

App. No. 26A_____

In the Supreme Court of the United States

NEW MEXICO FORWARD PARTY, BOB PERLS, MICHAEL VIGIL,
DENNIS DINGE, HARRY MONTOYA, AND FRANCES KAVA,
Applicants,

v.

MAGGIE TOULOUSE OLIVER, IN HER OFFICIAL CAPACITY AS SECRETARY
OF STATE OF NEW MEXICO, AND BARBARA DELANEY, IN HER OFFICIAL
CAPACITY AS COUNTY CLERK OF LUNA COUNTY, NEW MEXICO,
Respondents.

On Application for an Injunction Pending Appeal to the
United States Court of Appeals for the Tenth Circuit

**EMERGENCY APPLICATION FOR WRIT OF INJUNCTION PENDING
APPEAL**

**RELIEF REQUESTED BY THURSDAY, SEPTEMBER 17, 2026, AND IN NO
EVENT LATER THAN SEPTEMBER 18, 2026**

To the Honorable Neil M. Gorsuch,
Associate Justice of the Supreme Court of the United States
and Circuit Justice for the Tenth Circuit

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QUESTIONS PRESENTED

New Mexico is the only State that requires a new political party to petition its way onto the ballot and then requires each of the party's nominees to file a second, separate petition—here, 14,200 signatures apiece for candidates for statewide office, or 131,361 signatures across ten petitions to field a full statewide slate. That requirement is greater, by far, than any other State's. The district court measured the resulting burden by the 14,200 signatures one candidate needs, called every other burden "self-imposed," and refused to consider uncontested evidence that for the last quarter century New Mexico's elections for state and federal office averaged fewer than two candidates per race. The Tenth Circuit denied an injunction pending appeal in a single sentence, without reasons. The questions presented are:

1. Whether, under *Anderson v. Celebrezze*, 460 U.S. 780 (1983), and *Burdick v. Takushi*, 504 U.S. 428 (1992), a court assessing the burden a ballot access scheme imposes on a newly qualified political party and the voters who support it must measure the scheme's cumulative effect on the party's ability to field its nominees, rather than the signature requirement for a single candidate viewed in isolation.

2. Whether a State may condition a qualified minor party's access to the general-election ballot on a second round of candidate petitions—larger than the party's own qualifying petition and larger than the petitions the State demands of major party candidates—when the State has identified no interest that the second petition serves and concedes the same voters may sign every petition.

3. Whether the courts below erred in denying injunctive relief to two nominees of a qualified political party who each gathered more voter signatures than New Mexico requires of major party statewide candidates to reach the ballot.

PARTIES TO THE PROCEEDING

Applicants are New Mexico Forward Party ("NMFP"), a political party qualified under New Mexico law since May 14, 2026; Bob Perls, NMFP's nominee for United States Senate; Michael Vigil, NMFP's nominee for State Auditor; and Dennis Dingé, Harry Montoya, and Frances Kava, NMFP's nominees for Public Education Commission, Santa Fe County Magistrate Judge, and Luna County Magistrate Judge, respectively. All six were plaintiffs in the district court and are appellants in the Tenth Circuit. The relief requested in this Application runs to Applicants NMFP, Perls, and Vigil; Applicants Dingé, Montoya, and Kava have been placed on the ballot.

Respondents are Maggie Toulouse Oliver, in her official capacity as Secretary of State of New Mexico, and Barbara DeLaney, in her official capacity as County Clerk of Luna County, New Mexico. Both were defendants in the district court and are appellees in the Tenth Circuit. Respondent DeLaney did not oppose the relief sought below.

CORPORATE DISCLOSURE STATEMENT

Pursuant to Rule 29.6, Applicant New Mexico Forward Party states that it is a political party organized under the laws of New Mexico; it has no parent corporation, and no publicly held company owns 10% or more of any stock in it. The remaining Applicants are individuals.

RELATED PROCEEDINGS

United States District Court for the District of New Mexico

New Mexico Forward Party v. Toulouse Oliver, No. 1:26-cv-02286-MIS-SCY. Order Denying Motion for Preliminary Injunction entered September 2, 2026 (ECF No. 22) (App. 5–35). Order Denying Plaintiffs' Opposed Emergency Motion for Stay and Injunction Pending Appeal entered September 9, 2026 (ECF No. 28) (App. 3–4). The action remains pending.

United States Court of Appeals for the Tenth Circuit

New Mexico Forward Party v. Toulouse Oliver, No. 26-2145. Order denying Appellants' Emergency Motion for Stay and Injunction Pending Appeal entered September 15, 2026 (Doc. 11) (App. 1–2). The interlocutory appeal under 28 U.S.C. § 1292(a)(1) remains pending.

TABLE OF CONTENTS

QUESTIONS PRESENTED.....	ii
PARTIES TO THE PROCEEDING	iii
CORPORATE DISCLOSURE STATEMENT	iii
RELATED PROCEEDINGS.....	iii
TABLE OF AUTHORITIES	v
INDEX TO APPENDIX	x
JURISDICTION.....	2
INTRODUCTION	2
STATEMENT OF THE CASE.....	4
A. New Mexico's two-tier scheme for minor parties.....	4
B. Applicants' efforts to qualify.	6
C. Proceedings below.....	7
D. The ballot timeline.....	8
REASONS FOR GRANTING THE APPLICATION	8
I. The Legal Rights at Issue Are Indisputably Clear, and This Court Would Likely Grant Review and Reverse.....	9
A. The court below improperly measured the burden on one candidate, not the burden on a new party and the voters who support it.	9
B. The uncontested record shows a frozen political status quo, which the district court refused to consider.	10
C. The State has identified no interest the second petition serves, and its own concession shows the candidate petitions add nothing.....	12
D. The "self-imposed" rationale converts the Legislature's own deadline into a trap.	14
E. The question is important, the vehicle is clean, and the Tenth Circuit's unexplained denial leaves this Court's precedents unenforced.	15
II. Applicants Will Suffer Irreparable Injury Absent Relief.....	16
III. The Balance of Equities and the Public Interest Favor Placing Two Nominees of a Qualified Party on the Ballot.....	16
IV. In the Alternative, the Court Should Grant Certiorari Before Judgment.	18

