No. 24-2810

In the United States Court of Appeals for the Eighth Circuit

GET LOUD ARKANSAS, ET AL.,

Plaintiffs-Appellees,

v.

JOHN THURSTON, ET AL.,

Defendants-Appellants.

On Appeal from the United States District Court
for the Western District of Arkansas
No. 5:24-cv-05121

BRIEF OF THE HONEST ELECTIONS PROJECT, RESTORING INTEGRITY AND TRUST IN ELECTIONS, INC. AND CENTER FOR ELECTION CONFIDENCE, INC. AS *AMICI CURIAE* IN SUPPORT OF APPELLANTS AND AN EMERGENCY STAY

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CORPORATE DISCLOSURE STATEMENT

Under Federal Rule of Appellate Procedure 26.1 and Eighth Circuit Rule 26.1A, the Honest Elections Project, Restoring Integrity and Trust in Elections, Inc., and Center for Election Confidence, Inc. all state that they have no parent corporation, and no corporation owns 10% or more of each organization's stock.

TABLE OF CONTENTS

Corporate Disclosure Statement i

Table of Contents ii

Table of Authorities iii

Interest of the *Amici Curiae* 1

Summary of the Argument 2

Argument 6

- I. The *Purcell* principle mandates a stay of the district court's injunction. 6
- II. Even under a "relaxed" *Purcell* framework, a stay is still required because Defendants are likely to succeed on the merits. 10
  - A. Arkansas' handwritten signature requirement does not "deny" anyone the right to vote. 11
  - B. Handwritten signatures are "material in determining" voter qualifications. 14

Conclusion 19

Certificate of Compliance 20

Certificate of Service 21

TABLE OF AUTHORITIES

CASES

Ark. United v. Thurston,
No. 22-2918 (8th. Cir. 2022) 6, 7

Anderson v. Celebrezze,
460 U.S. 780 (1983) 13

Burdick v. Takushi,
504 U.S. 428 (1992) 13

Brnovich v. Democratic Nat'l Comm.,
141 S. Ct. 2321 (2021) 11

Carson v. Simon,
978 F.3d 1051 (8th Cir. 2020) 6, 7

Crawford v. Marion Cnty. Election Bd.,
553 U.S. 181 (2008) 11, 14, 15

Democratic Nat'l Comm. v. Wis. State Legislature,
141 S. Ct. 28 (2020) 9

Fla. State Conf. of NAACP v. Browning,
522 F.3d 1153 (11th Cir. 2008) 12

Howlette v. City of Richmond,
485 F. Supp. 17 (E.D. Va. 1978) 18

Hoyle v. Priest,
265 F.3d 699 (8th Cir. 2001) 11, 13, 17

League of Women Voters of Fla., Inc. v. Fla. Sec'y of State,
32 F.4th 1363 (11th Cir. 2022) 7, 8

League of Women Voters of Ark. v. Thurston,
2023 WL 6446015 (W.D. Ark. Sept. 29, 2023) 16

Merrill v. Milligan,
142 S. Ct. 879 (2022) .... *passim*

Org. for Black Struggle v. Ashcroft,
978 F.3d 603 (8th Cir. 2020) 7

Purcell v. Gonzalez,
549 U.S. 1 (2006) .... *passim*

Republican Nat'l Comm. v. Democratic Nat'l Comm.,
589 U.S. 423 (2020) 3, 6

Thompson v. Dewine,
959 F.3d 804 (6th Cir. 2020) 7

Vote.org v. Byrd,
700 F. Supp. 3d 1047 (N.D. Fla. 2023) .... *passim*

Vote.org v. Callanen,
89 F.4th 459 (5th Cir. 2023) .... *passim*

Vote.org v. Callanen,
39 F.4th 297 (5th Cir. 2022) .... *passim*

STATUTES

52 U.S.C. §10101 .... *passim*

Ark. Code Ann. §7-5-903 .... 5, 11

Ark. Code Ann. §7-5-404 .... 16, 17

Ark. Code Ann. §7-9-103 16

CONSTITUTIONAL PROVISIONS

Ark. Const. amend. 51 .... *passim*

OTHER AUTHORITIES

Arkansas Voter Registration Application, ARK. SEC'Y OF STATE (Rev. Jan. 2019), perma.cc/5KLW-BJKV 6, 19

