiny applies to the Criminal-Offense Warning and the Photo-Identification Requirement because the laws are content-based.

Petitioning for ballot access in Arkansas encompasses several types of content. In addition to initiated measures, petitioners may collect signatures to gain ballot access for independent statewide candidates, Ark. Code Ann. § 7-7-103, independent presidential candidates, *id.* § 7-

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8-302, and new political parties, *id.* § 7-7-205. Yet canvassers advocating for those types of ballot access need not provide potential signers with a Criminal-Offense Warning or verify their identity using photo ID—although the State's interest in preventing fraud is no different.

Burdening only one type of political petitioning, as these laws do, is classic content-based regulation necessitating strict scrutiny. Such a regulatory regime "draws distinctions based on the message a speaker conveys." *Reed v. Town of Gilbert*, 576 U.S. 155, 163 (2015). And these two laws "appl[y] to particular speech because of the topic discussed." *Id.* at 171. A canvasser trying to advance an initiative must provide the warning and inspect ID. But if that same canvasser simultaneously engages the same potential signer about a petition for a candidate or a new political party, she need not provide the warning or inspect ID. The distinction is drawn based on what the canvasser is advocating for—the petition—rather than who the canvasser herself is. This is a content-based restriction.[7] *See McCullen v. Coakley*, 573 U.S. 464, 479 (2014) (a

[7] Though Appellant's brief addresses Appellees' argument about content-based regulations as to the Photo-Identification Requirement only, Appellees address both laws here.

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law is "content based if it require[s] enforcement authorities to examine the content of the message that is conveyed to determine whether a violation has occurred" (internal quotation marks and citation omitted)).

Resisting this conclusion, Appellant cites *City of Austin v. Reagan National Advertising of Austin, LLC*, 596 U.S. 61 (2022), a case in which the Court held that a law regulating only off-premises signs (*e.g.*, billboards) is content-neutral, even though one must review the content of a sign to determine if it is "off-premises." But *City of Austin* is distinguishable on multiple fronts.

First, the Court found such regulations supported by "the Nation's history of regulating off-premises signs." *Id.* at 75. There is no such history of burdening the political speech of petitioners, as *Meyer* and its progeny show.

Second, though Appellant attempts to characterize the laws as "procedure-based" and to shoehorn them into *City of Austin*'s discussion of commercial solicitation, App. Br. 25, political speech is not "solicitation" as *Austin* describes it, *i.e.*, "seeking to obtain something" or an "attempt or effort to gain business," *City of Austin*, 596 U.S. at 72

(citation omitted). So this argument gains no purchase. In the petitioning context, asking for support or signatures is protected speech, because without it "the flow of such information and advocacy would likely cease." *Meyer*, 486 U.S. at 422 n.5 (quoting *Village of Schaumburg v. Citizens for a Better Env't*, 444 U.S. 620, 632 (1980)).

Third, the Court stressed that even laws regulating commercial solicitation cannot "discriminate based on topic, subject matter, or viewpoint." *City of Austin*, 596 U.S. at 72. Here, unlike in *City of Austin*, the "substantive message itself" is not "irrelevant," and the laws are not "agnostic as to content." *Id.* at 69, 71. Rather, a petition's substance is the regulation's lodestar—only petitions concerning initiatives trigger regulation. The laws' content-based nature becomes further apparent from *City of Austin*'s reaffirmation of *Reed*'s holding that governments may not engage in "subtler forms of discrimination that achieve identical results based on function or purpose." *Id.* at 74. Just as a restriction on signs that are "designed to influence the outcome of an election" is content-based—even if it does not specifically reference the substance of the signs—so too is a law that restricts

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speech that aims to support ballot measures. *Id.* In both cases, the law favors certain types of speech at the expense of others.

That leaves the State with *Wellwood v. Johnson*, 172 F.3d 1007 (8th Cir. 1999), which is easily distinguishable. There, the challenged law required the sponsor of any "wet/dry" alcohol initiative to obtain signatures from 38 percent of the locality's electorate to get on the ballot. *See id.* at 1008. *Meyer* itself found that a state can delineate a required number of signatures to qualify an initiative for the ballot. 486 U.S. at 425–26. So, unsurprisingly, the *Wellwood* court held that such thresholds do not implicate speech. A law that does not implicate speech does not impose content-based speech restrictions. By contrast, the Photo-Identification Requirement and the Criminal-Offense Warning do implicate speech—they regulate the interaction between canvasser and voter—and the Supreme Court's later decision in *Reed* clarifies that they do so in a content-based way.[8]

[8] Appellant cited *Wellwood* in his motion to stay the district court's order but did not oppose the preliminary injunction on this ground. That provides yet another reason to reject this argument. *See Eagle Tech. v. Expander Americas, Inc.*, 783 F.3d 1131, 1138 (8th Cir. 2015) ("It is well settled that we will not consider an argument raised for the first time on appeal.").

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4. Strict scrutiny applies to the Criminal-Offense Warning because it compels speech.

The Criminal-Offense Warning is also subject to strict scrutiny because it compels Appellees' speech. The vague and menacing warning that "petition fraud is a criminal offense"—which canvassers must deliver right when they are attempting to collect a signature—is not part of a sponsor's message and deters potential signers. *See* App. 164; R. Doc. 24-13, at 4. "Mandating speech that a speaker would not otherwise make necessarily alters the content of the speech." *Riley v. Nat'l Fed'n of the Blind of N.C., Inc.*, 487 U.S. 781, 795 (1988); *accord Nat'l Inst. of Fam. & Life Advocs. v. Becerra* ("*NIFLA*"), 585 U.S. 755, 766 (2018) (holding that a state may not compel pregnancy clinics to give disclosures about the availability of abortions, a procedure they did not perform).