SPECIFICS OF RELIEF REQUESTED.....	18
CONCLUSION.....	19

TABLE OF AUTHORITIES

Cases

<i>Abbott v. Perez</i> , 585 U.S. 579 (2018)	16
<i>Anderson v. Celebrezze</i> , 460 U.S. 780 (1983)	2, 9, 12–15
<i>Awad v. Ziriax</i> , 670 F.3d 1111 (10th Cir. 2012)	16
<i>Bullock v. Carter</i> , 405 U.S. 134 (1972)	9
<i>Burdick v. Takushi</i> , 504 U.S. 428 (1992)	9
<i>Chamber of Commerce of U.S. v. Edmondson</i> , 594 F.3d 742 (10th Cir. 2010)	16
<i>Constitution Party of New Mexico v. Duran</i> , No. 1:12-cv-325 (D.N.M. Dec. 9, 2013)	14
<i>Constitution Party of Pennsylvania v. Cortes</i> , 116 F. Supp. 3d 486 (E.D. Pa. 2015), <i>aff'd</i> , 824 F.3d 386 (3d Cir. 2016)	15
<i>Elrod v. Burns</i> , 427 U.S. 347 (1976)	16
<i>Fish v. Kobach</i> , 840 F.3d 710 (10th Cir. 2016)	16
<i>Garbett v. Herbert</i> , 458 F. Supp. 3d 1328 (D. Utah 2020)	14
<i>Illinois State Board of Elections v. Socialist Workers Party</i> , 440 U.S. 173 (1979)	12
<i>Jenness v. Fortson</i> , 403 U.S. 431 (1971)	10–11
<i>Kusper v. Pontikes</i> , 414 U.S. 51 (1973)	9
<i>Libertarian Party of New Mexico v. Herrera</i> , 506 F.3d 1303 (10th Cir. 2007)	15
<i>Libertarian Party of Ohio v. Blackwell</i> , 462 F.3d 579 (6th Cir. 2006)	10, 13
<i>Little Sisters of the Poor Home for the Aged v. Sebelius</i> , 134 S. Ct. 1022 (2014)	8
<i>Lubin v. Panish</i> , 415 U.S. 709 (1974)	17
<i>Maryland Green Party v. Maryland Board of Elections</i> , 832 A.2d 214 (Md. 2003)	13, 15, 18
<i>Nken v. Holder</i> , 556 U.S. 418 (2009)	8
<i>Norman v. Reed</i> , 502 U.S. 279 (1992)	2, 9, 13
<i>Ohio Citizens for Responsible Energy, Inc. v. Nuclear Regulatory Comm'n</i> , 479 U.S. 1312 (1986) (Scalia, J., in chambers)	8

<i>Planned Parenthood Ass'n of Utah v. Herbert</i> , 828 F.3d 1245 (10th Cir. 2016)	16
<i>Rogers v. Corbett</i> , 468 F.3d 188 (3d Cir. 2006)	15
<i>Roman Catholic Diocese of Brooklyn v. Cuomo</i> , 592 U.S. 14 (2020)	8
<i>Storer v. Brown</i> , 415 U.S. 724 (1974)	11
<i>Utah Republican Party v. Cox</i> , 892 F.3d 1066 (10th Cir. 2018)	10
<i>Williams v. Rhodes</i> , 89 S. Ct. 1 (1968) (Stewart, J., in chambers)	17
<i>Williams v. Rhodes</i> , 393 U.S. 23 (1968)	2, 9

Constitutional Provisions

U.S. Const. amend. I	2, 16
----------------------------	-------

Statutes

28 U.S.C. § 1254(1)	2
28 U.S.C. § 1292(a)(1)	2
28 U.S.C. § 1651(a)	1–2
28 U.S.C. § 2101(e)	2, 18
28 U.S.C. §§ 1331, 1343(a)(3)	2
42 U.S.C. § 1983	2, 7
N.M. Stat. Ann. § 1-4-8	3, 6, 14
N.M. Stat. Ann. § 1-7-2	3, 5, 12, 14
N.M. Stat. Ann. § 1-7-7	5
N.M. Stat. Ann. § 1-8-1	5
N.M. Stat. Ann. § 1-8-2	1–3, 5–7, 14, 18–19
N.M. Stat. Ann. § 1-8-21.1	5, 13
N.M. Stat. Ann. § 1-8-33	5, 13
N.M. Stat. Ann. § 1-8-51	3, 5
N.M. Stat. Ann. § 1-8-65	5
N.M. Stat. Ann. § 1-15-3	6, 11–12