Antoinette Grajeda, *Lawmakers Approve Voter Registration Signature Rule*, ARK. ADVOC. (May 2, 2024, 10:00 PM), perma.cc/4MJS-FZG5 4

Antoinette Grajeda, *Federal Judge Temporarily Blocks 'Wet Signature' Rule for Arkansas Voters*, ARK. ADVOC. (Aug. 29, 2024, 7:17 PM), perma.cc/HV9B-KVR8 .... 3, 8

Elections, ARK. SEC'Y OF STATE, perma.cc/S5FD-QP6N. 4

IRS, *1040 (and 1040-SR): Instructions* 61 (2022), perma.cc/Z9YR-X2DJ......................... 16

INTEREST OF THE *AMICI CURIAE*

The Honest Elections Project is a nonpartisan organization committed to supporting the right of all lawful voters to participate in free, fair, and honest elections. Through public engagement, advocacy, and public-interest litigation, the Project defends fair and reasonable measures that protect the integrity of the voting process. It opposes efforts to reshape elections for partisan gain. The Project has a significant interest in this case as it concerns an important safeguard to ensuring an honest election in Arkansas: the simple rule that each person applying to vote write their name down by hand on paper. The Project supports the right to vote of every American—a right which is only meaningful in an electoral system that makes certain every lawful ballot is counted, and which guards against fraud. The Project seeks to advocate in support of Arkansas' original signature requirement specifically because based on its national experience the Project is convinced that this vital election-integrity provision helps prevent fraud and ensure that applicants registering to vote are who they say they are.

Restoring Integrity and Trust in Elections, Inc. (RITE) is a non-profit organization that seeks to protect the rule of law throughout all phases of the voting process in the United States. RITE has a significant interest in ensuring that courts do not legislate election rules from the bench—especially on the eve of an election. RITE also supports policies that promote secure elections and enhance voter confidence in the electoral process such as Arkansas' original signature requirement. RITE's expertise

and national perspective on election law will assist the Court in reaching a decision consistent with the Constitution and the rule of law.

Center for Election Confidence, Inc. is a non-profit organization that promotes ethics, integrity, and professionalism in the electoral process. The Center works to ensure that all eligible citizens can vote freely in an election system that promotes election integrity, prevents vote dilution, and instills public confidence in election outcomes. To accomplish this, the Center conducts and publishes research and analysis regarding the effectiveness of current and proposed election methods. The Center is a resource for lawyers, policymakers, courts, and others interested in the electoral process. The Center has a significant interest in this case because it concerns the materiality provision of the Civil Rights Act, raising the issue of whether that provision will be upheld as written by Congress or whether it will be rewritten from the bench within weeks of a national election.

No party's counsel authored this brief in whole or in part; and no party, party's counsel, or person (other than *amici* or its counsel) contributed money to fund the brief's preparation or submission. No party opposed the filing of this brief.

SUMMARY OF THE ARGUMENT

The fast-approaching date of the upcoming election alone necessitates a stay of the district court's preliminary injunction. Under the *Purcell* principle, it is well-settled "(i) that federal district courts ordinarily should not enjoin state election laws in the period close to an election, and (ii) that federal appellate courts should stay injunctions

when, as here, lower federal courts contravene that principle." *Merrill v. Milligan*, 142 S. Ct. 879, 879-80 (2022) (Kavanaugh, J., concurral) (citing *Purcell v. Gonzalez*, 549 U.S. 1, 127 (2006) (per curiam)). The *Purcell* principle accords respect to "the State's extraordinarily strong interest in avoiding late, judicially imposed changes to its election laws and procedures." *Id.* at 881.

The wisdom of *Purcell* should prevail here. Even the district court acknowledged that the parties were "somewhat under the gun" due to the state's impending voter registration deadline.[1] Yet, in an oral opinion, the district court enjoined Arkansas' wet-signature requirement for voter registration anyway.