Riley concerned a law requiring charitable solicitors to "disclose to potential donors, before an appeal for funds, the percentage of charitable contributions collected during the previous 12 months that were actually turned over to charity." *Riley*, 487 U.S. at 795. This disclosure, though factual in nature, infringed speech, because "the disclosure will be the last words spoken as the donor closes the door or

hangs up the phone." *Id.* at 800. Likewise, the Criminal-Offense Warning forces canvassers to leave threats of criminal sanction ringing in potential signers' ears.

Appellant is incorrect that the State's general authority to regulate the petitioning process allows it to require canvassers to state whatever factual information it wants. The State is not forbidden from requiring any disclosures whatsoever. Indeed, it already requires petitions to contain a written notice of laws related to petition fraud—disclosures that Appellees do not challenge. *See* Ark. Code Ann. § 7-9-108(c); App. 201–02; R. Doc. 24-18. But the State may not compel a sponsor to convey its message in a manner that interferes with the sponsor's own message, as the Criminal-Offense Warning does.

And though states have authority to pass "regulations of professional conduct that incidentally burden speech" *NIFLA*, 585 U.S. at 769, they must link the regulation to *specific* conduct to avoid strict scrutiny. Citation to generic regulatory authority is not enough.[9]

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[9] *B.W.C. v. Williams*, 990 F.3d 614 (8th Cir. 2021), is not relevant at all, because it required disclosures by "county health officials" rather than private parties. *See Garcetti v. Ceballos*, 547 U.S. 410, 421–22 (2006) ("Restricting speech that owes its existence to a public employee's professional responsibilities does not infringe any liberties the employee

This Court recently made this clear in *Sanderson v. Hanaway*, 163 F.4th 1101 (8th Cir. 2026), where it held unconstitutional a statute requiring registered sex offenders to post a sign on Halloween saying, "No candy or treats at this residence." The Court applied strict scrutiny because, rather than being "incidental to conduct," the law "explicitly requires registrants to post a sign bearing a specific message." *Id.* at 1006. Though the state undoubtedly has general authority to regulate sex offenders, and though other parts of the statute regulated registrants' conduct (such as by keeping the lights off), "the sign mandate requires only speech (the posting of a sign with the government's message), not any other related conduct. In fact, it requires *verbatim* speech." *Id.* (citation omitted).

The Criminal-Offense Warning is no different. It forces canvassers to divert from their speech to share the State's prescribed message. The law is not linked to a canvasser's conduct—it mandates speech and speech only. "Signing a petition"—which Appellant attempts to tie the

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might have enjoyed as a private citizen."). Moreover, the requirement that doctors provide truthful information about procedures they perform is a classic example of speech being related to professional conduct. *See NIFLA*, 585 U.S. at 769–70.

regulation to, App. Br. 50—is not the canvasser's conduct. It is the signer's own associational act. And Appellant cannot justify the law simply because it has general authority to regulate ballot access through canvassing. Were it otherwise, *Riley* and *NIFLA* would have come out differently, because states may regulate solicitation and pregnancy clinics. Because the law requires speech that undermines canvassers' efforts to obtain support, it "alters the content of the speech" and is subject to strict scrutiny. *Riley*, 487 U.S. at 795.

5. The Canvassing Regulations cannot survive strict scrutiny.

As the Canvassing Regulations are subject to strict scrutiny, it is Appellant's burden to justify them. *See Meyer*, 486 U.S. at 425. Appellant must "prove that the restriction furthers a compelling interest and is narrowly tailored to achieve that interest." *Missourians for Fiscal Accountability v. Klahr*, 892 F.3d 944, 952 (8th Cir. 2018) (citation omitted).

Appellant does not attempt to meet this burden. He mentions strict scrutiny only as an afterthought in his arguments on the Photo-Identification Requirement and the Reading Requirement. App. Br. 28, 31. Even if the State has a compelling interest in "protecting the

integrity of the process against fraud, corruption, and unintentional mistakes," *id.* at 31, those interests are "more remote" in the petition-gathering context. *Meyer*, 486 U.S. at 427. Moreover, the Arkansas Constitution limits the State's "legitimate" interests, because it *prohibits* the General Assembly from passing laws that "in any manner interfer[e] with the freedom of the people in procuring petitions." Ark. Const. art. 5, § 1. In this area, it only allows laws "prohibiting and penalizing perjury, forgery, and all other felonies or other fraudulent practices, in the securing of signatures or filing of petitions." *Id.*

Even if Appellant could articulate a compelling interest, he also must show that the laws are narrowly tailored to that interest. He does not and cannot. He points to no *actual* fraud that these laws are intended to address. The statutes are not targeted at specific fraudsters—instead, they impermissibly burden the speech of everyone who participates in the process. *See Buckley*, 525 U.S. at 510 (Thomas, J., concurring) (finding badge requirement not narrowly tailored because it "burdens all circulators, whether they are responsible for committing fraud or not"). Moreover, the State's ends in preventing fraud can be met (or already are met) in other, less restrictive ways: affixing information

about the ballot title and petition fraud to petitioners' materials; enforcing fraud laws; and following the Secretary's current process of verifying each signature, which already roots out invalid signatures. The record contains no evidence that the State is validating petitions that should not have been counted.

