No. 25-3389

United States Court of Appeals
for the Eighth Circuit

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

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

v.

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

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

Defendant-Appellant's Reply

TIM GRIFFIN
Arkansas Attorney General

AUTUMN HAMIT PATTERSON
Solicitor General

NOAH P. WATSON
Deputy Solicitor General

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

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases **Page(s)**

Rules & Statutes

ARGUMENT

The district court's preliminary injunction was erroneous from top to bottom. Plaintiffs' response doesn't show otherwise. The district court's preliminary injunction should be reversed.

I. SEVERAL CLAIMS ARE NONJUSTICIABLE.

A. Plaintiffs' challenge to the Readability Requirement is moot.

The district court found AR Rights' challenge to the Readability Requirement was not moot because of the Secretary's supposed enforcement. Add. 30, App. 298, R. Doc. 50, at 30. But, as explained, that was wrong on multiple levels: AR Rights didn't sue the Secretary; he doesn't enforce the requirement, even if he had been sued; and the district court relied on long-repealed statutes. *See* Appellant Br. 17-19. Plaintiffs offer three responses. Each fails.

First, Plaintiffs do not dispute they didn't sue the Secretary over the Readability Requirement or that the district court artificially expanded the complaint. *See id.* Instead, they those defects are okay because Plaintiffs *could have* amended the complaint. *See* Appellees Br. 62 n.16.[1] And although Plaintiffs call a judicially expanded complaint "reasonable," *id.*, they cite no authority that gives district courts

[1] Citing Federal Rule of Civil Procedure 15, AR Rights appears to misdescribe an amended complaint as onerous as the "fil[ing] [of] a new lawsuit." Appellees Br. 62. Not so. Fed. R. Civ. P. 15(a)(2).

authority to rewrite complaints to enjoin parties who do not enforce the law and against whom plaintiffs did not seek relief.

Second, Plaintiffs do not dispute that the district court erroneously relied on two irrelevant Arkansas cases, one based on a now-repealed law and the other not discussing the Secretary's authority. *See* Appellant Br. 18–19. Instead, they try to create a method of enforcement for the Secretary, citing Arkansas Code § 7-9-115(a). Appellees Br. 62–63. Neither Plaintiffs nor the district court cited that provision below, and it isn't any enforcement mechanism. It requires the Secretary to send "a certified copy of the ballot title" to certain officials. Ark. Code Ann. § 7-9-115(a). He does not *enforce* the Readability Requirement (or any other requirement) when engaging in the secretarial act of sending a copy of the ballot title. *Id.* That is at most "a ministerial task relating to the implementation of [the Readability Requirement]—not an act enforcing [the Readability Requirement] against noncompliant" sponsors. *Bio Gen LLC v. Sanders*, 142 F.4th 591, 605-06 (8th Cir. 2025). Thus, even if Plaintiffs had sued the Secretary, he is entitled to sovereign immunity. *See* Appellant Br. 19.

Finally, Plaintiffs attempt to revive its dismissed claim against the Attorney General. *See* Appellees Br. 63-64; Add. 76, App. 344, R. Doc. 50, at 76 (dismissing Attorney General). But they did not and could not have appealed that dismissal. *See*

Bullock v. Baptist Memorial Hosp., 817 F.2d 58, 59 (8th Cir. 1987) (explaining that "[a]n order dismissing a complaint as to fewer than all defendants is of course not a final[, appealable] order"). Even if the Attorney General's dismissal before the Court, Plaintiffs argument is based on an unsupported assertion that they "may submit" proposed initiatives in the future. Appellees' Br. 64. That sort of "'some day' intention[]" cannot establish standing after discovery, *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 564 (1992), much less when asserted on appeal.

Plaintiffs also indicates surprise that the Attorney General reviewed the measure AR Rights submitted. *See* Appellee Br. 60. But they "expect[ed] an official response … by July 29, 2025." R. Doc. 23, ¶ 126. And they got one on July 28, 2025. *See* Ark. Att'y Gen. Op. 2025-056.[2]

Then, Plaintiffs assert, they are "exposed … to additional harm" because "the Arkansas Supreme Court owes no deference to the Attorney General's assessment." Appellees Br. 61. The "additional harm" is that an unknown future "opponent of the measure may challenge [the ballot title] in" Arkansas courts. *Id.* But those hypothetical nonparties' actions are unrelated to the Attorney General and

[2] Since the Arkansas initiative process began, the Attorney General has exercised varying degrees of control over the ballot title's language. *See* Ark. Code Ann. § 7-9-107(d)(1) ("substitute" ballot title); Ark. Act 2 of 1911, § 10 (1st Ex. Sess.) (create ballot title). AR Rights hasn't challenged that historical authority.

could happen whether Plaintiffs are successful against the Attorney General or not. Federal courts cannot "enjoin the world at large" or "enjoin the challenged laws themselves." *Whole Woman's Health v. Jackson*, 595 U.S. 30, 44 (2021) (citation modified). Yet that appears to be just what AR Rights wants.[3]

Plaintiffs' challenge to the Readability Requirement is moot, and there is no defendant to enjoin. The district court's preliminary injunction against the Secretary was error.[4]

B. Plaintiffs lack standing to challenge the READ Act.

Because a canvasser can only violate the READ Act "knowingly," Ark. Code Ann. § 7-9-103(c)(11), Plaintiffs must "show[] [a] desire to" engage in the conduct the READ Act proscribes, *Animal Legal Def. Fund v. Reynolds*, 89 F.4th 1071, 1079 (8th Cir. 2024); *see Tex. State LULAC v. Elfant*, 52 F.4th 248, 256 (5th Cir. 2022). So Plaintiffs must show they want to solicit signatures without the potential

[3] Indeed, Plaintiffs regularly use the misnomer of courts "enjoin[ing] a law." *E.g.*, Appellees Br. 54.