The district court's decision puts Arkansas election officials even more "under the gun" with the State's voter registration deadline only a month away and with voting beginning in the General Election in less than two weeks.[2] The decision disregards a "bedrock tenet of election law" that "[w]hen an election is close at hand, the rules of the road must be clear and settled." *Merrill*, 142 S. Ct. at 880-81. This Court should stay the district court's late injunction because it wrongly alters Arkansas' voter registration rules "on the eve of an election." *Republican Nat'l Comm. v. Democratic Nat'l Comm.*, 589 U.S. 423, 424 (2020).

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[1] Antoinette Grajeda, *Federal Judge Temporarily Blocks 'Wet Signature' Rule for Arkansas Voters*, ARK. ADVOC. (Aug. 29, 2024, 7:17 PM) perma.cc/HV9B-KVR8.

[2] *2024 Election Dates*, ARK. SEC'Y OF STATE, at 1-2 (Rev. Jan. 2024), perma.cc/B7EA-EM2X [hereinafter *Arkansas Election Calendar*].

Moreover, even if this Court were to apply a "relaxed version" of the *Purcell* principle, the district court's injunction should still be stayed because the underlying merits of plaintiffs' claims are not "entirely clearcut in their favor." *Merrill*, 142 S. Ct. at 881. To the contrary, plaintiffs' core argument is a recapitulation of propositions that have already been rejected by multiple federal courts.

Arkansas is not the first state whose officials have been sued in federal court over their laws requiring a handwritten signature to register to vote. Each of those suits has pushed the same flawed theory that requiring applicants to sign a voter registration form by hand is a violation of the Civil Rights Act. The Fifth Circuit rejected the theory, finding it "almost unquestionable that the wet signature requirement helps deter voter registration fraud." *Vote.org v. Callanen* (*Vote.org I*), 39 F.4th 297, 306 (5th Cir. 2022). And a different Fifth Circuit panel held that a handwritten signature requirement not only "advances voter integrity" but also is "a material requirement" under the Civil Rights Act. *Vote.org v. Callanen* (*Vote.org II*), 89 F.4th 459, 489 (5th Cir. 2023). In 2023, the Northern District of Florida also explained that a plaintiff could not "plausibly" show that "the wet-signature requirement is immaterial." *Vote.org v. Byrd* (*Vote.org III*), 700 F. Supp. 3d 1047, 1055 (N.D. Fla. 2023).

Plaintiffs' argument should fail again for two reasons. First, requiring handwritten signatures, a practice that Arkansas has been engaging in for decades,[3] does

[3] Antoinette Grajeda, *Lawmakers Approve Voter Registration Signature Rule*, ARK. ADVOC. (May 2, 2024, 10:00 PM), perma.cc/4MJS-FZG5 (quoting Arkansas Board of Election Commissioner

not deny anyone the right to vote. This is because Arkansas, by law, notifies applicants when their voter registration has been processed, providing them with the opportunity to come forward and correct any signature defects in their registration. Ark. Const. amend. 51, §§6(a)(8), 9(d); Ark. Code Ann. §7-5-903.[4] Indeed, plaintiffs do not allege that the original signature requirement has denied any individual the right to vote. Consequently, plaintiffs have failed to establish a valid claim under the materiality provision of the Civil Rights Act as that provision applies only to actions by state officials that "deny" the right of an "individual" to vote. 52 U.S.C. §10101(a)(2)(B).

Second, a handwritten signature is material to verifying an applicant's qualifications to vote. Handwritten signatures advance important state interests by helping to ensure that an individual seeking to register to vote is who they claim to be. These signatures are essential to Arkansas election officials' ability to detect fraud and preserve election integrity. And they work to make certain that applicants solemnly affirm they are not providing "false information" on their voter registration form.[5] Verifying a voter's identification, preventing voter fraud, protecting election integrity, and solemnizing the voter registration process are all important interests advanced by

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Director Chris Madison noting that "the rule adopts what we have been doing for the last 20 years for voter registration applications.").

[4] Arkansas also provides online updates to applicants concerning the processing status of their voter registration at www.VoterView.org. *Elections*, ARK. SEC'Y OF STATE, perma.cc/S5FD-QP6N.

[5] *Arkansas Voter Registration Application*, ARK. SEC'Y OF STATE (Rev. Jan. 2019), perma.cc/5KLW-BJKV.