Rules

Fed. R. App. P. 8(a)	2
Fed. R. App. P. 29	8
Sup. Ct. R. 11	2, 18

Sup. Ct. R. 22	1
Sup. Ct. R. 23	2

INDEX TO APPENDIX

Volume I

Order Denying Emergency Motion for Stay and Injunction Pending Appeal, No. 26-2145 (10th Cir. Sept. 15, 2026) (Doc. 11)	App. 1
Order Denying Plaintiffs' Opposed Emergency Motion for Stay and Injunction Pending Appeal, No. 1:26-cv-02286-MIS-SCY (D.N.M. Sept. 9, 2026) (ECF No. 28)	App. 3
Order Denying Motion for Preliminary Injunction (D.N.M. Sept. 2, 2026) (ECF No. 22)	App. 5
Order to Show Cause (D.N.M. Sept. 2, 2026) (ECF No. 23)	App. 36
Notice of Appeal (D.N.M. Sept. 2, 2026) (ECF No. 24)	App. 38
Appellants' Opposed Emergency Motion for Stay and Injunction Pending Appeal (10th Cir. Sept. 8, 2026) (Doc. 2-1)	App. 40
Exhibit A: 2026 Nominating Petition Calculations (Doc. 2-2)	App. 57
Secretary of State's Response in Opposition (10th Cir. Sept. 11, 2026) (Doc. 5-1)	App. 68
Exhibit A: Declaration of Mandy Vigil (Sept. 11, 2026), with Exhibit 1 (Doc. 5-2)	App. 92
Appellants' Reply (10th Cir. Sept. 13, 2026) (Doc. 7)	App. 99

Volume II

Complaint (D.N.M. July 14, 2026) (ECF No. 1)	App. 109
Plaintiffs' Emergency Motion for Preliminary Injunction (D.N.M. July 27, 2026) (ECF No. 8)	App. 136
Declaration of Richard Winger, with Exhibits A and B (ECF No. 8-1)	App. 162
Declaration of Michael J. Vigil (ECF No. 8-2)	App. 189
Declaration of Bob Perls, with Exhibit A (ECF No. 8-3)	App. 193
Declaration of Harry Montoya (ECF No. 8-4)	App. 204
Declaration of Frances Kava (ECF No. 8-5)	App. 207
Declaration of Dennis C. Dingel (ECF No. 8-6)	App. 209
Secretary of State's Response in Opposition to Motion for Preliminary Injunction (D.N.M. Aug. 14, 2026) (ECF No. 13)	App. 212
Declaration of Mandy Vigil (Aug. 14, 2026), with attachments (ECF No. 13-1)	App. 237
Plaintiffs' Reply in Support of Motion for Preliminary Injunction (D.N.M. Aug. 15, 2026) (ECF No. 14)	App. 254

Plaintiffs' Opposed Emergency Motion for Stay and Injunction Pending Appeal (D.N.M. Sept. 4, 2026) (ECF No. 27)	App. 265
Exhibit A: 2026 Nominating Petition Calculations (ECF No. 27-1).....	App. 291

**To the Honorable Neil M. Gorsuch,
Associate Justice of the Supreme Court of the United States
and Circuit Justice for the Tenth Circuit:**

Pursuant to Rule 22 and 28 U.S.C. § 1651(a), Applicants New Mexico Forward Party, Bob Perls, Michael Vigil, Dennis Dinger, Harry Montoya and Frances Kava respectfully request an immediate writ of injunction (1) barring Respondent Secretary of State from enforcing N.M. Stat. Ann. § 1-8-2(B) against Applicants Perls and Vigil in the 2026 election cycle, and (2) directing the Secretary to certify Mr. Perls (United States Senate) and Mr. Vigil (State Auditor) for New Mexico's November 3, 2026 general election ballot as the nominees of the New Mexico Forward Party, pending disposition of Applicants' interlocutory appeal in the Tenth Circuit and any petition for a writ of certiorari that follows. Relief is warranted because the courts below measured the wrong burden: they weighed the 14,200 signatures New Mexico demands of one candidate, when the scheme Applicants challenge required a newly qualified party to file ten separate petitions carrying 131,361 signatures to run a full statewide slate—a requirement no other State approaches—and then treated the Legislature's own compressed petitioning window and statutory registration freeze as burdens Applicants "imposed" on themselves. Measured as this Court's cases require, the burden is severe, the State has identified no interest a second petition serves once a party has qualified, and Mr. Perls and Mr. Vigil each demonstrated more voter support than New Mexico asks of major party candidates. Because the Secretary must transmit ballots to military and overseas voters by September 19, 2026, Applicants ask that relief be granted by September 18, 2026, and that an administrative injunction issue in the interim if the Circuit Justice or the Court requires additional time.

In the alternative, Applicants ask the Court to treat this Application as a petition for a writ of certiorari before judgment under Rule 11 and 28 U.S.C. § 2101(e),

grant the petition, and enjoin enforcement of § 1-8-2(B) as applied to Applicants pending the Court's decision.

JURISDICTION

The district court had jurisdiction under 28 U.S.C. §§ 1331 and 1343(a)(3) over Applicants' claims under 42 U.S.C. § 1983. The Tenth Circuit has jurisdiction over Applicants' interlocutory appeal from the denial of a preliminary injunction under 28 U.S.C. § 1292(a)(1). This Court will have jurisdiction to review the Tenth Circuit's judgment under 28 U.S.C. § 1254(1), and it has authority to issue an injunction in aid of that jurisdiction under the All Writs Act, 28 U.S.C. § 1651(a).

Applicants have satisfied Rule 23.3. They first sought a stay and injunction pending appeal from the district court on September 4, 2026 (ECF No. 27), which denied the motion on September 9, 2026 (ECF No. 28) (App. 3–4). They then moved in the Tenth Circuit under Fed. R. App. P. 8(a)(2) on September 8, 2026 (Doc. 2-1); after full briefing, a panel of that court denied the motion on September 15, 2026, in a two-page per curiam order stating only that "Appellants have not met their burden." App. 2. No further relief is available from any other court or judge.