[4] Plaintiffs insinuate disagreement with the Attorney General's interpretation of Arkansas Code § 7-9-107(l)(1) as allowing a ballot title to be written at the level of a second-semester eighth-grade student (*i.e.*, above an 8.5 and below a 9.0). *See* Appellees Br. 10, 61, 63. Nevertheless, the meaning of Arkansas law is not relevant to the issues here. And they have has never asserted that they disagree with the Attorney General's interpretation.

petitioner reading or hearing the ballot title before signing. *See* Appellant Br. 19-20. Plaintiffs don't make that showing. *See id.* at 20.

Plaintiffs have never disputed they didn't allege an intent to violate the law. *See* R. Doc. 42, at 6-7; R. Doc. 43, at 5-6; Appellees Br. 23-24. Nor do they defend the district court's unsupported conclusions otherwise. *See* Appellant Br. 20. Instead, citing *Dakotans for Health v. Noem*, 52 F.4th 381 (8th Cir. 2022), Plaintiffs assert that any law that "elongat[es]" the time it takes to collect signatures "is a First Amendment injury." Appellees Br. 23. But *Dakotans for Health* is about a sponsor's ability to show standing when a law "primarily" regulates canvassers; to make that showing, the sponsor must show that its and the canvassers' "interests are highly intertwined, if not inseparable." 52 F.4th at 387. *Dakotans for Health* says nothing about the required showing when a law contains a knowledge requirement.

Plaintiffs have not shown an injury in fact to challenge the READ Act.

C. Submitting a paid-canvasser list to the Secretary does not injure Plaintiffs, and their challenge to that requirement is unripe.

Although Plaintiffs challenged the paid-canvasser list under Arkansas Code § 7-9-601(a)(2)(C), their real grievance is with FOIA, which they did not challenge. *See* Appellee Br. 21. Yet the district court allowed this statutory shuffle, not enjoining the Secretary from any action he takes under the challenged law but instead enjoining him from complying with his FOIA duties. *See id.* Plaintiffs declare it

"meaningless" that the challenged law does not require public disclosure, which is their alleged injury. *See* Appellees Br. 55-56. But they do not respond to the Supreme Court's holding that plaintiffs "cannot, by virtue of [their] standing to challenge one government action [responding to a FOIA request], challenge other governmental actions [like the Secretary retaining paid-canvasser lists] that d[o] not injury [them]." *FEC v. Cruz*, 596 U.S. 289, 301 (2022) (citation modified). Plaintiffs have failed to show § 7-9-601(a)(2)(C) causes their alleged public-disclosure injury.

Next, Plaintiffs dispute that their claim is unripe, even though "they have offered no evidence that some third party will make a FOIA request to the Secretary for the paid-canvasser lists." Appellant Br. 21. Initially, they say the Secretary didn't argue ripeness below. Appellees Br. 56. But the parties argued about the jurisdictional import that it is unknown if "anyone [will] make a FOIA request … that could potentially cause the alleged injury." Tr. 21:10-11; *cf. id.* at 30:1-6 (Intervenors' counsel responding). And even if Defendants hadn't made the argument, ripeness cannot be forfeited because it goes to subject-matter jurisdiction, *Koscielski v. City of Minneapolis*, 435 F.3d 898, 903 (8th Cir. 2006), so it may be "raise[d] … at any stage in the proceedings," *Bergstrom v. Bergstrom*, 623 F.2d 517, 519 n.1 (8th Cir. 1980).

To sidestep their lack of evidence, Plaintiffs generalize their injury as "the chilling of [their] speech," Appellees Br. 57, but that only returns to the question of

what it is that allegedly chills Plaintiffs' speech. The answer is: "a nonparty mak[ing] a FOIA request" who then causes "the *public* disclosure of paid-canvasser information," not the initial submission of paid-canvasser lists to the Secretary. Appellant Br. 21. Thus, the alleged public-disclosure injury is not based on "the very existence of" § 7-9-601(a)(2)(C); instead, it is "based on speculation about a particular future" event—that is, a nonparty's FOIA request and subsequent publication of the information. *281 Care Comm. v. Arneson*, 638 F.3d 621, 631 (8th Cir. 2011).

The Court lacks jurisdiction over Plaintiffs' challenge to § 7-9-601(a)(2)(C)'s paid-canvasser list.

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

For each law the district court enjoined the Secretary from enforcing, Plaintiffs are unlikely to succeed on the merits.

A. Requiring photographic identification to sign a petition is constitutional.

As explained, requiring canvassers to verify a petitioners' identity via photographic identification complies with the First Amendment. Plaintiffs' contrary arguments fail.

First, Plaintiffs assert that presenting photographic identification "implicates speech because it demands that canvassers interrupt themselves to request that the potential signer produce ID." Appellees Br. 29. Although Plaintiffs call *Hoyle v.*

Priest, 265 F.3d 699 (8th Cir. 2001), "far afield," *id.*, they do not meaningfully dispute that canvassers in *Hoyle* had to ask a person to sign the petition and for much personal information—just like the photo-identification requirement here. *See* Appellant Br. 24. Asking for a signature and personal information "did not implicate the First Amendment" in *Hoyle*. *Miller v. Thurston*, 967 F.3d 727, 738 (8th Cir. 2020). The same is true for the photo-identification requirement because it's only a modernization of *Hoyle*'s law. *Compare* Appellant Br. 7, 24 (discussing historical verification requirement), *with* Ark. Code Ann. § 7-9-109 (current codification), *and* Ark. Act 197 of 1991, § 1 (enacted language nearest to *Hoyle*), *and* Ark. Act 2 of 1911, § 8 (1st Ex. Sess.) (original language). Therefore, Plaintiffs' claim fails. Photographic verification does not implicate the First Amendment.