Arkansas' handwritten signature rule, making a handwritten signature "material in determining" a voter's qualifications. 52 U.S.C. §10101(a)(2)(B).

For these reasons, this Court should grant a stay of the lower court's preliminary injunction.

ARGUMENT

I. The *Purcell* principle mandates a stay of the district court's injunction.

Purcell requires that when a lower court swoops in and alters a state's election rules "close to the election date," an appellate court must "correct that error," even if it "would prefer not to do so." *Republican Nat'l Comm.*, 589 U.S. at 425. *Purcell* relaxes the "traditional test for a stay" in "election cases when a lower court has issued an injunction of a state's election law in the period close to an election." *Merrill*, 142 S. Ct. at 880 (Kavanaugh, J., concurral).

The *Purcell* principle has been "recently and repeatedly reaffirmed" by the Supreme Court. *Carson v. Simon*, 978 F.3d 1051, 1062 (8th Cir. 2020) (collecting cases). Indeed, it is common for courts to stay district court injunctions while "express[ing] no opinion" on the merits merely because the district court issued the injunction within close proximity to the date of an election. *Purcell*, 549 U.S. at 5; *e.g*, Order, *Ark. United v. Thurston*, No. 22-2918, at 1 (8th. Cir. Sept. 28, 2022) (granting stay without opinion less than two months before midterm election citing *Purcell*).

The *Purcell* principle safeguards "the fair and orderly operation of elections" ensuring that "all will play by the same, legislatively enacted rules" without an injunction

flipping the status quo during the late innings of an election cycle. *Org. for Black Struggle v. Ashcroft*, 978 F.3d 603, 609 (8th Cir. 2020) (internal citation omitted) (staying district court injunction). The *Purcell* principle also preserves federalism. "[E]lection interference by federal courts" through late-breaking injunctions disrupts the Constitution's design that the State bear primary responsibility for setting election rules. *Carson*, 978 F.3d 1051 at 1062.

To determine if the *Purcell* principle applies, courts ask whether "an election is close at hand." *Merrill*, 142 S. Ct. at 880 (Kavanaugh, J., concurral); *see also Carson*, 978 F.3d 1051 at 1062 ("[J]udges should normally refrain from altering" state rules "close to an election"). Even six months may be too close to an election for a federal court to issue an injunction of a state's election rules where, as here, there are "interim deadlines" that will affect state administration. *Thompson v. Dewine*, 959 F.3d 804, 813 (6th Cir. 2020), *application to vacate stay denied*, 2020 WL 3456705 (U.S. June 25). The Supreme Court has stayed an injunction pursuant to *Purcell* when the next election was "about four months away." *Merrill*, 142 S. Ct. at 888 (Kagan, J., dissental); *see also League of Women Voters of Fla., Inc. v. Fla. Sec'y of State*, 32 F.4th 1363, 1371 (11th Cir. 2022) (staying injunction where voting was beginning in "less than four months"). During the last election cycle, this Court stayed a district court's order issued on August 19, 2022, nearly three months before the November midterm election. *See* Order, *Ark. United v. Thurston*, No. 22-2918, at 1 (8th. Cir. Sept. 28, 2022).

In this case, not only is the election too close, but also the interim deadline of when Arkansas voter registration closes is fast approaching. The district court issued an injunction on August 29, 2024—39 days before voter registration closes and just 21 days before voting begins.[6] Even the district court judge admitted that the parties were "somewhat under the gun" due to the state's impending voter registration deadline when he issued the injunction.[7] Yet, the district court not only issued an injunction, but also informed State Defendants that the court would not even be able to provide a "fulsome memorandum opinion" explaining the order for the injunction until a week and a half later on September 10, 2024. Defs.' Motion to Stay, App., at 294, R. Doc. 65, at 2. Allowing this injunction to stand will leave state officials with a mere 26 days to read, understand, and devise plans to implement the court's order, as well as determine how best to inform voters, state and local election officials, and volunteers about this last-minute change *before voter registration closes statewide*. By the time the ink dries on the district court's written opinion, Arkansas election officials will have less than two months until the General Election. Because the district court's order was issued "under the gun"[8] of the looming state voter registration deadline and is well within a four-month window before the General Election, *Purcell* applies, and an emergency stay is warranted. *Merrill*, 142 S. Ct. at 879 (granting stay when the next election was roughly

[6] *Arkansas Election Calendar*, *supra* note 2.
[7] Grajeda, *supra* note 1.
[8] Grajeda, *supra* note 1.

four months away); *see also League of Women Voters of Fla., Inc.*, 32 F.4th at 1371 n.6 (applying the *Purcell* principle to a case that "easily falls within the time period that triggered *Purcell* in *Milligan*").