6. The Canvassing Regulations cannot survive even lesser scrutiny.

Additionally, the Canvassing Regulations cannot satisfy even the lesser burden that they be "reasonable, nondiscriminatory, and further[] an important regulatory interest." *Miller*, 967 F.3d at 740. To meet this requirement, Appellant must do more than "merely rel[y] on a bare assertion of election integrity rather than evidence or a reasonable response connected to" asserted problems in the petitioning process. *SD Voice*, 60 F.4th at 1081. Appellant has presented no evidence of relevant fraud in the initiative process, and he cannot show that the laws constitute a reasonable response to a problem.[10]

Appellant characterizes the Reading Requirement as "[r]equiring petitioners to know what they are signing." App. Br. 28. This

[10] In addition to the reasons discussed below, the Criminal-Offense Warning and Photo-Identification Requirement fail lesser scrutiny because they are discriminatory. *See* Part I.A.3.

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characterization wrongly assumes that citizens cannot understand petitions without handholding. Citizens learn about ballot initiatives in many ways—reading news articles, visiting campaign sites, discussing with friends and family, reading them on their own clock, or talking to a canvasser. Such paternalistic laws are inherently suspect. *See Krislov v. Rednour*, 226 F.3d 851, 864 (7th Cir. 2000) ("[T]here is no per se bar to paternalistic laws, but they are highly suspect when they also burden speech."). And notably, when the General Assembly refers a measure to the ballot, it does not require voters to have the measure read to them before they vote on it.

Appellant further speculates that the law is needed because people might confusedly sign the wrong petition or be "tricked by bad actors." App. Br. 31. But Appellant provides no record evidence that these are real problems, and the Reading Requirement is not narrowly tailored even if they were. The State can and does punish anyone who "[k]nowingly misrepresents the purpose and effect of the petition or the measure affected for the purpose of causing a person to sign a petition." Ark. Code Ann. § 7-9-103(c)(6). This law is simply a mechanism to burden speech.

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Next, Appellant baldly asserts that the Photo-Identification Requirement is reasonable, citing the concurring opinion in *Crawford*. But *Crawford* considers *voting*, not the act of signing a petition so that a measure can *thereafter* be voted upon. *See Meyer*, 486 U.S. at 427. Moreover, Appellant fails to link the Requirement to any existing problem that it is meant to solve, or even to a problem that he professes to foresee. Unlike *Crawford*, where a voter would immediately cast a ballot after showing ID, no petition is counted until the Secretary verifies each signature. *See* Ark. Code Ann. § 7-9-103(a)(1)(A) (stating information petitioners are required to provide); *id.* § 7-9-111 (requiring Secretary to verify sufficiency). The State criminalizes signing a petition if one is not authorized to do so, *id.* § 7-9-103(b)(3), and then verifies every petition to confirm a registered voter signed it. *Crawford* is not on point, and the Photo-Identification Requirement is unconstitutional.

As for the Criminal-Offense Warning, Appellant offers perhaps the weakest justification of all, stating that Arkansas regularly sees signatures that "could have been petition fraud." App. Br. 48. Appellant presents no evidence there *has* been "petition fraud" by signers that the

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Criminal-Offense Warning would prevent. A State must present more than conjecture to justify burdening speech. *Cf. Buckley*, 525 U.S. at 210 (Thomas, J., concurring) ("[T]he State has failed to satisfy its burden of demonstrating that fraud is a real, rather than a conjectural, problem."). And even if Appellant had offered more than conjecture, the Criminal-Offense Warning would still be unreasonable because a potential signer is none the wiser after receiving it. What is petition fraud?[11] How does one avoid committing it? By providing no meaningful information, the warning has no deterrent effect—beyond unconstitutional deterrence from supporting ballot measures.

B. Act 241 violates the First Amendment.

1. The cool-off period violates the First Amendment.

The cool-off period completely prohibits experienced canvassers from collecting signatures during the most important part of sponsors' campaigns—the final push to garner enough support before the deadline. The law "clearly limits the number of voices that will convey a message on the ballot" and "makes it less likely that [sponsors] will

[11] Indeed, as Intervenor-Plaintiffs explained below, even Appellant has struggled to articulate what petition fraud is. *See* R. Doc. 43, at 21 n.4.

secure the number of signatures necessary to place the matter on the ballot, thus limiting the ability to advance statewide discussion on political issues." *SD Voice*, 60 F.4th at 1080.

Accordingly, the law is subject to strict scrutiny, though it is unjustifiable under any standard. Appellant minimizes the violation by saying that thirty days is a "limited" period in which to prohibit canvassers and that "canvassers may continue advocating for a petition in any other way." App. Br. 42. But the most important advocacy here is collecting signatures during the final thirty days of the campaign—hardly a "limited" period. Regardless, *Meyer* could not be clearer: "The First Amendment protects [Plaintiffs'] right not only to advocate their cause but also to select what they believe to be the most effective means for doing so." *Meyer*, 486 U.S. at 424.[12]

[12] Appellant's "equal time" excuse, App. 43–44, is inscrutable. Appellees challenge the total bar on experienced canvassers circulating petitions during a period in which sponsors are authorized to circulate petitions. The "equal time" argument does not even attempt to explain or justify a ban on particular circulators.

2. The true-affidavit requirement violates the First Amendment.

The district court correctly held that the true-affidavit requirement cannot survive any level of scrutiny because it sweeps in far more speech than necessary to achieve aims that other laws already serve.