Second, the requirement is not content based. *See* Appellant Br. 25-26. Plaintiffs argue otherwise because it does not also apply to "petition[s] for a candidate or a new political party." Appellees Br. 38. Plaintiffs' response is unavailing. For one, Plaintiffs attempt to distinguish *City of Austin* and *Heffron* because this case is not about "commercial solicitation." Appellees Br. 39. But they misread those cases. The solicitation at issue there *was* entitled to First Amendment protection; that's why the Court engaged in the free-speech analysis. Yet the Court upheld the regulations as content neutral. *See City of Austin v. Reagan Nat'l Advert. of Austin, LLC*,

596 U.S. 61, 72-74 (2022). In *Heffron*, the law was content neutral when courts looked at the speech's content to determine if the speaker was engaged in one of two processes: solicitation or proselytization. *Id.* In the same way, the photo-identification requirement is content neutral, even though one must look to the content of speech to determine if speakers are engaged in the ballot-initiative process, candidate-access process, or political-party-creation process. Within the appropriate category—ballot-initiative process—the photo-identification requirement is "agnostic as to content." *Id.* at 69. And *Wellwood v. Johnson* confirms that even some distinctions within that process are content neutral. 172 F.3d 1007, 1009-10 (8th Cir. 1999) (no First Amendment violation when law "discriminat[es] between one issue and another").[5]

Third, the burden's severity. Plaintiffs don't dispute that the district court erroneously held—without party presentation—that Arkansans must pay a fee to obtain a valid identification. *See* Appellees Br. 33 n.5. That error is why the district court held *Crawford v. Marion County Election Board*, 553 U.S. 181 (2008), was "not controlling." Add. 57, App. 325, R. Doc. 50, at 57. Yet Plaintiffs maintain the district

[5] Plaintiffs assert nonpreservation because the Secretary didn't cite *Wellwood* when discussing content neutrality. *See* Appellees Br. 41 n.8. Below, the Secretary argued that the photo-identification requirement is content neutral. *See* R. Doc. 39, at 40-41; Tr. 108:15-109:3.

court "correctly distinguished *Crawford*" and "did not base its ruling on [its misunderstanding of Arkansas law]." Appellees Br. 33 & n.5. A plain reading of order indicates otherwise. Regardless, *Crawford* disposes of the district court's severity findings (and those now proffered by Plaintiffs). According to Plaintiffs, potential petitioners may not have identification when canvassers approach or may not want to give personal information to the canvassers. Appellees Br. 33-34. But the possibility that some petitioners "may not have identification with them for reasons 'arising from life's vagaries'" does not create a severe burden, nor does presenting "identification 'represent a significant increase over the usual burdens of'" giving personal information to sign a petition. Appellant Br. 28 (citation omitted).

Plaintiffs' means-ends analysis is also unavailing. Their first move is to limit Arkansas's First Amendment interests by relying on Plaintiffs' interpretation of limits in the Arkansas Constitution. *See id.* at 46. But they cite no authority that would allow this Court to import state-level restrictions into the First Amendment. To shoehorn a state-law claim into a federal analysis would violate sovereign immunity and be contrary to precedent: federal courts cannot "instruct[] 'state officials on how to conform their conduct to state law.'" *Smith v. Reynolds*, 139 F.4th 631, 637 (8th Cir. 2025) (citation omitted). Indeed, "it [would be] difficult to think of a

greater intrusion on state sovereignty." *Pennhurst*, 465 U.S. at 106. But that is what Plaintiffs ask of this Court.

Next, Plaintiffs make the same mistake the district court did, asserting that the Secretary "points to no *actual* fraud." Appellees Br. 46; *id.* at 47. Yet legislatures may act "with foresight" without presenting "elaborate, empirical verification." *Miller*, 967 F.3d at 740 (citation omitted). In any event, Arkansas pointed to both actual and potential fraud. *See* Appellant Br. 3-4. This Court has also recognized Arkansas's history of "fraud in the initiative process." *Miller*, 967 F.3d at 740. And the Supreme Court has recognized nationwide issues. *Reed*, 561 U.S. at 197-98. The Secretary has provided more than enough—particularly at this stage—to support Arkansas's interest.

The photo-identification requirement is constitutional.

B. Requiring petitioners to read or hear the initiative they sign is not unconstitutional.

As explained, requiring petitioners to read or hear a ballot title before signing is constitutional. To avoid that conclusion, Plaintiffs grasp at third-party standing, try to lump analysis of the READ Act with unrelated laws, and diverge from this Court's well-established test. Those attempts fail.

First, Plaintiffs the First Amendment is implicated based on their belief that the law (1) "regulates canvassers' expression" while soliciting signatures and (2)

"prevents voters from associating with the sponsor." Appellees Br. 28. As to the first, Plaintiffs concede that the law's text focuses on petitioners, not sponsors or canvassers (other than knowingly accepting signatures from petitioners who do not read or hear the ballot title). *See* Appellee Br. 28. That leaves only "social mores [that] might increase 'the difficulty of the process,'" but that "is insufficient to implicate the First Amendment." Appellant Br. 29 (citation omitted). Plaintiffs do not disagree with that conclusion, except by *ipse dixit*. *See* Appellees Br. 28. As to the second, Plaintiffs cannot obtain standing derived from petitioners' potential standing. *See* Appellant Br. 35-36 (discussing third-party standing).