Plaintiffs might argue that *Purcell* requires leaving the district court's ruling in place because a stay would be a late judicial intervention. But "[c]orrecting an erroneous lower court injunction does not itself constitute a *Purcell* problem. Otherwise, appellate courts could never correct a late-breaking lower court injunction of a state election. That would be absurd and is not the law." *Milligan*, 142 S. Ct. at 882 n.3 (Kavanaugh, J., concurral).

For the same reason, it's also irrelevant under *Purcell* that the final rule took effect on September 1. *Purcell* prevents "federal intrusion on state lawmaking processes." *Democratic Nat'l Comm. v. Wis. State Legislature*, 141 S. Ct. 28, 28 (2020) (Roberts, C.J., concurring). It is not a freestanding analysis of the likelihood of voter confusion. After all, few inquiries could be more intrusive than permitting the federal judiciary to decide which election laws would best avoid confusion and protect elections. In any event, the original-signature requirement has been in effect via emergency rule since May 4, and upsetting that status quo would both confuse voters and intrude on state election administration.

II. Even under a "relaxed" *Purcell* framework, a stay is still required because Defendants are likely to succeed on the merits.

Since the district court's injunction was issued on the eve of an election, applying the *Purcell* principle alone is sufficient to warrant a stay. *Merrill*, 142 S. Ct. at 881 (Kavanaugh, J., concurral). But even if this Court were to apply a "relaxed" version of *Purcell*, plaintiffs still can only stave off a stay if "the underlying merits are entirely clearcut" in their favor. *Id.* Plaintiffs' claims are nowhere close to reaching this "heighten[ed]" standard as State Defendants are likely to succeed on the merits. *Id.* at 881. Indeed, the only other federal circuit court that has ruled in a final judgment on the merits of plaintiffs' exact position concluded that a handwritten signature requirement is material under the Civil Rights Act. *Vote.org II*, 89 F.4th at 489.

Plaintiffs' misguided theory that requiring a handwritten signature to register to vote violates the materiality provision of the Civil Rights Act must fail as a matter of law for two independent reasons. First, the materiality provision does not even apply to Arkansas' handwritten signature requirement. This is because Arkansas' rule does not "deny the right" of anyone to vote as that the Arkansas Constitution provides applicants with an opportunity to fix any signature deficiencies. 52 U.S.C. §10101(a)(2)(B); Ark. Const. amend. 51, §9d. Second, even if the materiality provision were to apply, handwritten signatures are "material" in determining voter qualifications as such signatures help verify a voter's identity, preserve election integrity, prevent

fraud, and solemnize the voting process. Each of these arguments will be addressed in turn.

A. Arkansas' handwritten signature requirement does not "deny" anyone the right to vote.

To trigger scrutiny under the materiality provision of the Civil Rights Act, a state official must actually "deny the right" of some individual "to vote." 52 U.S.C. §10101(a)(2)(B). But the Arkansas Constitution guarantees voter registration applicants the opportunity to fix any signature deficiencies in their applications by mandating notification of applicants if "information" is "missing" and requiring a state official to "contact the applicant to obtain the missing information." Ark. Const. amend. 51, §§6(a)(8), 9(d). In addition, the Arkansas Code requires that county clerks "send written notification" when a "person registers to vote for the first time" or becomes "inactive" or is "removed" from the voter registration rolls and provides a process for challenging removal if it occurs. Ark. Code Ann. §7-5-903. Registration, just like voting, "necessarily requires some effort and compliance with some rules" because "the concept of a voting system" that "furnishes an equal 'opportunity' to cast a ballot must tolerate the 'usual burdens of voting.'" *Brnovich v. Democratic Nat'l Comm.*, 594 U.S. 647, 669 (2021) (quoting *Crawford v. Marion Cnty. Election Bd.*, 553 U.S. 181, 198 (2008)). And a voter who fails to follow the registration rules is not a "qualified or registered elector" of the state under the Arkansas Constitution. Ark. Const. amend. 51, §11(a)(5).