INTRODUCTION

This Court has said for more than half a century that the right "to create and develop new political parties" is a First Amendment right, *Norman v. Reed*, 502 U.S. 279, 288 (1992), that it "means little if a party can be kept off the election ballot," *Williams v. Rhodes*, 393 U.S. 23, 31 (1968), and that a court reviewing a ballot access rule must "consider the character and magnitude of the asserted injury" before deciding how much deference the State is owed, *Anderson v. Celebrezze*, 460 U.S. 780, 789 (1983). New Mexico's scheme is designed in a way no other State's is. A new party must first gather signatures equal to one-half percent of the last vote for governor to qualify—3,561 signatures in 2026. N.M. Stat. Ann. § 1-7-2(A). Then, unlike every

other petition-qualification State in the Nation, New Mexico requires each of the party's nominees for to file a second, separate petition, and it sets that petition at two percent of the last vote for governor—14,200 signatures for candidates for statewide office—whenever the party has fewer than 7,100 registered members, which a newly formed party inevitably will. § 1-8-2(B); § 1-8-51(C). The party petition and every candidate petition are due the same day. §§ 1-7-2(A), 1-8-2(B).

Applicants met the first tier. NMFP filed its qualifying petition on May 8, 2026, 48 days before the statutory deadline, and the Secretary certified it as a qualified party on May 14. App. 14. Its two statewide nominees then had 41 days to gather 14,200 signatures each—and for most of that window a statutory freeze on voter-registration processing, §§ 1-4-8(A), (B), (D), locked them out of the State's online petitioning platform because they could not update their own registrations to NMFP until June 8. App. 14. Applicants spent roughly \$63,000, sent 1.66 million text messages to more than 500,000 registered voters, and drew more than 56,000 voters to the online petition, which yielded fewer than 2,700 signatures because the platform was closed to them. App. 15. Mr. Vigil submitted 4,400 signatures; Mr. Perls submitted 2,700. *Id.* Each exceeded the 2,505 and 2,351 signatures, respectively, New Mexico required of Democratic and Republican statewide candidates to reach their primary ballots this year. Mot. for Prelim. Inj. at 6, ECF No. 8 (App. 141) (citing Compl. ¶ 44 (App. 120)).

The district court nevertheless held that the burden on Applicants was "reasonable, not severe." It reached that conclusion by declining to measure the burden the scheme actually imposed. It reasoned that "the onus is not on the party to gather signatures for their candidates," so "it is inaccurate to portray the signature requirement as one imposed on the party to field a full statewide slate." App. 23. It held the 41-day window "self-imposed" because NMFP could have formed the year before, App. 21, and attributed the online lockout to "NMFP's timing" rather than to

the statute that created the freeze, App. 14. It declined to consider Applicants' uncontested evidence that minor-party and independent candidates almost never qualify for statewide office in New Mexico, calling that argument "not coherent" in an as-applied challenge. App. 30. And it accepted the State's interest in a "modicum of support" without asking why a party that has already shown that support must show it again, nine more times, at four times the size. The Tenth Circuit added nothing: it declined to consider the amicus brief in which the Attorney General of New Mexico told the court that the State's own scheme is "plainly unconstitutional," and denied relief without stating a reason. App. 1–2 & n.1.

Every one of those steps departs from this Court's precedent. The equities are not close. The State has no cognizable interest in enforcing a law that violates the Constitution, and the harm to Applicants—exclusion from the only general election in which they can run this cycle—cannot be undone after November 3. Ballot deadlines are imminent, but they are imminent because the district court did not rule on a motion filed July 27 until September 2, two days before county clerks certified their ballots, and because the Tenth Circuit took a week to say that Applicants had not met their burden. Applicants moved at every stage with dispatch. They ask this Court to do the same.

STATEMENT OF THE CASE

A. New Mexico's two-tier scheme for minor parties.

New Mexico recognizes two classes of political parties. A "major political party" is one whose candidate received at least five percent of the vote for governor or President at the last general election and whose membership is at least one-third of one percent of the statewide voter file. N.M. Stat. Ann. § 1-7-7(A). Major party nominees reach the general election ballot by winning a primary. § 1-8-1(A). To reach

the primary ballot, a major party candidate for statewide office must either win 20 percent of the delegate vote at the party's pre-primary convention or file a petition signed by party members equal to 2 percent of the party's gubernatorial vote in the previous primary election—2,505 signatures for a Democrat and 2,351 for a Republican in 2026. §§ 1-8-21.1(C), 1-8-33(B); Mot. for Prelim. Inj. at 6, ECF No. 8 (App. 141).

Every other party is a "minor political party." To qualify, it must file rules and a petition signed by voters equal to one half percent of the last vote for governor. § 1-7-2(A). In 2026 that figure was 3,561. App. 6. Qualification, however, does not place the party's nominees on the ballot. Each nominee of a qualified minor party must separately file a nominating petition. § 1-8-2(B). For statewide office, the nominee of a minor party whose registered membership exceeds one percent of the last gubernatorial vote in the *general election* (7,100 members in 2026) needs signatures equal to one percent of that vote—7,100 signatures. The nominee of a smaller minor party needs two percent—14,200 signatures. *Id.*; § 1-8-51(C). NMFP had 227 registered members. App. 7. A full statewide slate—United States Senate plus the eight statewide state offices on the 2026 ballot—therefore required nine candidate petitions of 14,200 signatures each, 127,800 signatures, on top of the party's own 3,561: ten petitions, 131,361 signatures. App. 22; 2026 Nominating Petition Calculations, App. 58.

The petitioning window is fixed by statute. The Secretary may not make petition forms available before March of the election year, § 1-8-65(D); the party petition and every candidate petition are due on the twenty-third day after the June primary, §§ 1-7-2(A), 1-8-2(B)—June 25, 2026. A candidate may not declare candidacy until the petition is filed. § 1-8-65(B). And § 1-8-2(E) requires each nominee to be a registered member of the party no later than the day the party files its petition, while §§ 1-4-8(A), (B), and (D) suspend processing of registration changes from 28 days

before the primary until the Monday after it—May 5 through June 8, 2026. Because the State's online petitioning platform is available only to candidates whose registration reflects their party, the freeze made the platform unavailable to the nominees of any party that qualified during that period. App. 14. New Mexico imposes no petition requirement at all on the presidential nominees of qualified parties. § 1-15-3.