Precedent contradicts Appellant's argument that the law does not concern speech. Signing a petition is protected expressive conduct. *John Doe No. 1*, 561 U.S. at 194–95. So a law requiring invalidation of lawful voters' petition signatures *does* concern speech. To be clear, the law need not directly interfere with canvassers' and signers' one-on-one communications to implicate that speech. The filing deadline in *SD Voice* did not restrict direct communications, but it nevertheless "burden[ed] the ability to express a position on a political matter by signing an initiative petition." 60 F.4th at 1079 (cleaned up). Just so here. Canceling all of a canvassers' signatures affects speech by negating the signer's political expression as well as the sponsor's efforts to communicate its message.[13]

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[13] Appellees do not assert third-party rights, but rather their own. Petition circulation involves an "interactive communication" between canvasser and signer, *Meyer*, 486 U.S. at 421–22, which "comprises both the request for the signature and the signature itself," and so laws impeding the collection of valid signatures implicate *Appellees'* First

The district court's scrutiny analysis was also correct. The true affidavit does not advance "integrity of and public confidence in the initiative process." App. Br. 41. The affidavit that every canvasser must attach to every petition page already attests to the genuineness of the signatures. Ark. Code Ann. § 7-9-108(b). Appellant argues that the true affidavit is needed because it requires certification of compliance with all applicable laws and does so after collection. But an affidavit saying "I followed the law" is essentially useless—particularly without a mechanism to inform canvassers of what the law is. Scrupulous circulators follow the law; unscrupulous ones would sign this affidavit

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Amendment rights. *See Initiative & Referendum Inst. v. U.S. Postal Serv.*, 417 F.3d 1299, 1311–12 (D.C. Cir. 2005). The cancellation of signatures burdens Appellees' speech and deprives sponsors of their "freedom to associate with others for the common advancement of political beliefs and ideas." *Kusper v. Pontikes*, 414 U.S. 51, 56–57 (1973).

Nor did the district court violate the party-presentation principle. In the cases Appellant cites, the court advanced entire claims that parties never made. *See United States v. Sineneng-Smith*, 590 U.S. 371, 374 (2020) (parties did not raise whether statute was overbroad under First Amendment); *Clark v. Sweeney*, 607 U.S. 7, 9–10 (2025) ("radical transformation" of petitioner's claim). Here, Plaintiffs-Appellees squarely presented a claim that the true-affidavit requirement burdens speech and cited *SD Voice*, the primary case the district court relied on. *See* R. Doc. 21, at 11–12, 18.

regardless of whether they did, and they already can be punished for violating existent law. This third affidavit requirement—applicable only to canvassers for initiatives rather than other forms of ballot access—is simply a trap that will invalidate all signatures obtained by canvassers who, for whatever reason, do not submit the affidavit.

C. *Dakotans for Health* requires the Pre-Collection Disclosure Requirement to be enjoined.

This Court has already enjoined a law that is materially indistinguishable from the Pre-Collection Disclosure Requirement and found that plaintiffs in similar circumstances to Appellees had standing. That should be the end of the analysis.

In *Dakotans for Health*, a ballot question committee challenged a law that required production of paid canvassers' personal information, permitted public disclosure of that information "while the petitions are still being circulated," and voided all signatures collected by a canvasser who failed to provide or update the information. 52 F.4th at 384–85. The Court found that the plaintiff had standing. *Id.* at 387. On the merits, the Court applied exacting scrutiny and found the law inadequately tailored to the State's interest in the integrity of the ballot-initiative process. First, the law discriminated against paid

canvassers without adequate reason. *Id.* at 390. Second, the requirement for disclosure before the end of canvassing was a "recipe for harassment," a "severe burden on speech," and "chilling in today's world." *Id.* at 391–92.

There is no meaningful difference between those facts and the facts here. The Arkansas law requires disclosure of paid canvassers' names and residential addresses. Ark. Code Ann. § 7-9-601(a)(2)(C). Signatures are disqualified if this information is not submitted. *Id.* § 7-9-126(c)(4). The information is publicly available during the canvassing period. *Id.* § 25-19-105. And Appellees have presented the same sort of proof presented in *Dakotans for Health*: that the law reduces the pool of canvassers and results in canvasser harassment. *See* App. 057–058; R. Doc. 20-5, at 3–4; App. 119; R. Doc. 24-6, at 11; App. 173–74; R. Doc. 24-15, at 2-3. The Court should reach the same result it did in *Dakotans for Health.*

The State's primary attempt to distinguish *Dakotans for Health*—on both jurisdiction and merits—is that disclosure here arises from the Arkansas FOIA and not from the section of the code governing ballot initiatives. That is a meaningless distinction. Appellees are injured by

having to submit the information, even if another section of the code requires the disclosure. As the district court correctly found, and as Appellant does not contest, the defendant's actions need not be "the very last step in the chain of causation" to create standing. *Bennett v. Spear*, 520 U.S. 154, 169 (1997). The three essential elements of standing are present here: Appellees are injured by the disclosure; the injury is fairly traceable to Appellant as the official who both collects the information and makes it public; and a favorable judicial decision will (and indeed, has) redressed that injury. And Appellant's argument on the merits just mimics its standing argument. Regardless of the statutory scheme's formal structure, Appellees' speech is chilled by disclosure of canvassers' identifying information.

Appellant makes two other attempts to distinguish *Dakotans for Health*, one on jurisdiction and the other on the merits. Neither is availing.

For the first time on appeal, Appellant argues that Appellees' claim is not ripe because "their alleged injury will occur only if a nonparty makes a FOIA request for the lists and then subsequently publicizes the paid canvassers' information." App. Br. 21. To the contrary, the injury is

the chilling of Appellees' speech—that is, the reduced availability of canvassers because of harassment that could occur (and in the past has occurred) because of the disclosure. That injury is present when the sponsors engage in their canvassing campaigns and does not depend on actual disclosure. Here, standing and ripeness "boil down to the same question." *Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 157 n.5 (2014).