The ordinary burdens of exercising the right to vote do not "deny" the right. This Court has acknowledged this distinction, holding that "no citizen is being denied the right to vote" under the materiality provision merely because Arkansas requires "petition signers" to be "qualified electors." *Hoyle v. Priest*, 265 F.3d 699, 704 (8th Cir. 2001). Similarly, "no citizen is being denied the right to vote" merely because Arkansas requires voter registration form signers to fill out the application form in a qualified manner by hand. In both the petition signing case and this voter registration form signing case, Arkansas' duly promulgated rule "simply protects the state and its citizens against both fraud and caprice, valid concerns considering the time and expense needed" to undertake the voting process. *Id*. The absence of a denial is even clearer here because an applicant has an opportunity to cure the missing information after being contacted by a state official. Ark. Const. amend. 51, §9(d).

Plaintiffs' complaint confirms that they are challenging an ordinary burden of voting, not a denial of the right. Plaintiffs argue that they are being "forced," by Arkansas state election officials to "print" copies of voter registration applications, which "requires significantly more resources, including time and costs" to accomplish. Defs.' Motion to Stay, App. at 7, 8-9, 23, 25; R. Doc. 2 at 5, 6, 21, 23. But missing from plaintiffs' complaint and entire case is any allegation that any plaintiff or any Arkansas voter registration applicant has ever been "denied" the right to vote due to Arkansas' handwritten signature voter registration requirement. Plaintiffs do not even allege that they or anyone else have not been able to comply with the law. Indeed, it is "hard to

conceive how the wet signature rule deprives anyone of the right to vote." *Vote.org I*, 39 F.4th at 306. In *Vote.org II*, the Fifth Circuit "set aside that holding" to consider it further in a "later case," but the Court still confirmed that even if the need to cure a deficiency in a handwritten signature "creates a hurdle," such a burden "is not itself a final denial of … the right to vote." 89 F.4th at 487. The Eleventh Circuit has been even more clear that the materiality provision "does not establish a least-restrictive-alternative test for voter registration applications in the plain text of the statute." *Fla. State Conf. of NAACP v. Browning*, 522 F.3d 1153, 1175 (11th Cir. 2008). This Court similarly reasoned that the materiality provision prohibits "deny[ing]" the right to vote—not *de minimis* burdens on that right. *Hoyle*, 265 F.3d 699 at 704.

Since minimal burdens like Arkansas' wet-signature requirement do not deny the right to vote, they are not governed by the materiality provision. Instead, the *Anderson-Burdick* balancing test governs claims alleging undue burdens on the right to vote. *Anderson v. Celebrezze*, 460 U.S. 780, 806 (1983); *Burdick v. Takushi*, 504 U.S. 428, 430 (1992). But plaintiffs have not asserted an *Anderson-Burdick* claim in this case. For good reason: that claim too would be hard to sustain since modern "society is replete with examples of original-signature requirements," "everyone has encountered some, and no one here disputes the ubiquity of these requirements." *Vote.org III*, 700 F. Supp. 3d 1047, at 1056. The district court's injunction can only stand if this Court adopts a new, stricter test by substituting "burden" for Congress's choice of "deny" in the materiality provision.

B. Handwritten signatures are "material in determining" voter qualifications.

Plaintiffs' claim also fails because a handwritten signature is "material in determining" voter qualifications. 52 U.S.C. §10101(a)(2)(B). Handwritten signatures help the state confirm that a voter registration applicant is actually "who they say they are." *Vote.org II*, 89 F.4th 459 at 487. Federal courts in multiple circuits have already confirmed this as a matter of law. *Id.*; *Vote.org I*, 39 F.4th 297 at 308; *Vote.org III*, 700 F. Supp. 3d 1047 at 1056-57. Plaintiffs have no good answer to these cases, which should remove any doubt that their claims are anything but "entirely clearcut" in their favor. *Merrill*, 142 S. Ct. at 881 (Kavanaugh, J., concurral). Indeed, it is "[u]ndeniable" that verifying a voter's identity is "material" to determining whether a voter meets the "age, citizenship, residency, capacity, and criminal history qualifications" necessary to vote and that an original-signature requirement "far more" than tenuously supports such an identity interest. *Id.* at 487, 489.