B. Applicants' efforts to qualify.

NMFP announced its effort in April 2026, filed its qualifying petition on May 8, and was certified on May 14—48 days ahead of the deadline. App. 14. Its nominees for local office qualified: Mr. Dingel for Public Education Commission (1,014 signatures required), Mr. Montoya for Santa Fe County Magistrate (928 signatures required), and Ms. Kava for Luna County Magistrate (59 signatures required). App. 15. Respondent DeLaney initially declined to certify Ms. Kava under § 1-8-2(E) but relented after this suit was filed. App. 8. Respondent DeLaney has conceded that § 1-8-2(E) is unconstitutional as applied to Ms. Kava. Reply, Doc. 7, at 2 n.1 (App. 100).

The statewide nominees faced a different task. On May 27 the Secretary's office told Mr. Perl the online system would not be available to him until June 8. App. 8. Applicants' declarations place actual availability at June 12. App. 14–15. In the interim Applicants ran the paid digital campaign described above and deployed paid circulators to gather wet signatures at public events. App. 14–15. When the June 25 deadline arrived, Mr. Vigil had 4,400 signatures and Mr. Perl had 2,700, and the Secretary refused to certify either. App. 15. The uncontested evidence is that § 1-8-2(B) also cost NMFP twelve credible candidates who declined to run due to the signature requirement it imposes and the requirement that they change their voter registration to a party that was not yet qualified. Perl Decl. ¶ 7, ECF No. 8-3 (App. 194).

C. Proceedings below.

Applicants sued under 42 U.S.C. § 1983 on July 14, 2026, and moved for a preliminary injunction on July 27. They asked the district court to enjoin enforcement of §§ 1-8-2(B) and 1-8-2(E) as applied to them in the 2026 cycle. App. 5–6. In support they submitted the declaration of Richard Winger, a nationally recognized authority on ballot access law, establishing that New Mexico's aggregate requirement is the highest in the Nation—the next closest, Texas, required 81,030 signatures in 2026 for a State fifteen times more populous—and that in every race for state or federal office other than President from 2002 through 2024, no more than three candidates have appeared on New Mexico's ballot, with fewer than two on average. Winger Decl. ¶¶ 15–25, ECF No. 8-1 (App. 166–168); Mot. for Prelim. Inj. at 10–12 (App. 145–147). The Secretary did not contest that evidence.

The district court heard the motion on August 28 and denied it on September 2. It treated the challenge as as-applied, App. 12, and held that Applicants were not substantially likely to succeed because the burden was "reasonable, not severe." App. 23. The court's stated reasons are set out in the Introduction and addressed below. Applicants noticed their appeal the same day and moved in the district court for a stay and injunction pending appeal on September 4. The Secretary's county clerks certified their ballots to the printer that day. App. 93 (Vigil Decl. ¶ 4(a)). The district court denied the stay motion on September 9. App. 3–4. Applicants had already moved in the Tenth Circuit on September 8. The Secretary responded on September 11 with a declaration describing the ballot-printing timeline; the Attorney General of New Mexico filed an amicus brief in support of Applicants on September 10; Applicants replied on September 13. On September 15 the panel denied the motion per curiam without considering the Attorney General's brief because Fed. R. App. P. 29 "does not contemplate amicus briefs during consideration of a motion for a

preliminary injunction pending appeal," and gave no reason for the denial beyond the conclusion that "Appellants have not met their burden." App. 2.

D. The ballot timeline.

According to the Secretary's Elections Director, county clerks must have ballots available for military and overseas voters by September 18, 2026, and must transmit them by September 19; clerks may begin sealing voting machines on September 22; and all pre-printed ballots must be in the clerks' possession by September 24. App. 93–95 (Vigil Decl. ¶ 4). Because the two offices at issue are statewide, every ballot style is affected. *Id.* ¶ 8 (App. 96). The Secretary added Ms. Kava to the ballot after this suit was filed. App. 8.

REASONS FOR GRANTING THE APPLICATION

The All Writs Act authorizes a Justice or the Court to issue an injunction when "the legal rights at issue are indisputably clear" and relief is "necessary or appropriate in aid of the Court's jurisdiction." *Ohio Citizens for Responsible Energy, Inc. v. Nuclear Regulatory Comm'n*, 479 U.S. 1312, 1313 (1986) (Scalia, J., in chambers). The Court may grant such relief "based on all the circumstances of the case" without "express[ing] . . . the Court's views on the merits." *Little Sisters of the Poor Home for the Aged v. Sebelius*, 134 S. Ct. 1022, 1022 (2014). An applicant must show a likelihood of success on the merits, irreparable injury absent relief, and that the balance of equities and the public interest favor an injunction. *Roman Catholic Diocese of Brooklyn v. Cuomo*, 592 U.S. 14, 16 (2020); *Nken v. Holder*, 556 U.S. 418, 434 (2009). When the government is the opposing party, the last two factors merge. *Nken*, 556 U.S. at 435. Each factor strongly favors Applicants.

I. The Legal Rights at Issue Are Indisputably Clear, and This Court Would Likely Grant Review and Reverse.

A. The court below improperly measured the burden on one candidate, not the burden on a new party and the voters who support it.

Under *Anderson* and *Burdick*, the court must identify "the character and magnitude of the asserted injury" before it can know whether the State's "important regulatory interests" suffice or whether the rule must be "narrowly drawn to advance a state interest of compelling importance." *Anderson*, 460 U.S. at 789; *Burdick*, 504 U.S. at 434. Misstate the burden and a flawed analysis follows the error. That is what happened here.