On the merits, Appellant argues that, unlike the State in *Dakotans for Health*, he has presented sufficient proof of fraud to justify discrimination against paid canvassers—legislative findings, a law review article and "recent incidents that have occurred in Arkansas" (the canvassers-in-hotels incident discussed *infra* Part I.D). App. Br. 3–5, 52–53.[14] But the cited legislative findings—that a low validity rate during an election over a decade ago involved "apparent fraud," that "paid canvassers may have an incentive" to submit forged signatures, and that "*untrained* paid canvassers" will submit forgeries—do not show "corruption particular to paid circulators." *Dakotans for Health*,

[14] At page 3 of his brief, Appellant also cites news articles about purported fraud during 2012, which do not disclose whether the canvassers at issue were volunteer or paid.

52 F.4th at 390. Invalidity can occur for innocuous reasons—such as sloppy signatures or inadvertent double signing—that are not fraud. At most, the legislative findings show that forgery among paid canvassers is possible, which was true in *Dakotans for Health*, too. *Id.* Nor does a general characterization in a law-review article or a single instance of bad conduct indicate a need to disadvantage paid canvassers as a class. *See Buckley*, 525 U.S. at 210 (Thomas, J., concurring). Even if this argument were accepted, it would not change the result, because the law is still chilling under *Dakotans for Health*'s second rationale—that the disclosure is a recipe for harassment.

D. The Domicile Requirement violates the First Amendment.

The district court correctly held that the Domicile Requirement cannot meet any level of scrutiny. As an initial matter, it would have been justified in applying strict scrutiny. Like the Canvassing Regulations, the Domicile Requirement does not apply to other forms of political petitioning, which makes it a content-based regulation. *See supra* Part I.A.3.

But like the district court, this Court need not get that far because the law contains an additional defect—*it does not even apply to the*

conduct that it purports to respond to. Only those canvassing "for a statewide initiative petition or statewide referendum petition" must be domiciled in Arkansas. Ark. Code Ann. § 7-9-103(a)(8)(B). But—though the State does not make this clear in its brief—the "canvassers in hotels" incident said to spur this legislation arose from a *local* petitioning effort. *See* App. 232; R. Doc. 39-4 at 7 (explaining canvassers collected signatures "in individual counties for a local measure that would prevent the use of voting machines when counting ballots").

The district court also correctly concluded that the law fails scrutiny because Appellant relied on bare assertions of election integrity. App. 314; Add. 46; R. Doc. 50, at 46 (citing *SD Voice*, 60 F.4th at 1081). In the court below, Appellant said nothing to justify the need for the domicile requirement on top of the existing residency requirement. *See* R. Doc. 39, at 39–40. In this Court, Appellant now stretches for justifications, including that it ensures that canvassers are subject to subpoenas, that petitions have grassroots support, and that Arkansas background checks are available. App. Br. 33–34. But Appellant provides no reason to believe that the residency requirement, which the district court did not enjoin, inadequately serves those functions. Residence, though

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without the duration of domicile, still requires "something more than a place of temporary sojourning, implying a degree of permanence." *Leathers v. Warmack*, 19 S.W.3d 27, 33 (Ark. 2000) (internal quotation marks and citation omitted). A "resident" of Arkansas is not a mere visitor to Arkansas.[15] Leaving the constitutionality of broader residency restrictions for another day, Appellant has provided no evidence that a scourge of petition fraud by non-domiciled Arkansas residents justifies a categorical prohibition on protected speech by a whole class of people.

E. The Eighth-Grade Requirement violates the First Amendment, and the Court has jurisdiction.

1. Appellant is a proper defendant and the claim is not moot as to the Attorney General.

Circumstances changed as Protect AR Rights' preliminary-injunction motion was pending. Faced with a claim against him that the Eighth-Grade Requirement is unconstitutional, the Attorney General took a ballot title that was written at above grade level 9, rewrote it to grade

[15] For example, for state income tax purposes, a resident of Arkansas includes persons (a) domiciled in Arkansas; (b) maintaining a permanent abode in Arkansas for more than half the year; or (c) where other facts and circumstances establish residency. 2-26 Ark. Code R. 51-102(9).

level 8.9, deemed 8.9 not "above eighth grade" per Act 602, and certified it.

In one sense, this gave Protect AR Rights what it wanted: it could begin collecting signatures. But in another sense, it exposed Protect AR Rights to additional harm. Under Arkansas law, the Attorney General does not have the final word on whether the ballot title is valid. An opponent of the measure may challenge it in the Arkansas Supreme Court at any time—including after signatures are collected and verified—as non-compliant with the Eighth-Grade Requirement, and the Arkansas Supreme Court owes no deference to the Attorney General's assessment that 8.9 is "not above eighth grade." *See* Ark. Const. art. 5, § 1; *Wilson*, 500 S.W.3d at 166. There are "volunteers and donors who are hesitant to commit to Protect AR Rights' campaign because of this risk." R. Doc. 43-1, at 3. And regardless of any downstream effects from this uncertainty, Protect AR Rights is injured by the speech infringements that form the basis of its merits claim. *See Lowry ex rel. Crow v. Watson Chapel Sch. Dist.*, 540 F.3d 752, 762 (8th Cir. 2008).

The district court correctly determined that, though the Attorney General no longer has any immediate role in enforcing the statute, Protect AR Rights continues to suffer an injury. The question becomes whether the Secretary has any role in enforcing the law such that enjoining him from enforcing it will redress the injury.[16] "For a sufficient connection to the enforcement of the challenged law, [the] officer must have *methods* of enforcement for the challenged law at its disposal." *Bio Gen LLC v. Sanders*, 142 F.4th 591, 605 (8th Cir. 2025) (internal quotation marks and citation omitted).

