

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION**

VOTE.ORG, *et al.*,

Plaintiffs,

v.

Civil Action No.: 1:22-cv-01734-JPB

GEORGIA STATE ELECTION  
BOARD, *et al.*,

Defendants,

GEORGIA REPUBLICAN PARTY,  
INC., *et al.*,

Intervenor-Defendants.

**PLAINTIFFS' NOTICE OF SUPPLEMENTAL AUTHORITY**

Plaintiffs VOTE.ORG, PRIORITIES USA, GEORGIA ALLIANCE FOR RETIRED AMERICANS (the "Alliance"), and COMMUNICATIONS WORKERS OF AMERICA LOCAL 3204 RETIRED MEMBERS COUNCIL ("CWA"), respectfully submit this Notice to inform the Court of the United States District Court for the Western District of Arkansas's recent decision in *Get Loud Arkansas v. Thurston*, No. 5:24-CV-5121, 2024 WL 4142754 (W.D. Ark. Sept. 9, 2024) ("*Get Loud Arkansas*" or "*GLA*") (attached as Exhibit 1). Although the United States Court of Appeals for the Eighth Circuit recently granted defendants' motion to stay the decision pending appeal, the Eighth Circuit's stay order expressed no skepticism of

the district court's factual findings or legal conclusions. *See* Order, *Get Loud Arkansas v. Thurston*, No. 24-2810 (8th Cir. Oct. 9, 2024) (attached as Exhibit 2). Rather, the Eighth Circuit granted the stay in response to arguments based “almost entirely on *Purcell v. Gonzalez*,” which cautions federal courts against making last-minute modifications to election rules. *Id.* at 2 (Smith, J., dissenting) (citing *Purcell v. Gonzalez*, 549 U.S. 1 (2006)). Because the Eighth Circuit has provided no basis to reject the district court's reasoning on standing or the merits, the district court's decision is relevant to this Court's consideration of the Cross-Motions for Summary Judgment here, specifically with respect to (1) whether Plaintiffs have standing to challenge Georgia's pen and ink rule, and (2) whether the pen and ink rule violates the materiality provision.

### **I. Article III Standing**

In *Get Loud Arkansas*, the plaintiff organizations (including Vote.org) developed online tools that allowed prospective voters to fill out and sign their voter registration applications digitally. 2024 WL 4142754, at \*4–5. Earlier this year, Arkansas's State Board of Election Commissioners adopted a rule that required all applications submitted outside of certain designated agencies to be signed with a wet signature. *Id.* at \*5–6. The plaintiffs sued shortly after, alleging that Arkansas's wet signature rule violates the materiality provision of the Civil Rights Act of 1964. *Id.* at \*2.

In considering whether at least one of the plaintiffs adequately alleged standing, the court found that Get Loud Arkansas had demonstrated sufficient injury-in-fact because the wet signature rule directly interfered with the use of GLA's online tool and "'perceptibly impaired' GLA's ability to provide voter registration services to Arkansans," which "caused a 'concrete and demonstrable injury to the organization's activities.'" *Id.* at \*12–13 (citing *Havens Realty Corp. v. Coleman*, 455 U.S. 363, 378–79 (1982), and *FDA v. All. for Hippocratic Med.*, 602 U.S. 367, 395 (2024)). To support its finding, the court explained that because the wet signature rule "*prohibits* [organizations] from utilizing online digital signature technology," it "specifically target[s] GLA's activity of registering voters through its online tool." *Id.* at \*13. In response, GLA "used its resources"—"time, labor, and money"—"to comply with the Rule that proscribed the use of its digital signature tool," by "redesigning its tool and retraining and hiring additional staff to register people using paper applications." *Id.* Doing so "markedly limit[ed] [GLA's] ability to carry out its [other] organizational activities" like "assisting voters who have been purged from voter rolls and organizing campaigns." *Id.* The *GLA* court also relied on the Supreme Court's recent decision in *FDA v. Alliance for Hippocratic Medicine*, which confirmed that an organization suffers a concrete injury where the defendant's actions "perceptibly impair[]" its "ability to provide [organizational]

services.” 602 U.S. at 395 (citation omitted); *see also Get Loud Arkansas*, 2024 WL 4142754, at \*13–14.