Applicants are a political party and the voters who formed it. The Complaint alleges, and the record establishes, that NMFP was organized to "qualify candidates for the ballot in local, state and federal elections," and that each individual Applicant seeks "to campaign for, speak and associate with and vote for NMFP's candidates." Compl. ¶¶ 6–11, ECF No. 1 (App. 110–111). Those are the rights this Court's cases protect. The Constitution secures the right "to create and develop new political parties," *Norman*, 502 U.S. at 288; "a basic function of a political party is to select the candidates for public office to be offered to the voters," *Kusper v. Pontikes*, 414 U.S. 51, 58 (1973); and "the right to vote is heavily burdened if that vote may be cast only for one of two parties at a time when other parties are clamoring for a place on the ballot," *Williams*, 393 U.S. at 31. Because "the rights of voters and the rights of candidates do not lend themselves to neat separation," *Bullock v. Carter*, 405 U.S. 134, 143 (1972), a court cannot measure the burden on a party by looking at one of its candidates in isolation.

The district court did exactly that. It held that because "[t]he requirement to obtain signatures falls on the candidate," and "no candidate may run for more than

one office," it was "inaccurate to portray the signature requirement as one imposed on the party to field a full statewide slate." App. 22–23. But the statute is what it is: to place its nine statewide nominees on the ballot, a party with fewer than 7,100 members must produce ten petitions bearing 131,361 signatures, all due the same day. That the statute assigns each petition to a different name does not shrink the burden on the party or its voters; it multiplies it. The court's observation that the same 14,200 voters could "conceivably" sign all ten petitions, App. 23, confirms the point rather than answering it—if 14,200 voters suffice to show a party's support, the State has no interest in making them sign nine more times.

The Tenth Circuit's own precedent required the cumulative inquiry. "[W]hen a plaintiff challenges ballot access provisions in combination," the court must weigh their "practical effect . . . viewed in their totality," "in sum rather than in isolation." *Utah Republican Party v. Cox*, 892 F.3d 1066, 1088 (10th Cir. 2018) (citations omitted); accord *Libertarian Party of Ohio v. Blackwell*, 462 F.3d 579, 586 (6th Cir. 2006) (the question is "whether the combined effect of the applicable election regulations creates an unconstitutional burden"). The district court instead evaluated the 14,200-signature requirement alone and treated the party petition, the doubled two-percent tier, the compressed window, and the registration freeze as though they did not bear on the burden at all. App. 16–31. The Tenth Circuit did not explain why that approach can be reconciled with *Cox*.

B. The uncontested record shows a frozen political status quo, which the district court refused to consider.

This Court has recognized that an election law imposes a "severe" burden when it "operate[s] to freeze the political status quo." *Jenness v. Fortson*, 403 U.S. 431, 438 (1971). The Court has also recognized that "past experience" informs the inquiry: "it will be one thing if independent candidates have qualified with some regularity and quite a different matter if they have not." *Storer v. Brown*, 415 U.S. 724, 742 (1974).

Applicants established a severe burden under both tests. From 2002 through 2024, no race for state or federal office in New Mexico other than President has had more than three candidates on the ballot; in almost every race just two, or one, qualified; and the average number of candidates per race was fewer than two. Winger Decl. ¶¶ 22–25 (App. 167–168). The Secretary offered no contrary evidence. Her only answer—that fourteen minor-party candidates have qualified for "statewide" office in the last decade—refers to presidential candidates, on whom New Mexico imposes no petition requirement whatsoever. Reply, Doc. 7, at 6 (App. 104); § 1-15-3.

The district court did not weigh this evidence. It held the argument "not coherent" in an as-applied challenge because NMFP's candidates had never run before, so "[w]hether NMFP candidates appear frequently or infrequently is not ascertainable." App. 30. That misreads *Jenness* and *Storer*, which ask whether *any* independent or minor-party candidate can reach the ballot under the scheme, not whether the particular plaintiff has done so before. A newly formed party could never satisfy the test the district court applied. In the alternative the court held that because NMFP's three *local* nominees qualified, "reasonably diligent candidates can access the ballot." App. 31. But those nominees needed 59, 928, and 1,014 signatures, respectively; the statewide nominees needed 14,200 apiece, in the same 41 days, without the online platform. That local candidates cleared a bar 14 to 240 times lower says nothing about whether the statewide bar freezes the status quo—and the Attorney General of New Mexico, whose office administers the State's litigation, told the Tenth Circuit that it does.

C. The State has identified no interest the second petition serves, and its own concession shows the candidate petitions add nothing.

Once the burden is correctly measured, the State must justify it with "precise interests," and the court must "determine the legitimacy and strength of each of those

interests" and "the extent to which those interests make it necessary to burden the plaintiff's rights." *Anderson*, 460 U.S. at 789. The Secretary never attempted that showing. She invoked the general interest in requiring "a modicum of support" and in preventing "overcrowding, voter confusion, and frivolous candidacies." Opp., Doc. 5-1, at 12 (App. 79). Applicants do not dispute that a State may require a modicum of support. The question is why a party that has demonstrated that support by qualifying under § 1-7-2(A) must demonstrate it again, separately, for each nominee, at four times the size of the party petition.

The record supplies three answers, all of them adverse to the State. First, New Mexico itself has concluded that party nomination alone is enough to protect its interests in the one statewide contest that attracts the most candidates: the presidential nominee of a qualified party goes on the ballot with no petition at all. § 1-15-3. "[T]he quantum of support necessary to ensure an orderly ballot for one office ought to be sufficient for the other," and a State that has "determined that its interest in avoiding overloaded ballots in statewide elections is served" by one requirement may not impose a heavier one on other statewide races without a compelling reason. *Illinois State Bd. of Elections v. Socialist Workers Party*, 440 U.S. 173, 186 (1979). New Mexico has never had an overcrowded presidential ballot. Compl. ¶¶ 56–57 (App. 126).