The Secretary possesses such enforcement authority via his statutory obligation to certify measures for the ballot. For example, after the Secretary verifies that a measure has enough signatures to qualify for the ballot, he must furnish to relevant officials "a certified copy of the

[16] Appellant complains that the district court violated the party-presentation principle by enjoining the Secretary. App. Br. 18 n.4. But given Protect AR Rights' injury and the Attorney General's attempt to avoid review of this claim, it was reasonable for the district court to enter relief against a State defendant who is able to redress the injury. There was no need for the court to dismiss the claim and require Protect AR Rights to file a new lawsuit against an existing defendant who was already in the case. *See, e.g.*, Fed. R. Civ. P. 15(c), (d) (allowing amendment to change the party against whom a claim is asserted and to address conduct that arose after the original complaint.

ballot title and popular name for each proposed measure and each referred act to be voted upon at the ensuing election." Ark. Code Ann. § 7-9-115(a). Absent the district court's injunction, the Secretary would be precluded from taking the steps necessary to place the measure on the ballot if an opponent of Protect AR Rights' ballot title successfully challenges it as noncompliant with Act 602. So even if Appellant is correct that he does not decide whether the wording of a ballot title is sufficient in the first instance—*but see* Ark. Const. art 5, § 1 ("The Sufficiency of all state-wide petitions shall be decided in the first instance by the Secretary of State . . . .")—Appellant enforces Act 602 by declining to forward for placement on the ballot any measure he would otherwise certify but for noncompliance with Act 602.

Furthermore, this claim is not moot as to the Attorney General because he may not moot the claim by changing the language of the ballot title and deeming 8.9 not to be "above eighth grade" per Act 602. A defendant may not "automatically moot a case by the simple expedient of suspending its challenged conduct after it is sued. Instead[] a defendant's voluntary cessation of a challenged practice will moot a case only if the defendant can show that the practice cannot reasonably

be expected to recur." *FBI v. Fikre*, 601 U.S. 234, 242 (2024) (cleaned up). To show that its voluntary conduct moots the case, a defendant must meet the "formidable burden" to "prove no reasonable expectation remains that it will return to its old ways." *Id.* at 241 (cleaned up). While the Attorney General will not re-apply Act 602 against Protect AR Rights in the 2026 election cycle, he will certainly apply Act 602 to future ballot titles that Protect AR Rights may submit. Thus, as in *Fikre*, where the Court found that the government "might" relist the plaintiff on the No Fly List "if" he did certain things in the future, *id.* at 242, this case is not moot—the Attorney General not only might but would apply Act 602 if Protect AR Rights submits a noncompliant ballot title in the future.[17]

[17] Below, Protect AR Rights asked the district court for the alternative relief of certifying the meaning of Act 602 to the Arkansas Supreme Court as a method of avoiding the ongoing harm set out above. *See* R. Doc. 43, at 37–38. The district court declined, leaving Protect AR Rights in a place where it risks the same harm recurring. "Because mootness is jurisdictional," the Court considers whether a case is or is not moot regardless of whether and how the parties briefed the issue below. *In re Steward*, 828 F.3d 672, 684 (8th Cir. 2016); *Irish Lesbian & Gay Org. v. Giuliani*, 143 F.3d 638, 648 (2d Cir. 1998) ("[A] court should not dismiss a case that is not moot simply because no party has properly raised an exception.").

2. Strict scrutiny applies because the Eighth-Grade Requirement severely burdens speech.

The district court correctly determined that the Eighth-Grade Requirement imposes a severe burden because—even assuming that it is easy to comply—the law "dictate[s] what kind of words and sentences a petition sponsor can use to describe a ballot measure." Add. 39.

First of all, complying with the requirement is *not* easy. Sponsors must navigate the Scylla of expressing the measure simply with the Charybdis of providing sufficient detail and every "essential fact," as required by state law. *See Bailey v. McCuen*, 884 S.W.2d 938, 942 (Ark. 1994). Measures have failed this requirement because they did not discuss all forms of marijuana legalization, *Paschall v. Thurston*, 699 S.W.3d 352, 355 (Ark. 2024); because they did not define "non-economic damages," *Wilson*, 500 S.W.3d at 167; and because they did not include information about the status of sports gambling under federal law, *Lange v. Martin*, 500 S.W.3d 154, 159 (Ark. 2016). In contrast to these demands for more complexity, Act 602 now requires less.

Appellant does not acknowledge this tension, or mention that the Attorney General only approved the measure after substituting *his own* language for Protect AR Rights' preferred expression. Appellant's only

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other argument—that no one has challenged readability requirements for medical, government, and insurance documents—is even weaker, for such documents do not concern core political speech, where First Amendment protections are at a "zenith." *Meyer*, 486 U.S. at 425.

In fact, Appellant says nothing at all to challenge the district court's conclusion that the severity of a burden can be inherent in the nature of a speech restriction. The district court was correct that the law creates a severe burden by constricting sponsors' expression and effectively striking certain words and phrases from their vocabulary. *Cf.* App. 309; Add. 41; R. Doc. 50, at 41 (explaining difficulty of obtaining approval under Act 602 for a measure that uses the phrase "medical marijuana").

3. Strict scrutiny applies because the Eighth-Grade Requirement is content- and speaker-based.

The Eighth-Grade Requirement discriminates based on both content and speaker. It is content-based because it "applies to particular speech because of the topic discussed"—whether to initiate citizen change at a state level. *Reed*, 576 U.S. at 171. Contrary to Appellant's argument, it is content-based even if a state and local petition seeks a similar change (such as a shift to paper ballots). Whether paper ballots should be adopted statewide is a completely different topic than whether they

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should be adopted in Pangburn. The law is also speaker-based (though in a manner different than Appellant argues): it applies only to citizens who initiate measures, not to legislators who initiate them.