Despite these holdings, plaintiffs maintain that Arkansas' handwritten signature requirement is "an arbitrary restriction" that is "irrelevant" and immaterial in "determining voter qualifications." Defs.' Motion to Stay, App. at 5; R. Doc. 2 at 3. But Arkansas' handwritten signature requirement helps effectuate the State's compelling interest in "carefully identifying all voters participating in the election process." *Crawford*, 553 U.S. 181 at 196. The requirement helps ensure that the applicant is a real, living, breathing, physical person. Under the Arkansas Constitution, an applicant is not

eligible to register to vote if they are "deceased." Ark. Const. amend. 51, §11(c)(2)(B) (a "deceased voter registration shall be cancelled"). A handwritten signature helps Arkansas election officials confirm that an applicant is qualified to vote and provides some evidence that the applicant is not deceased. In a modest way, the handwritten signature requirement assists election officials in verifying the living existence of the voter registration applicant.

Further, Arkansas' handwritten signature requirement is material because it advances the state's compelling interest in preventing fraud and substantial interest in ensuring voter integrity. "As a matter of law," ensuring voter integrity is a "substantial interest." *Vote.org II*, 89 F.4th 459 at 488. "[A] State has considerable discretion in deciding what is an adequate level of effectiveness to serve its important interests in voter integrity. When [courts] evaluate the materiality of a measure, [they] must give weight to the State's justification for it." *Id.* at 485. "While the most effective method of preventing election fraud may well be debatable, the propriety of doing so is perfectly clear." *Crawford*, 553 U.S. 181 at 196. And "actual evidence of voter registration fraud" has "never been required to justify a state's prophylactic measures" to "increase the uniformity and predictability of election administration." *Vote.org I*, 39 F.4th 297 at 308 (cleaned up).

Here, Arkansas has made the reasonable policy judgment to prevent fraud and safeguard voter integrity through its handwritten signature requirement. This policy decision makes sense because the process of "physically signing the form with the

warnings in front of the applicant, threatening penalties for perjury and stating the needed qualifications, has some prospect of getting the attention of many applicants and dissuading false statements that an electronic signature, without these warnings, does not." *Id.* at 488-89. Indeed, a handwritten signature is far preferrable "in stature" to "a copied, faxed, or otherwise non-original signature." *Vote.org III*, 700 F. Supp. 3d 1047 at 1056. "[W]e" all—plaintiffs included—know this as a matter of simple commonsense. *Id.* at 1055. Indeed, modern "society is replete with examples of original-signature requirements" because "original signatures carry different weight than other 'signatures.'" *Id.* at 1056. In Arkansas, handwritten signature requirements are a common facet of the democratic process with state law requiring that a registered voter "sign his or her own name" in "proper handwriting" to "order an initiative or referendum vote." Ark. Code Ann. §7-9-103. The federal government also uses them to help deter and detect fraud with the IRS mandating them on physical tax returns. *See* IRS, *1040 (and 1040-SR): Instructions* 61 (2022) perma.cc/Z9YR-X2DJ.

Moreover, Arkansas' handwritten signature requirement is crucial to preventing absentee ballot fraud. Arkansas has a "history of absentee ballot fraud." *League of Women Voters of Ark. v. Thurston*, 2023 WL 6446015, at *14 (W.D. Ark. Sept. 29, 2023) (citing example of Arkansas Democratic primary in which "98 fraudulent absentee ballots" were submitted). To prevent such fraud, Arkansas law requires that each county clerk, before providing an absentee ballot to a voter, verify that "the signatures on the absentee ballot application and the voter registration application record" are "similar."

Ark. Code Ann. §7-5-404(a)(2). If they are not similar, "the county clerk shall not provide an absentee ballot to the voter." *Id.* As the Director for the State Board of Election Commissioners testified, signature verification for absentee ballots is "absolutely a step that's required to be able to count your vote" under Arkansas' statutory scheme. Defs.' Motion to Stay, App. at 190, R. Doc. 46-7, at 34-35. Further, it is a step that has "caught" fraud in the past in the State. *Id.* at 35.