Second, the Secretary's own argument that the same 14,200 voters may sign every candidate petition, Opp., Doc. 5-1, at 7–8 (App. 74–75), concedes that the candidate petitions measure nothing the party petition does not. A requirement that demonstrates no additional support serves no additional interest; it is simply an obstacle. The only other State ever to require nominees of a qualified minor party to petition separately for the general election ballot was Maryland, and its highest court struck the requirement down for precisely that reason. *Maryland Green Party v. Maryland Bd. of Elections*, 832 A.2d 214, 236 (Md. 2003). The district court

distinguished *Maryland Green Party* on the ground that Maryland's candidate petition was smaller than its party petition, App. 27, but that is mistaken: Maryland's one-percent requirement for candidates for statewide office (roughly 27,000 signatures) dwarfed its 10,000-signature party petition. Reply, Doc. 7, at 7 n.3 (App. 105).

Third, the Secretary offered no justification at all for requiring a party with fewer than 7,100 members to gather twice the signatures required of a larger minor party. The district court acknowledged as much and supplied its own rationale—that a larger party "has more demonstrated support." App. 28. *Anderson* does not permit a court to sustain a burden on "generalized and hypothetical interests" it constructs for the State. *Blackwell*, 462 F.3d at 593; *Anderson*, 460 U.S. at 793. And where the State can serve its interest through the one-percent requirement it applies to other minor parties, the two-percent tier is not narrowly drawn as applied to a party that, by definition, cannot have grown its membership before its first petition is due. *See Norman*, 502 U.S. at 289.

The Secretary's comparison to major party candidates fares no better. Major party statewide candidates reach the primary ballot with 2,505 or 2,351 party-member signatures—or none, if they win 20 percent at convention and qualify for the primary ballot by designation—and reach the general election ballot by winning a primary that is often uncontested. §§ 1-8-21.1(C), 1-8-33(B). Minor party nominees need 14,200 signatures from the public at large, in a window the statute cuts to weeks. Mr. Perls and Mr. Vigil each gathered more signatures than the major parties' statewide candidates were required to gather. The district court did not find that they had failed to show a modicum of support; it found that the number the Legislature chose was entitled to deference. App. 28. That inverts the *Anderson* inquiry.

D. The "self-imposed" rationale converts the Legislature's own deadline into a trap.

The district court excused the compressed petitioning window and the registration freeze on the ground that "[n]othing prevented NMFP from forming prior to the availability of the petition forms." App. 21. That reasoning cannot be squared with *Anderson*, which invalidated Ohio's early filing deadline precisely because a State may not force new parties and their candidates to organize on the State's preferred calendar rather than the political one. 460 U.S. at 790–95. The same district court has rejected the same argument before, holding in *Constitution Party of New Mexico v. Duran*, No. 1:12-cv-325 (D.N.M. Dec. 9, 2013), that a State cannot defend an April minor party deadline by saying the party should have formed earlier.

NMFP did not miss a deadline; it beat one by seven weeks. The Legislature set the party-petition deadline on the same day as the candidate-petition deadline. §§ 1-7-2(A), 1-8-2(B). The Legislature suspended registration processing from May 5 to June 8. § 1-4-8. And the Legislature conditioned candidacy on party membership as of the date of the party petition. § 1-8-2(E). A party that qualifies within the window the Legislature itself allows has "imposed" nothing on itself; it has used the time the State gave it. Where the State's own measures impede signature gathering during the petitioning period, the resulting shortfall is the State's to justify, not the plaintiff's to absorb. *See Garbett v. Herbert*, 458 F. Supp. 3d 1328, 1352 (D. Utah 2020). The district court's contrary rule means that in an as-applied challenge no plaintiff could ever prevail, because every burden can be recharacterized as a consequence of the plaintiff's timing.

Nor does *Libertarian Party of New Mexico v. Herrera*, 506 F.3d 1303 (10th Cir. 2007), on which the district court repeatedly relied, support the result below. *Herrera* rejected a challenge to New Mexico's candidate-petition requirement because the plaintiffs "did not attempt to obtain the signatures and therefore proffered no

testimony as to the burdens." *Id.* at 1310. Applicants supplied everything *Herrera* found missing: candidates who tried, spent \$63,000, reached half a million voters, and fell short; comparative data from other States; the historical qualification record; and the testimony of a recognized expert. That the district court characterized this as "not the type of evidence listed in *Herrera*," App. 22, cannot be reconciled with *Herrera*'s own description of what was lacking there.

E. The question is important, the vehicle is clean, and the Tenth Circuit's unexplained denial leaves this Court's precedents unenforced.

Whether the *Anderson* burden is measured on a party or on a single candidate is a recurring question of federal law with consequences in every State that qualifies parties by petition. Maryland's highest court struck down the only comparable candidate-petition requirement. *Maryland Green Party*, 832 A.2d 214. The courts below reached the opposite result on a stronger record, and the Tenth Circuit did so without a word of analysis. The Secretary's principal authority for the proposition that New Mexico's scheme is not unique, *Rogers v. Corbett*, 468 F.3d 188 (3d Cir. 2006), concerned a Pennsylvania scheme that has since been held unconstitutional, *Constitution Party of Pennsylvania v. Cortes*, 116 F. Supp. 3d 486 (E.D. Pa. 2015), *aff'd*, 824 F.3d 386 (3d Cir. 2016), and that did not require a separate party petition nor separate petitions for a qualified party's nominees, but rather allowed a party's entire slate of candidates to qualify by means of a single petition. That statutory scheme is not "similar" to New Mexico's in any constitutionally relevant sense.