Appellant treats speaker-based discrimination as unproblematic, but that is not necessarily so. Speaker-based distinctions are "all too often simply a means to control content," and "laws favoring some speakers over others demand strict scrutiny when the legislature's speaker preference reflects a content preference." *Id.* at 170 (internal quotation marks and citations omitted). That content preference exists here. The legislature has only burdened ballot measures capable of overriding or evading its will—the statewide initiative and referendum. The law thus protects the legislature's control over statewide lawmaking and favors measures that legislators—not the people—want.

4. The Eighth-Grade Requirement cannot survive any level of scrutiny.

The Eighth-Grade Requirement does not survive lesser scrutiny, much less strict scrutiny.

Appellant says that "initiated amendments have lately involved complex regulatory regimes," App. Br. 47. But he is silent about the complexity of the legislature's own measures, including measures that

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will appear on the ballot in 2026. *See* R. Doc. 43, at 44; R. Doc. 43-4.[18] The law thus fails the requirement that laws be nondiscriminatory.

It also fails the lesser-scrutiny requirement of reasonableness. As the district court correctly found, the law contains the double flaw of being both underinclusive (because it exempts legislatively referred amendments) and overinclusive (because the mechanistic formula it employs excludes ballot titles that are perfectly understandable and accurate under existing Arkansas legal standards for ballot titles). It is unreasonable to preclude ballot titles merely because "they use long words, even if those words, like 'Arkansas' and 'Constitution' are easily understood by voters." App 311; Add. 43; R. Doc. 50, at 43 (footnote omitted).

Finally, Appellant does not adequately link the law to the interests he says it advances, much less show that it is the least speech-restrictive way to meet those interests. Appellant regurgitates an

[18] Appellant notes that the Arkansas Supreme Court recently declared Amendment 98 "poorly drafted," App. Br. 47, but he fails to mention the court earlier found that the ballot title was not misleading. *Rose v. Martin*, 500 S.W.3d 148 (Ark. 2016). The language that the court found "inoperable" is the language of the amendment itself, not the language of the ballot title, which is what voters consider and the part of the measure that is relevant for the analysis here.

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interest in combatting "fraud and corruption," App. Br. 46, but the laws have nothing to do with that. Use of multisyllabic words does not constitute fraud. And the existing process already accounts for Appellant's asserted interests in transparency, accountability, and public confidence. It does so by offering double assurance—first through the Attorney General, then through the Arkansas Supreme Court upon challenge—that the ballot title accurately represents the measure. *See* App. 179–81; R. Doc. 24-16, at 3–5 (stating legal standards for ballot title, including that it may not be "misleading," cause "confusion," or use terms that are "technical and not readily understood by voters"). The Eighth-Grade Requirement adds nothing to this process but a burden on speech.

II. The district court correctly sustained Appellees' facial challenges.

The district court did not commit clear error in resolving Appellees' facial challenges. The district found that the laws "operate in a single, narrow context—circulation of initiative and referendum petitions," and that there are "[no] applications of these laws for which the First Amendment analysis would differ." App. 306 n.17; Add. 38 n.17; R. Doc. 50, at 38 n.17. That analysis does precisely what courts should do: it

asks "whether a law's unconstitutional applications are substantial compared to its constitutional ones." *Moody v. NetChoice*, 603 U.S. 707, 718 (2024). Because the laws apply only in one narrow circumstance, there are no applications in which the laws are constitutional.

Appellant also alleges that the district court improperly required him to disprove facial invalidity. It did no such thing. It stated that Appellant offered no reason to question its own conclusion that it "[could not] conceive of" meaningful constitutional applications. App. 306 n.17; Add. 38 n.17; R. Doc. 50, at 38 n.17.

Appellant's argument that Appellees provided no "evidence" of the laws' sweep also falls flat. App. Br. 64. *Moody*, the primary precedent here, does not require the plaintiff to present "evidence" or "proof" (though, as discussed below, Appellees did discuss relevant applications of the law). Rather, the task is to "evaluate the full scope of the law's coverage," to "decide which . . . applications are constitutionally permissible and which are not," and to "finally weigh the one against the other." 603 U.S. at 744. Appellees and the district court analyzed these questions. *See* R. Doc. 43, at 49–52. This is not a situation in

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which "none of the parties . . . focused on" the required analysis. 603 U.S. at 744.

Moreover, the district court would not have reached a different conclusion had it been more verbose. Facial challenges are appropriate when a law "has, in effect, one application," such that "the statute does not apply differently to anyone within the category of" those affected. *Sanderson*, 163 F.4th at 1106. So this Court upheld a facial challenge to South Dakota's version of the Pre-Collection Disclosure Requirement, *see Dakotans for Health*, 52 F.4th at 388—a law that applies only to paid canvassers (or their sponsors) and chills their speech in the same way. The same principle sustains Appellees' facial challenge to most of the other laws. Each of the content-based laws—the Photo-Identification Requirement, the Criminal-Offense Warning, the Domicile Requirement, and the Eighth-Grade Requirement—burdens speech in the same way and for the same reason: because the speaker supports amending state law via the ballot-initiative process. Likewise, the Criminal-Offense Warning compels speech related to canvassing only and applies in the same way for all canvassers. *Cf. Sanderson*, 163 F.4th at 1106.

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The same is true for the claims that hinge on the severity of the burden. All canvassers must engage in identical conduct by collecting ID and providing the Criminal-Offense Warning. All sponsors extend their interactions with canvassers by implementing the Reading Requirement. The Eighth-Grade Requirement controls the speech of all sponsors. And Act 241 applies in precisely the same way for all canvassers—it disqualifies all their signatures if they fail to submit the true affidavit and requires them not to speak at all after submitting it.

