No. _____, Original

In the
Supreme Court of the United States

STATE OF MISSOURI,

Plaintiff,

v.

STATE OF NEW YORK,

Defendant.

MOTION FOR LEAVE TO FILE BILL OF COMPLAINT

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July 3, 2024

MOTION

Pursuant to 28 U.S.C. § 1251(a) and this Court's Rule 17, the State of Missouri respectfully seeks leave to file the accompanying Bill of Complaint against the State of New York. Missouri seeks modest relief: a stay of New York's gag order and impending sentence against Donald J. Trump during the 2024 Presidential election season so Missourians can participate in the election free from New York's exercise of coercive power limiting the ability of Trump to campaign.

As set forth in the accompanying brief and complaint, the actions by New York have created constitutional harms that threaten to infringe the rights of Missouri's voters and electors, namely:

- New York's gag order and impending sentence unlawfully impede the ability of electors to fulfill their federal functions.
- New York's gag order and impending sentence violate the *Purcell* principle.
- New York's gag order and impending sentence violate the First Amendment rights of Missouri citizens to listen to the campaign speech of a specific individual on specific topics.

Missouri respectfully submits that the forgoing violations establish considerable harms to voters and electors in Missouri, who will be precluded from fully engaging with and hearing from a major-party Presidential candidate in the run up to the November election. These harms are a direct consequence of New York's calculated, unprecedented decision to

prosecute Trump for alleged bookkeeping offenses just months before the Presidential election.

This Court should grant leave to file the complaint and stay any gag order or sentence against Trump until after the November Presidential election.

July 3, 2024

Respectfully submitted,

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Missouri brings this action against the State of New York, and for the cause of action says the following:

NATURE OF THE ACTION

1. Missouri seeks to invoke this Court's original jurisdiction to make just one modest request: temporarily stay any gag order and sentence imposed by the State of New York against Donald Trump. Missouri requests that the stay last until after the 2024 election.

2. This modest request imposes no harm on the State of New York, but it ensures that voters in Missouri and across America are able to make their voices heard this November without one State interfering with the ability of everybody else to hear a major-party candidate campaign.

3. New York's gag order and impending sentence against Trump interfere with his ability to freely travel and campaign and interfere with the right of Americans everywhere—and members of the Electoral College in particular—to hear Trump's political speech.

4. Nothing is more destructive to the health of a democracy than distrust in the outcome of an election. And yet New York has brought transparently weak charges for the transparent purpose of trying to impose political damage against Trump and trying to restrain his ability to campaign in advance of an election forecasted by the polls to be very close.

5. As the former Governor and former Attorney General of New York said two weeks ago, "[i]f his name was not Donald Trump and if he wasn't

running for president … I'm telling you that case would've never been brought."[1]

6. This lawfare is poisonous to American democracy. The American people ought to be able to participate in a Presidential election free from New York's interference. Any gag order and sentence should be stayed until after the election.

JURISDICTION AND VENUE

7. This Court has original and exclusive jurisdiction over this action under Article III, § 2, cl. 2 of the U.S. Constitution and 28 U.S.C. §1251(a), because the dispute is both a "Case[ ] … in which a State shall be Party" and a "controvers[y] between two or more States."

PARTIES

8. Plaintiff State of Missouri is a sovereign State and sues by and through its Attorney General. *See* Mo. Rev. Stat. § 27.060.

9. Missouri has standing to sue in its sovereign and quasi-sovereign capacities.

10. Missouri is injured by New York's attempt to use its coercive state power to interfere with the ability of Missouri electors to fulfill their

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[1] Miranda Nazzaro, *Cuomo: Trump NY Hush Money Case 'Should Have Never Been Brought'*, The Hill (June 22, 2024), https://thehill.com/regulation/court-battles/4734858-andrew-cuomo-donald-trump-alvin-bragg-hush-money-case-new-york

federal function and of Missourians to receive relevant election-related information.

11. Missouri has an "interest in securing observance of the terms under which it participates in the federal system" and in not being "denied its rightful status within the federal system." *Alfred L. Snapp & Son, Inc.* v. *Puerto Rico*, 458 U.S. 592, 607–08 (1982).

12. Missouri brings this suit to assert that interest.

13. Defendant is the State of New York.

FACTS

I. Summary of Defendant's criminal charges, the gag order, and the upcoming sentencing

14. New York, through New York County District Attorney Alvin Bragg, has brought criminal charges against Donald Trump that appear to have been brought principally for the purpose of assisting Joseph Biden's campaign by trying to inflict political damage against Trump and trying to restrain Trump's ability to campaign.