The record is fully developed, the challenge is as-applied, the facts are undisputed, and the State's own chief legal officer agrees that the statutory scheme is unconstitutional. Whether the Court acts on the Application, or treats it as a petition for certiorari before judgment, the case presents the question cleanly and the answer under this Court's precedents is not in doubt.

II. Applicants Will Suffer Irreparable Injury Absent Relief.

"The loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury." *Elrod v. Burns*, 427 U.S. 347, 373 (1976) (plurality opinion); *Fish v. Kobach*, 840 F.3d 710, 752 (10th Cir. 2016); *Planned Parenthood Ass'n of Utah v. Herbert*, 828 F.3d 1245, 1263–64 (10th Cir. 2016). The injury here is not merely minimal in duration; it is permanent. The 2026 general election will be held once. If Mr. Perls and Mr. Vigil are excluded from the ballot, no later judgment can restore to them, to NMFP, or to the voters who signed their petitions the opportunity to compete in it. The district court's only response was that Applicants had not shown a likelihood of success. App. 32. For the reasons above, they have.

III. The Balance of Equities and the Public Interest Favor Placing Two Nominees of a Qualified Party on the Ballot.

The State "does not have an interest in enforcing a law that is likely constitutionally infirm," and "the public interest will perforce be served by enjoining the enforcement of the invalid provisions of state law." *Chamber of Commerce of U.S. v. Edmondson*, 594 F.3d 742, 771 (10th Cir. 2010); *Awad v. Ziriax*, 670 F.3d 1111, 1131–32 (10th Cir. 2012). The Secretary's reliance on *Abbott v. Perez*, 585 U.S. 579, 602 (2018), assumes the statute is valid; it is not.

The Secretary's remaining objection is administrative. Her Elections Director attests that county clerks certified their ballots on September 4, that military and overseas ballots must be transmitted by September 19, and that adding two names would require re-proofing, re-coding, and re-testing ballot styles statewide. App. 93–96 (Vigil Decl. ¶¶ 4–10). Applicants do not minimize that work. But three points bear on how the Court should weigh it.

First, the relief requested is the narrowest possible: two names added to two contests that already appear on every ballot. The State has already shown it can do this—it added Ms. Kava to the Luna County ballot after this suit was filed. App. 8. This Court has ordered exactly this relief on the eve of an election where a State's ballot access law was invalid. *Williams v. Rhodes*, 89 S. Ct. 1, 2 (1968) (Stewart, J., in chambers) (ordering candidate placed on Ohio ballot pending decision).

Second, the timing is not of Applicants' making. They sued on July 14, moved for a preliminary injunction on July 27, and asked for expedited consideration. The district court set its hearing for August 28 and ruled on September 2—two days before ballot certification. Applicants appealed the same day, moved for a stay in the district court within two days, and moved in the Tenth Circuit four days later. The Tenth Circuit took a week to deny relief without explanation. Applicants, however, have pursued their claims diligently and expeditiously.

Third, the public interest in a ballot that presents voters with a genuine choice is not abstract here. The record reflects that the Republican Party candidates for United States Senate and for State Auditor initially qualified as write-ins. App. 33. Having avoided a primary, both write-in candidates will appear on the general election ballot alongside the incumbent Democratic candidates for United States Senate and State Auditor. New Mexico's asserted interest in preventing "overcrowding" is not implicated by adding a single name to a one- or two-candidate race. *Cf. Lubin v. Panish*, 415 U.S. 709, 715 (1974) (State's interest is in ballots of "reasonable size" listing "serious candidates with some prospects of public support"). Mr. Perls and Mr. Vigil are such candidates: each has demonstrated more support than New Mexico demands of the major parties' nominees.

IV. In the Alternative, the Court Should Grant Certiorari Before Judgment.

If the Court concludes that the question warrants plenary consideration, it should treat this Application as a petition for a writ of certiorari before judgment under 28 U.S.C. § 2101(e) and Rule 11, grant the petition, and enjoin enforcement of § 1-8-2(B) as applied to Applicants pending its decision. The case is "of such imperative public importance as to justify deviation from normal appellate practice." Sup. Ct. R. 11. The question whether a State may require a qualified party's nominees to petition twice arises in every election cycle, the Tenth Circuit has declined to say why the district court's approach is correct, and the courts below have reached a result in conflict with Maryland's highest court in *Maryland Green Party*. Without prompt action, the Court will be unable to address the question until after the election that gives it urgency has passed.

SPECIFICS OF RELIEF REQUESTED

Applicants respectfully request that Justice Gorsuch, or the Court, enter an order:

1. Enjoining Respondent Toulouse Oliver, and those acting in concert with her, from enforcing N.M. Stat. Ann. § 1-8-2(B) against Applicants Perls and Vigil in the 2026 general election;

2. Directing Respondent Toulouse Oliver to certify Applicant Perls as the New Mexico Forward Party's nominee for United States Senate and Applicant Vigil as its nominee for State Auditor for placement on New Mexico's November 3, 2026 general election ballot, and to take all steps necessary to effectuate that placement;

3. Granting such relief by September 18, 2026, and, if additional time is required to consider the Application, entering an administrative injunction directing

the Secretary to include Applicants Perls and Vigil on any ballot transmitted or printed before the Court rules; and

4. In the alternative, treating this Application as a petition for a writ of certiorari before judgment, granting the petition, and enjoining enforcement of § 1-8-2(B) as applied to Applicants pending the Court's decision.

CONCLUSION

The Application for a writ of injunction pending appeal should be granted.

Respectfully submitted,

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September 15, 2026

CERTIFICATE OF SERVICE

A copy of this application was served by email and U.S. mail to the counsel listed below in accordance with Supreme Court Rule 22.2 and 29.3:

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