Second, the district court didn't individually analyze the READ Act, instead incorporating it with two others. *See* Appellant Br. 29-30. Plaintiffs first try to avoid this by asserting that "[t]he district court need not have cited the proof in support of [its] holding" the READ Act individually poses a severe burden. Appellants Br. 35. Yet it is undisputed that the district court individually analyzed only one of the three law's burden. *See* Appellant Br. 29-30. That is error. *See Darst-Webbe Tenant Ass'n Bd. v. St. Louis Housing Auth.*, 339 F.3d 702, 712 (8th Cir. 2003) ("fail[ing] to specifically state the facts upon which a decision was reached can be reversible error").

Alternatively, Plaintiffs assert that reviewing the conglomerated burden of three distinct laws is appropriate because "canvassers must execute all three … in

the same interaction." Appellee Br. 36. But that same-interaction theory (which has no precedential support) would have also been met in *Initiative & Referendum Institute v. Jaeger*, 241 F.3d 614 (8th Cir. 2001). In *Jaeger*, the Court addressed two canvasser regulations: a residency requirement and commissions ban. *Id.* at 615. Both of those laws regulated the formation of the sponsor-canvasser relationship and were alleged to impose the same burden. *See* Appellant Br. 30. This Court didn't lump the *Jaeger* analysis together, and it shouldn't here either.

Plaintiffs' citations to *Murdock v. Pennsylvania*, 319 U.S. 105 (1943), and *Pierce v. Jacobsen*, 44 F.4th 853 (9th Cir. 2022), do not move the needle. *Murdock* does not stand for the proposition Plaintiffs claim. It addresses "a single issue—the constitutionality of *an* ordinance." *Murdock*, 319 U.S. at 110 (emphasis added). The reference to "cumulative[]" effects is to the "taxes" from multiple impositions of the "this ordinance," not multiple ordinances. *Id.* at 114. And the Ninth Circuit's *Pierce* decision is easily distinguishable: it expressly rejects *Jaeger*. *See Pierce*, 44 F.4th at 862 n.5. Further, *Pierce*'s brief mention of "the entire regulatory scheme" was irrelevant to its departure from *Jaeger* on a residency requirement's burden. *Id.* at 861. In fact, there was "little evidence" that the residence requirement made it harder to get on the ballot "in light of the entire regulatory scheme." *Id.* The same is true

here; initiatives in Arkansas have maintained a consistent rate since they were first allowed. *See* Appellant Br. 3.[6]

Third, to dispute the Secretary's burden analysis, Plaintiffs accuse him of "re-write[ing] the law" by offering a "relatively simple" way for canvassers to comply with the READ Act—"simply ask[ing] the signer if she has read or heard the ballot title." Appellees Br. 30. But that applying, not rewriting, the law. *Miller* explains that a burden is not severe if "one can imagine relatively simple ways" to comply. 967 F.3d at 740. And the READ Act prohibits canvassers only from "knowingly accept[ing]" signatures if the petitioner did not read or hear the ballot title. Ark. Code Ann. § 7-9-103(c)(11). Thus, if a canvasser asks whether a petitioner read or heard the ballot title and the petitioner confirmed he did, the canvasser wouldn't be violating the law, absent a petitioner's flagrant failure. *Cf.* Ark. Code Ann. § 5-2-202(2) ("knowingly" means "aware" or "practically certain").

Plaintiffs' arguments on the means-ends analysis also fail. As before, Plaintiffs improperly import Arkansas law into the First Amendment. *See supra* p. 12. They also miss the evidence Arkansas presented and misunderstand that the Legislature may act preemptively rather than reactively. *See supra* pp. 12-13. Moreover, the

[6] The district court's collapsing of the criminal-offense warning and photo-identification requirement was also error. *See* Appellant Br. 30 n.6.

potential for signing the wrong petition can also occur by accident, for example, when petitions are circulated together. *See* Appellant Br. 31. Plaintiffs don't dispute the increased risks when that occurs.

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

The district court enjoined the Secretary from enforcing both the residence and domicile components of Act 453. *See* Add. 77, App. 345, R. Doc. 50, at 77; *see also* Appellant Br. 32. Plaintiffs don't dispute that the district court erred by enjoining the Secretary from the residency component. *See* Appellees Br. 58-60.[7] Therefore, the district court's injunction should at least be narrowed to allow the Secretary to enforce that component.

Act 453's domicile requirement is constitutional too. The district court, however, ignored *Jaeger*, offering no reason to distinguish that residency requirement from Act 453's domicile component. *See* Appellant Br. 32-33. Plaintiffs don't offer one either. Nor have they offered a reason to depart from the normal sliding-scale analysis, even though neither Plaintiffs nor the district court apply it.

[7] When Plaintiffs say that the district court "did not enjoin" Arkansas's "residency requirement," Appellees Br. 59, they are referring to a separate challenged provision, not Act 453's residency requirement. *See* Appellant Br. 32 (explaining that enforcement of one residency requirement was enjoined while the other wasn't).