As Appellees noted below (in performing the analysis Appellant claims they did not do), the only potential for daylight between regulated parties concerns the Reading and Eighth-Grade Requirements. A sponsor with a very short ballot title may not be burdened as severely by having to read the ballot title (though for reasons already discussed, they may be severely burdened in other ways); and a sponsor with an exceedingly simple measure may have less trouble expressing itself in eighth-grade language (though the law still controls its speech). But the unconstitutional applications of these laws are substantial when compared to the constitutional ones. Concerning the Reading Requirement, most ballot titles have

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substantial length, meaning that the law will severely burden the speech of sponsors as measured by the time needed to repeatedly read the ballot title—not to mention the deterrent effect that the requirement has on canvassers, regardless of length. *See* R. Doc. 43, at 51 n.14 (analyzing 2024 ballot titles). Similarly, the Eighth-Grade Requirement severely burdens the speech of all sponsors whose measure requires even remotely complicated sentence structure to fairly summarize, as will typically be true.

Finally, this case is not like *Moody*, where the regulation of "social-media platforms" included a wide array of applications. *See* 603 U.S. at 717–18. The laws either burden the speech of all canvassers and sponsors in the same way, or they burden speech in a way that is unconstitutional in the same way for a wide majority of speakers. The district court did not err. Each law is facially invalid.[19]

[19] Should the Court disagree that the Reading Requirement and Eighth-Grade Requirement are facially invalid, Appellant has presented no reason, outside of its more general arguments, that the Court should not find these laws invalid as applied.

III. Appellees satisfy the other preliminary-injunction factors.

The district court did not abuse its discretion by finding that the balance of factors support granting a preliminary injunction.

A. Appellees will suffer irreparable harm without a preliminary injunction.

The district court correctly found that Appellees would suffer irreparable harm without an injunction. Appellant complains that the district court "plac[ed] too much weight on the alleged constitutional violation." App. Br. 56. But "loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury." *Lowry ex rel. Crow*, 540 F.3d at 762 (quoting *Elrod v. Burns*, 427 U.S. 347, 373 (1976) (plurality opinion)). And because "it is always in the public interest to protect constitutional rights," "[i]n a First Amendment case . . . the likelihood of success on the merits is often the determining factor in whether a preliminary injunction should issue." *Phelps-Roper v. Nixon*, 545 F.3d 685, 690 (8th Cir. 2008). The district court faithfully applied this law.

Appellant does not substantively dispute that "[t]he newly enacted laws" at issue "were promptly challenged within weeks of their enactment." App. 341; Add. 73; R. Doc. 50, at 73. Appellant advances

substantive argument only as to a single challenged law—the Pre-Collection Disclosure Requirement—asserting that Appellees "waited over a decade" to challenge this law. *See* App. Br. 56–57. But Appellees' claims arise out of their 2025 campaigns. They filed suit and sought a preliminary injunction in 2025 because their injuries arose in 2025. Moreover, the risks of public disclosure, and the resulting chill on First Amendment rights, have heightened due to technological advances, and became particularly acute due to harassment of canvassers in the most recent election cycle. App. 341–42; Add. 73–74; R. Doc. 50, at 73–74. (citing *Dakotans for Health*, 52 F.4th at 392). The district court's conclusion is not clearly erroneous.

B. The balance of harms favors Appellees and the public interest favors relief.

The district court correctly concluded that the balance of equities favors Appellees. As argued above, Appellees introduced evidence that they were losing volunteers, their fundraising was being impacted, and their canvassing was being impeded, thus ultimately reducing their ability to speak to and associate with voters. By contrast, while Appellant asserts that Arkansas, and the public, have an interest in enforcing the challenged laws, a State—and the public—"has no

interest in enforcing overbroad restrictions that likely violate the Constitution." *Dakotans for Health*, 52 F.4th at 392.

Finally, Appellant incorrectly argues that the district court should have deployed the *Purcell* principle to deny a preliminary injunction. App. Br. 60. *Purcell* concerns special considerations when courts "alter the election rules on the eve of an election." *RNC v. DNC*, 589 U.S. 423, 424 (2020) (per curiam). Appellant cites no case in which any court has construed laws regulating the pre-election process of initiative-petition circulation as "election rules" under *Purcell*. To the contrary, the Court in *Dakotans for Health* affirmed the grant of a preliminary injunction—on November 1, 2022—without applying *Purcell*. 52 F.4th 381; *cf. Meyer*, 486 U.S. at 427 (noting different interests "at the petition stage of an initiative" as compared to "the time of balloting").

Moreover, as the district court noted, the next election was a year away when it granted a preliminary injunction. App. 343; Add. 75; R. Doc. 50, at 75. Appellees challenged the new laws shortly after they were enacted. Taken to its logical conclusion, Appellant's argument would mean preliminary relief is *never* available in the ballot-initiative context. And *Purcell* is especially inapt where, as here, Arkansas

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permits challenges to ballot measures in the weeks before the election. *See, e.g.*, *Wilson*, 500 S.W.3d at 162. The district court correctly concluded that *Purcell* does not warrant denial of a preliminary injunction.

CONCLUSION

The Court should affirm the district court's order granting a preliminary injunction.

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CERTIFICATE OF COMPLIANCE

I certify that this brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B) because it contains 14,963 words, excluding the parts exempted by Fed. R. App. P. 32(f), which is within the limit of 15,000 words set by the Court in its order of March 11, 2026.

I also certify that this motion complies with the requirements of Fed. R. App. P. 32(a)(5)-(6) because it has been prepared in a 14-point Century, a proportionally spaced typeface, using Microsoft Word.

I further certify that this brief has been scanned for viruses and is virus-free.

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CERTIFICATE OF SERVICE

I hereby certify that on March 17, 2026, I filed the foregoing on the CM/ECF system, which will serve notice on counsel for all parties.

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