But if the district court's preliminary injunction is not stayed, Arkansas' statutorily mandated process for signature verification of absentee ballots will not be followed in the upcoming General Election. Indeed, plaintiffs admit that under Arkansas law, "an absentee ballot application signature" is to be "compared to the voter's signature on their voter registration application." Defs.' Motion to Stay, App. at 218, R. Doc. 46-1 at 26. However, without a stay, county clerks across the state of Arkansas will not be able to properly fulfill their statutorily mandated duty to compare to determine how "similar" the "signatures" of an absentee ballot applicant are to "the voter registration application record" for the General Election. Ark. Code Ann. §7-5-404(a)(2).

In addition to helping verify a voter's identity, preserving election integrity, and preventing voter fraud, Arkansas' handwritten signature requirement also effectuates the state's legitimate interest in solemnizing the voting process. A State has a legitimate interest in attaching a "solemn weight" to the voting process. *Vote.org II*, 89 F.4th at 489. A handwritten signature has a solemnity "that an imaged signature does not." *Id.*

(quoting *Vote.org I*, 39 F.4th at 308). Requiring a handwritten signature helps solemnize the voting process in at least two ways. First, the applicant's act of handwriting out his or her signature "impresses upon the signers" the "seriousness of the act." *Vote.org III*, 700 F. Supp. 3d 1047 at 1056 (quoting *Howlette v. City of Richmond*, 485 F. Supp. 17, 23 (E.D. Va. 1978)). Second, the handwritten signature requirement dissuades persons who are not the applicant from signing the applicant's name "by subjecting those who take the oath to potential criminal liability for perjury." *Howlette*, 485 F. Supp. 17 at 23 (discussing significance of individual notarization requirement in the initiative and referendum context); *see also Hoyle*, 265 F.3d at 704-05 (concluding that a registered voter signature requirement for proposed ballot initiatives was "material" under the Civil Rights Act). Under the signature box on every Arkansas' voter registration application, the following oath is printed:

> The information I have provided is true to the best of my knowledge. I do not claim the right to vote in another county or state. If I have provided false information, I may be subject to a fine of up to $10,000 and/or imprisonment of up to 10 years under state and federal laws.[9]

When each individual signs by hand a voter registration application in Arkansas, they do so right above this oath, impressing upon them the potential for criminal liability for providing false information. While one could easily skim over this message if signing the application electronically, the process of printing the form out and putting pen to

[9] *Arkansas Voter Registration Application*, *supra* note 3.

paper to handwrite the applicant's signature helps better cement in the mind of the person filling out the application the gravity and consequence of this important oath.

Ultimately, the only federal circuit who has issued a final judgment on the merits of plaintiffs' materiality argument concluded that "[s]igning an application is related to voting qualifications." *Vote.org II*, 89 F.4th at 489. At the very least, this makes plaintiffs' arguments to the contrary anything but "entirely clearcut" in their favor. *Merrill*, 142 S. Ct. at 881 (Kavanaugh, J., concurral). As a result, "absolute" rather than "relaxed" application of the *Purcell* principle is warranted. *Id.* State Defendants have a high likelihood of success on the merits and an "extraordinarily strong interest in avoiding late, judicially imposed changes" to Arkansas' duly promulgated election procedures. *Id.*

CONCLUSION

For all these reasons, this Court should stay the district court's judgment.

Dated: September 9, 2024

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

This brief complies with Rule 32(a)(7)(B) because it contains 4,629 words, excluding the parts exempted by Rule 32(f). This brief also complies with Rule 32(a)(5)-(6) because it is prepared in a proportionally spaced face using Microsoft Word in 14-point Garamond font.

The electronic version of the brief has been scanned for viruses and are virus-free.

Dated: September 9, 2024 *<u>/s/ Gilbert C. Dickey</u>*

CERTIFICATE OF SERVICE

I filed a true and correct copy of this brief with the Clerk of this Court via the CM/ECF system, which will notify all counsel.

Dated: September 9, 2024 /s/ *Gilbert C. Dickey*