If they had applied the First Amendment analysis, Act 453 survives. On burden, Plaintiffs do not dispute that the burden is not severe, so the lesser scrutiny applies. *See* Appellees Br. 58-60. On tailoring, Plaintiffs merely call the bases for Arkansas's law a "stretch[]." *Id.* at 59. But most of Arkansas's justifications were approved in *Jaeger*. And more bafflingly, Plaintiffs admit that "non-domiciled Arkansas residents" acting as canvassers is "a scourge." *Id.* at 60. Arkansas can "respond to potential [scourges] in the electoral process with foresight." *Miller*, 967 F.3d at 740 (citation omitted). Indeed, the concern is supported by a recent sponsor who attempted to avoid the residency requirement with paid canvassers. *See* Appellant Br. 5. Further, applying the domicile requirement only to statewide measures is supported by *Jaeger* too. For statewide petitions, there is a larger pool of potential canvassers with a direct interest in the petition's outcome (as people who will be regulated by a ratified initiative) than there are for local petitions. *See Jaeger*, 241 F.3d at 617 (the number of potential canvassers decreases the burden).[8]

[8] Plaintiffs appear to assert that Act 453 is not content neutral. Appellees Br. 58. But the Plaintiffs didn't argue that below. Thus, the Court should not decide this novel question, especially where "it would be beneficial for the district court to consider an alternative argument in the first instance." *Tovar v. Essentia Health*, 857 F.3d 771, 779 (8th Cir. 2017).

Act 453's residency and domicile requirements are constitutional. The Legislature acted reasonably and with foresight.

D. Requiring canvassers to confirm they followed the law while canvassing is not unconstitutional.

As explained, requiring an affidavit that canvassers followed the law while collecting signatures is constitutional. Plaintiffs make several contrary, unavailing arguments.

First, the post-circulation affidavit doesn't implicate the First Amendment. Plaintiffs essentially concede that, admitting it doesn't "interfere with canvassers' and signers' one-on-one communications." Appellees Br. 52. That's fatal; petition-related speech is implicated only if it affects "the communication of ideas associated with the circulation of petitions." *Miller*, 967 F.3d at 737-38 (citation omitted).

Plaintiffs try to latch onto petitioners "expressive conduct" of signing petitions. Appellees Br. 52. But that raises third-party standing issues. *See* Appellant Br. 35-36. And while canvassers communicate with petitioners when a petition is signed, the post-circulation affidavit's tangential relationship to that communication is insufficient to implicate the First Amendment. If Plaintiffs were right, *every* law regulating the petition process would implicate the First Amendment, no matter how conduct oriented.

Plaintiffs also downplay the district court's serious party-presentation violations because Plaintiffs "cited" a case under their legal-standard heading that the district court also "relied on." Appellees Br. 53 n.13. Despite Plaintiffs' whitewashing, the district court's decision rests on a third-party standing argument that Plaintiffs never raised and the Secretary had no opportunity to rebut; that's reversable error. *See* Appellant Br. 36-37.

Second, even if speech is implicated, the affidavit survives scrutiny. Initially, Plaintiffs don't dispute that the affidavit is a minimal burden. *See* Appellees Br. 53-54. Indeed, signing a piece of paper is "simple." Appellant Br. 38 (citation omitted). Nor do Plaintiffs dispute that the affidavit serves different interests than other laws. *Compare id.* at 39-40 (comparing different requirements), *with* Appellees Br. 53-54 (not disputing the laws' different scopes).

What Plaintiffs' argument boils down to is this: the affidavit is "essentially useless" because "[s]crupulous circulators follow the law" while "unscrupulous ones" will break the law anyway. Appellees Br. 53. If that were right, every law would be unconstitutional. But that isn't how the analysis works. States have an interest in protecting the signature-collection process on both the frontend and backend. *Cf. Brakebill v. Jaeger*, 905 F.3d 553, 560 (8th Cir. 2018) (voter

identification at the time of voting serves different interest than prosecuting fraudsters afterwards). The post-circulation affidavit is constitutional. *See* Appellant Br. 34-41.

E. Creating a fair playing field for sponsors who are entitled to extra time to collect signatures is constitutional.

As explained, Act 241's equal-time provision constitutionally creates a fair playing field for sponsors who obtain a cure period. *See* Appellant Br. 43-44. Plaintiffs haven't overcome that conclusion.

Initially, Plaintiffs don't dispute that the equal-time provision creates a level playing field. *See* Appellees Br. 50-51. Instead, Plaintiffs assert that strict scrutiny applies, so the equal-time provision is unconstitutional. According to Plaintiffs, the provision is a severe burden because it limits "collecting signatures during the final thirty days of the campaign." *Id.* at 51. That's not accurate. After the sponsor submits signatures, the Secretary determines if the sponsor is entitled to a 30-day cure period (which means the sponsor can collect signatures for the final 30 days) or is *not* entitled to a cure period (which means the sponsor's drive ended when it submitted signatures). *See* Appellant Br. 41-44. The only limit, therefore, is for sponsors who ultimately obtain a cure period. And even they are limited only during the Secretary's determination. *See id.* at 41.

Not only is Plaintiffs' severity analysis legally incorrect, it also deviates from Plaintiffs' evidence. The only alleged burden is an undefined "disrupt[ion]" in collecting signatures during "[t]he first few days" of the Secretary's determination. App. 53; R. Doc. 20-4, at 5. As explained, that doesn't create a severe burden. *See* Appellant Br. 42-43.

After asserting strict scrutiny applies, Plaintiffs don't engage in any means-ends analysis. *See* Appellees Br. 51. Even so, the equal-time provision survives scrutiny. *See* Appellant Br. 43-44.

F. Making ballot titles accessible to the average adult doesn't violate the First Amendment.

As explained, even if Plaintiffs' challenge to the Readability Requirement weren't moot, there's no constitutional issue with making ballot titles accessible to average adults. Plaintiffs disagree for inapposite reasons.