Like GLA, here, Vote.org has shown that the pen and ink rule directly regulates and interferes with its activities—namely, “utilizing [its] online digital signature technology”—and that, in response, it has had to divert significant “time, labor, and money” to “redesign[] its tool” and launch a print-and-mail program at the expense of “its ability to engage in other organizational activities.” 2024 WL 4142754, at \*13; *see also* Pls.’ SUMF at 11–15, ECF No. 159-3.

## II. Materiality Provision

The *GLA* court held that a wet signature is not material in determining voter qualifications. 2024 WL 4142754, at \*15–22. In doing so, it reached several conclusions regarding issues identical to those that have been raised regarding the merits in this case. *First*, the *GLA* court rejected the Fifth Circuit’s reasoning in *Vote.org v. Callanen*, 89 F.4th 459 (5th Cir. 2023), as unpersuasive, concluding that it was inconsistent with the statutory text, history, and purpose of the materiality provision, as well as with Justice Alito’s dissent in *Ritter v. Migliori*, 142 S. Ct. 1824 (2022), which was joined by Justices Thomas and Gorsuch. *Get Loud Arkansas*, 2024 WL 4142754, at \*18–22. The dissenting Justices in *Migliori* observed that if a voter “typed his or her name instead of signing it,” then “those violations would be material in determining whether a ballot should be counted, *but they would not be*

‘material in determining whether such individual is qualified under state law.’” *Id.* at \*20 (citing *Migliori*, 142 S. Ct. at 1826). Thus, the *GLA* court concluded, “the inclusion of a digital signature, rather than a wet signature, would not be material either.” *Id.*

*Second*, the *GLA* court found that a state’s purported interests are “not a relevant consideration in analyzing a violation under the Materiality Provision,” *id.* at \*18, noting that the plain language of the provision “makes quite clear the relevant question: Is the error or omission material in determining whether an applicant is qualified to vote under state law?,” *id.* at \*19. *But see* State Defs.’ MSJ at 33–37, ECF No. 156-1. Accordingly, the *GLA* court concluded that “[t]he Materiality Provision is not a burden-interest balancing statute,” and that whatever the state’s interests may be, including “preventing voter fraud, that interest must yield to a qualified voter’s right’ under the Materiality Provision.” 2024 WL 4142754, at \*18 (quoting *La Unión del Pueblo Entero v. Abbott*, 705 F. Supp. 3d 725, 745 (W.D. Tex. 2023) (“*LUPE*”).

*Third*, the *GLA* court found that the wet signature rule denies the right to vote, even if there is an opportunity for the voter to cure a rejection based on the wet signature rule’s enforcement. 2024 WL 4142754, at \*15–16. In other words, “denial of the statutory right to vote under Section 101 is complete when a particular application is rejected,” regardless of whether a person may “cure the rejection or

submit another application.” *Id.* at \*15 (cleaned up) (quoting *LUPE*, 705 F. Supp. 3d at 760); *see also* Pls.’ SUMF, ECF No. 159-3 at 8, 23-24.

*Fourth*, the *GLA* court confirmed that the relevant qualifications to vote mean the “substantive voter attributes” that allow one to cast a ballot under state law. 2024 WL 4142754, at \*17 (quoting *LUPE*, 705 F. Supp. 3d at 751). In Arkansas, as in Georgia, qualified voters must be (1) a U.S. citizen, (2) a resident of the state, (3) 18 years or older, (4) not convicted of a qualifying felony, and (5) must not have been adjudged mentally incompetent by a court. *Id.* (citations omitted); Ga. Const., Art. II, Sec. I, Para. II; O.C.G.A. § 21-2-216. The *GLA* court’s conclusions on the merits apply equally here.

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Dated: October 17, 2024

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**CERTIFICATE OF COMPLIANCE**

I hereby certify that the foregoing **Plaintiffs' Notice of Supplemental Authority** has been prepared in accordance with the font type and margin requirements of LR 5.1, N.D. Ga., using font type of Times New Roman and a point size of 14.

Dated: October 17, 2024

/s/ Uzoma N. Nkwonta  
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**CERTIFICATE OF SERVICE**

I hereby certify that I have on this date caused to be electronically filed a copy of the foregoing **Plaintiffs' Notice of Supplemental Authority** with the Clerk of Court using the CM/ECF system, which will automatically send e-mail notification of such filing to counsel of record.

Dated: October 17, 2024

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