First, the requirement isn't a severe burden, either facially or as applied. *See* Appellant Br. 44-45. Plaintiffs' primary argument for severity is that sponsors' ballot titles must adequately describe their proposed measure, which "demands … more complexity," while the Readability Requirement "requires less" complexity. Appellees Br. 65. But a ballot title can address complex policies; it just must do so in a way that's understandable to the average adult. *See* Appellant Br. 8. And even if there were some issues for which it would be difficult to write a ballot title at an

eighth-grade level, Plaintiffs have made no showing that's enough to bring a facial challenge. *See infra* pp. 32-33. Indeed, every Plaintiffs' ballot title has been approved. *See* Appellant Br. 7.

Second, the requirement is not content based. As discussed, the district court's analysis fails because it doesn't acknowledge that speakers engaged in different processes are not comparable. *See* Appellant Br. 45-46; *supra* pp. 10-11. Unable to rebut that, Plaintiffs pivot to an argument the district court never addressed. *See supra* n.8 (citation omitted). Plaintiffs claim the requirement is content based because it applies to citizen initiatives, not legislatively submitted measures, and thus "favors measures that legislators … want," providing no further explanation. Appellees Br. 67. But the fact the Readability Requirement applies in that way is a speaker-based distinction, not a content-based one; "[i]t is agnostic as to [the] content" of any measure. *City of Austin*, 596 U.S. at 69. And there are many reasons that speaker-based distinction makes sense—like legislative expertise and separation-of-powers concerns. *See infra* p. 25. The Readability Requirement is content neutral.

Third, the Readability Requirement survives means-ends scrutiny. *See* Appellant Br. 46-47. To avoid that conclusion Plaintiffs make several missteps.

Initially, they try to shoehorn their content-based and failed equal-protection challenges into the lesser-scrutiny analysis by calling the law "[]discriminatory." Appellees Br. 67-68. But "discriminatory" in this context refers to viewpoint discrimination. *See Anderson v. Celebrezze*, 460 U.S. 780, 794 (1983) ("discriminat[ion] against … political preferences [that] lie outside the existing political parties"). It's not a backdoor for claims that fall under other constitutional analysis.

In any event, the content-based argument fails for the reasons discussed. The equal-protection implication also fails, as the district court held. *See* Add. 72, App. 340, R. Doc. 50, at 72. Plaintiffs have identified no suspect class, so the law is non-discriminatory if it survives rational basis. *United States v. Skrmetti*, 605 U.S. 495, 510 (2025) (citations omitted). There are at least three rational bases. One is that citizen initiatives have lately involved complex regulatory regimes. *See, e.g.*, Ark. Const. amend. 98, §§ 1-26 (medical marijuana). Another is that it gives Arkansas's elected representatives—who possess an expertise that others don't—more leeway than petition sponsors whose only interest is to get something on the ballot. *See* Ark. Const. art. 5, §§ 1-3 (vesting the lawmaking power in elected representatives). Further, it avoids a separation-of-powers problem under the Arkansas Constitution, which could otherwise exist if the Attorney General or Arkansas Supreme Court

exercised authority over Legislative proposals. *See* Ark. Const. art. 4, §§ 1-2 (separation-of-powers provisions).

Next, Plaintiffs assert the Readability Requirement is not "reasonable[]." Appellees Br. 68. Their first argument is based on the distinction between legislative proposals and citizen initiatives. *Id.* But, as explained, that distinction is reasonable. Plaintiffs' second argument is about that the formula itself is flawed, supposedly being skewed by "words[] like 'Arkansas' and 'Constitution.'" Appellees Br. 68 (citation omitted). But the formula "is made for actual documents, not single sentences" or single words. Tr. 47:19-20. And using a document of the proper length, the Readability Requirement is set at the average adult's reading level, making the requirement reasonable and sufficiently tailored. *See* Appellant Br. 46.

Finally, Plaintiffs say the requirement isn't "adequately link[ed] … to [Arkansas's] interests." Appellees Br. 68. But, as the Secretary explained, the Readability Requirement ensures that "technically true language" that is used "in a 'deficient, confusing, or misleading' way" cannot lead voters astray. Appellant Br. 46 (citation omitted). Although Plaintiffs say other laws account for that concern, none of the laws they identify are designed to ensure readability to allow the average adult to understand the ballot title's purpose.

G. Notifying petitioners that petition fraud is a criminal offense isn't unconstitutional.

As explained, providing a warning that petition fraud is a criminal offense isn't unconstitutional. *See* Appellant Br. 47-50. And Plaintiffs arguments otherwise are unpersuasive.

First, on severity, Plaintiffs don't dispute that it's simple to provide the appropriate warning; they instead inaccurately accuse the Secretary of "wrongly reduc[ing] the severity analysis to a stopwatch test." Appellees Br. 32. Plaintiffs offer two faulty reasons that simplicity analysis shouldn't apply. One is a hypothetical law that instructs canvassers to tell petitioners not to sign, Appellees Br. 32, but the severity of the burden wouldn't be the problem; the means-ends analysis would. The other is an unofficial self-conducted survey about the number of canvassers who are apparently "deter[red" from canvassing by giving a criminal-offense warning and a statement that some potential petitioners may not sign because of the warning. Appellees Br. 32-33. Issues exist with the cited declaration.[9] Regardless, Plaintiffs ignore this Court's approach to the severity analysis: if "one can imagine relatively

[9] For example, the declaration says (1) giving a criminal-offense warning "would impact the[] willingness" of "42.7% of volunteers," while (2) complying with the criminal-offense warning and two other laws would cause only "19.1% of volunteers" to "probably not volunteer." App. 136-37, R. Doc. 24-8, ¶¶ 12, 15.

simple ways … [to] comply with the … requirement," then it doesn't "impose[] severe burdens." *Miller*, 967 F.3d at 740. Act 218 meets that analysis.

Second, Plaintiffs assert that the criminal-offense warning is subject to strict scrutiny because it compels speech. Appellees Br. 42. To reach this conclusion, Plaintiffs downplay Arkansas's "considerable leeway" to regulate the initiative process, *SD Voice v. Noem*, 60 F.4th 1071, 1077 (8th Cir. 2023) (citation omitted), even while conceding that it's "not forbidden from requiring any disclosures," Appellees Br. 43. That "regulatory authority" extends to requiring canvassers "to provide truthful information relevant." *B.W.C. v. Williams*, 990 F.3d 614, 621 (8th Cir. 2021). Plaintiffs attempt to limit *B.W.C.*'s reach by citing *Garcetti v. Ceballos*, 547 U.S. 410 (2006), but *B.W.C.* said nothing about *Garcetti*. It focused instead on the government's regulatory authority over the process for children entering school. *B.W.C.*, 990 F.3d at 617-18. And Plaintiffs' quote from *Riley v. National Federation of the Blind of North Carolina, Inc.*, 487 U.S. 781 (1988), that the criminal-offense warning would "be the last words spoken," are inapposite. Appellees Br. 42. That portion of *Riley* was discussing "discriminat[ion]" against certain types of charities and a subset of disclosures that would make the hearer "unhappy" and lead to an "unfavorable" outcome. 487 U.S. at 799-800. Here, the warning applies to all initiatives and is a proper regulation under Arkansas's leeway. Importantly, Plaintiffs

don't dispute that the warning is appropriately "'tied' to the act the State seeks to provide information about." Appellant Br. 49-50 (citation omitted).

Third, Plaintiffs assert the warning fails any level of scrutiny. *See* Appellees Br. 45-47, 49-50. Plaintiffs again try to improperly smuggle Arkansas law into the analysis. *See supra* p. 12. And they misunderstand this Court's precedent on what Arkansas needs to support its interests. *See supra* pp. 12-13.

Finally, Plaintiffs try to obfuscate the meaning of "petition fraud" in a footnote, referencing legislative testimony about unenacted text. *Id.* at 50 n.11. But that's no reason to believe that "petition fraud is a criminal offense" meaning anything other than the criminal offense of petition fraud. *See* Appellant Br. 48; Ark. Code Ann. § 5-55-601(b)(1)(A) (defining "petition fraud").

Plaintiffs haven't shown that the criminal-offense warning fails any means-ends analysis.

H. Providing a list of paid canvassers to the Secretary doesn't violate sponsors' free-speech rights.

As explained, Plaintiffs' challenge is nonjusticiable and constitutional on the merits. Plaintiffs offer three unavailing arguments otherwise.

First, Plaintiffs incorrectly claim that Arkansas's paid-canvasser list is "materially indistinguishable" and has "no meaningful difference" from the law at issue in *Dakotans for Health*. Appellees Br. 54, 55. But Arkansas's paid-canvasser list is

missing *Dakotans for Health*'s major sticking point—a public-disclosure requirement. *See* Appellant Br. 51-52. And that distinction makes all the difference. *See id.*

Second, Plaintiffs insist (for a third time) that this distinction is "meaningless" because a different, unchallenged provision of Arkansas law would require public disclosure. Appellees Br. 55-56. But that circles back to Plaintiffs' standing issue: plaintiffs cannot "by virtue of his standing to challenge one government action challenge other governmental actions." Appellant Br. 21 (citation omitted). The district court's injunction confirms Plaintiffs' problem. It enjoined the Secretary from "disclos[ing] … any information provided … pursuant to the [paid-canvasser list] of Arkansas Code § 7-9-601," which isn't required by that law. Add. 77, App. 345, R. Doc. 50, at 77. In other words, the district court enjoined the Secretary from implementing the FOIA, not the paid-canvasser list. *See* Appellees Br. 55 (citing Arkansas Code "§ 25-19-104"—*i.e.*, FOIA—as the law that allows "information [to be] publicly available").

Third, Plaintiffs maintain that Arkansas improperly distinguished between paid and unpaid canvassers because evidence was too old (barely "over a decade") and "a law-review article" (which, for unexplained reasons, is less weighty). Appellees Br. 57-58. Plaintiffs are wrong on both counts. First, the evidence isn't stale. The paid-canvasser list has been required since 2013—*immediately* after the bad

conduct in 2012. *See* Appellant Br. 4, 53. Moreover, this Court in 2020 relied on a case addressing bad conduct from the 1990s. *See Miller*, 967 F.3d at 740 (noting "that Arkansas has encountered fraud in the initiative process before" (citation omitted).

Plaintiffs' downplaying a scholarly article that explains the dangers of paid canvassers is even harder to understand; indeed, they don't even explain what (if anything) they disagree with in it. *See* Appellees Br. 58. In fact, Plaintiffs' own declaration notes signatures collected by paid canvassers are culled at a 15-percentage-point increase over signatures collected by volunteer canvassers. App. 112, R. Doc. 24-6, ¶ 12.

Despite Plaintiffs' contrary assertions, Arkansas presented sufficient evidence, both from real-world experience and scholarly study. *See Dakotans for Health*, 52 F.4th at 389 (explaining States are "not required to present 'elaborate, empirical verification'" (citation omitted).

I. Plaintiffs didn't meet their burden for facial challenges.

Plaintiffs disagree that they must "present 'evidence' or 'proof'" that a facial challenge is appropriate. Appellees Br. 70. But *Moody v. NetChoice, LLC* is clear that Plaintiffs have that burden, first explaining that facial challenges outside the First Amendment require plaintiffs to "*establish*[] that no set of circumstances exists

under which the law would be valid" or "*show*[ ] that the law lacks a plainly legitimate sweep." 603 U.S. 707, 723 (2024) (citation modified) (emphases added). Then, for the First Amendment, that test is "substituted [with] a less demanding though still rigorous standard." *Id.* That still-rigorous standard requires plaintiffs to establish that "the law's unconstitutional applications substantially outweigh its constitutional ones." *Id.* at 724. *Moody* didn't remove plaintiffs' burden.

The district court didn't hold Plaintiffs to that burden and improperly flipped the burden to the Secretary to disprove Plaintiffs' facial challenges, *see* Appellant Br. 54, or perhaps placed the burden on itself, *see* Appellees Br. 70 (citing the district court's "own conclusion that it '[could not] conceive of' meaningful constitutional applications" (citation omitted)). Yet Plaintiffs acknowledge there's at least "potential" that some challenged laws will be constitutional as applied but then conclude (without explanation) that the "unconstitutional applications … are substantial when compared to the constitutional ones." Appellees Br. 72. Beyond *ipse dixit*, Plaintiffs have made no showing about the degree of unconstitutional applications. *See* Appellant Br. 54-55.

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

As explained, Plaintiffs failed to establish the remaining preliminary-injunction factors. Plaintiffs attempt to defend its arguments and the district court's analysis fails for three reasons.

First, irreparable harm. Plaintiffs don't dispute that they cannot show irreparable harm for the claims that fail on the merits. *See* Appellant Br. 56. Nor do they dispute that their delay between filing the complaint and seeking preliminary relief should counsel against awarding the preliminary injunction. *See id.* at 57. And their only response to the over-decade-long delay in challenging the paid-canvasser list is that their "claims arise out of their 2025 campaigns." Appellees Br. 75 (emphasis in original). But that overlooks that Plaintiffs have participated in past cycles in which the paid-canvasser list was required. *See, e.g.*, App. 39-40, R. Doc. 20-1, ¶¶ 6, 10 (LWVAR and SARD); App. 111, R. Doc. 24-6, ¶ 7 (AR Kids). Plaintiffs' delays in seeking relief weigh against them. *See* Appellant Br. 56-57.

Second, balance of equities and public interest. Plaintiffs dispute that Arkansas has an interest in enforcing the challenged laws, at least assuming those laws' unconstitutionality. Appellees Br. 75-76 (citation omitted). But the Supreme Court has squarely foreclosed that argument. Less than a year ago, the Supreme Court confirmed that, whatever the merits analysis, "[a]ny time a State is enjoined by a court

from effectuating statutes enacted by representatives of its people, it suffers a form of irreparable injury." *Trump v. CASA, Inc.*, 606 U.S. 831, 861 (2025) (citation modified). That's why each factor must be analyzed in more than "a cursory fashion." *Winter v. Nat'l Res. Def. Council, Inc.*, 555 U.S. 7, 26 (2008). The district court failed to do that because it merged these factors with the likelihood-of-success factor, and Plaintiffs repeat the mistake. *See* Appellees Br. 74-75.

Third, the *Purcell* principle. Plaintiffs argue that *Purcell* is inapplicable to the initiative-petition context. *See* Appellees Br. 76. But Plaintiffs' distinction isn't supported by precedent. For example, the Supreme Court has described a citizen-referendum process as part of "the electoral process" and explained that States have the same interest identified in *Purcell* in protecting the initiative processes from the harmful "systemic effect" that occurs when "the democratic process" is destabilized. *Reed*, 561 U.S. at 197 (quoting *Purcell v. Gonzalez*, 549 U.S. 1, 4 (2006) (per curiam)). *Purcell* applies.

Plaintiffs don't dispute the serious harms can occur because of the district court's failure to apply *Purcell*. *See* Appellant Br. 60-62. That leaves Plaintiffs with arguing that applying *Purcell* would mean that plaintiffs could never obtain preliminary relief for an initiative-related law. *See* Appellees Br. 76-77. That's flawed for two reasons. First, it's inaccurate. Take, for example, an unconstitutional public-

disclosure law like the one in *Dakotans for Health*. A properly tailored preliminary injunction prohibiting only public disclosure, while allowing the State to retain information for integrity purposes, would be proper. *Cf. Dakotans for Health*, 52 F.4th at 393 (explaining that the preliminary injunction should be "narrowly tailored to remedy only the specific harms shown …, rather than to enjoin all possible breaches of the law" (citation modified)). Second, even if it were accurate, it's not a basis to avoid applying relevant portions of the analysis.

Conclusion

For these reasons, the Court should reverse.

Respectfully submitted,

TIM GRIFFIN
Arkansas Attorney General

AUTUMN HAMIT PATTERSON
Solicitor General

NOAH P. WATSON
Deputy Solicitor General

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

Counsel for Defendant-Appellant

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 6,500 words, excluding the parts exempted by Fed. R. App. P. 32(f).

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

I further certify that this PDF file was scanned for viruses, and no viruses were found on the file.

/s/ *Noah P. Watson*
Noah P. Watson

Certificate of Service

I certify that on April 17, 2026, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which shall send notification of such filing to any CM/ECF participants.

/s/ *Noah P. Watson*
Noah P. Watson