15. As the former Governor and former Attorney General of New York, Andrew Cuomo, said just two weeks ago, "[i]f his name was not Donald Trump and if he wasn't running for president … I'm the former AG of in New York, [and] I'm telling you that case would've never been brought."[2]

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[2] Nazzaro, *supra*

16. Bragg's charges are so weak that experts and commentators across the political spectrum—in both left-of-center and right-of-center publications—have decried the charges as a threat to the rule of law.[3]

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[3] For a small but representative sample, see,

- "[T]he charges in the current trial have a disturbing feel of prosecutorial overreach …."
  - Editorial Board, St. Louis Post-Dispatch (Apr. 16, 2024), https://www.stltoday.com/opinion/editorial/editorial-the-first-trump-case-may-be-the-weakest-but-it-is-nonetheless-justice-in/article_4b4e8bd4-fb51-11ee-88ee-371551e3cd9d.html
- "New York's trial of Mr. Trump violated basic due-process principles."
  - David Rivkin Jr., *Trump's Trial Violated Due Process*, Wall St. J. (June 4, 2024), https://www.wsj.com/articles/trumps-trial-violated-due-process-76fae047
- "All Americans, regardless of political affiliation, should be appalled at this selective prosecution. Today the target is Trump. Tomorrow it may be a Democrat. After that, you and me."
  - Alan Dershowitz, *Trump's Trial Will Go Down in the History Books as a Stupendous Legal Catastrophe*, Daily Caller (May 8, 2024), https://dailycaller.com/2024/05/08/opinion-trumps-trial-is-a-stupendous-legal-catastrophe-for-the-history-books-alan-dershowitz/
- "When a district attorney, who is a powerful force in government, abuses his position of trust to subvert the legal process, and when a judge acts in concert to dismantle the due process rights of the accused, our system of justice is threatened. Reverence to the rule of law is lost."
  - Gregg Jarrett, *In Trump trial there was no real crime but America just lost something it can never get back*,

17. For example, Boston University law professor Jed Handelsman Shugerman, a vehement critic of Trump, wrote an article in *The New York Times* castigating the charges as "a disaster," "a setback for the rule of law," and "a dangerous precedent."[4]

Fox News (May 30, 2024), https://www.foxnews.com/opinion/trump-trial-real-crime-america-just-lost-something-can-never-get-back

- "President Trump's … crime was winning a presidential election and threatening to win another. New York Democrats prosecuted Trump solely to create a political advantage for their unpopular candidate by convicting and threatening to imprison his Republican opponent."
  - Andy Puzder, *Trump's true crime and other lessons from his New York Trial*, Fox News (June 8, 2024), https://www.foxnews.com/opinion/trumps-true-crime-other-lessons-from-his-new-york-trial
- "New York Supreme Court Justice Juan Merchan … ought never to have accepted the case. And Merchan surely should have stepped away once Trump's lawyers moved that he disqualify himself."
  - Hugh Hewitt, *Here's the No. 1 Reason Why Trump Should Win on Appeal*, Wash. Post (June 10, 2024), https://www.washingtonpost.com/opinions/2024/06/10/trump-win-appeal-merchan/
- "So even in the end, the defense doesn't know what the jury found—which is nice symmetry since from the beginning the defense wasn't told what Bragg was alleging."
  - Andrew McCarthy, *In Memory of Justice*, National Review (June 1, 2024), https://www.nationalreview.com/2024/06/in-memory-of-justice/

[4] Jed Handelsman Shugerman, *The Trump Indictment Is a Legal Embarrassment*, N.Y. Times (Apr. 5, 2023), https://www.nytimes.com/2023/04/05/opinion/trump-bragg-indictment.html

18. Bragg nonetheless brought a criminal trial before Judge Merchan, who violated state judicial ethics rules by donating to the Biden campaign and to a group called "Stop Republicans."[5]

19. Judge Merchan's daughter also has a political consulting company that attacks Trump and stands to gain financially from a conviction.[6]

20. Judge Merchan refused to recuse despite having donated to Trump's general-election opponent and despite having a direct family member who stood to gain financially from a conviction.

21. Instead, Judge Merchan imposed a gag order prohibiting Trump from criticizing Merchan's daughter.

22. Bragg charged Trump with bookkeeping offenses. To get around the statute of limitations and elevate those minor misdemeanor offenses to felonies, Bragg chose to charge Trump with bookkeeping offenses made "with intent to commit another crime."[7]

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[5] William K. Rashbaum, et al., *Ethics Panel Cautions Judge in Trump Trial Over Political Donations*, N.Y. Times (May 17, 2024), https://www.nytimes.com/2024/05/17/nyregion/trump-trial-judge-merchan-donations.html ("Political contributions of any kind are prohibited under state judicial ethics rules.")

[6] Ben Protess, *Trump Asks Trial Judge to Step Aside, Aiming Again at His Daughter*, N.Y. Times (Apr. 2, 2024), https://www.nytimes.com/2024/04/02/nyregion/trump-trial-judge-daughter.html

[7] Jury Instructions at 29, *New York* v. *Trump*, Ind. No. 71543-23, available at https://ww2.nycourts.gov/people-v-donald-j-

23. Bragg refused to specifically identify what conduct other than bookkeeping offenses Trump was accused of committing.

24. Judge Merchan instructed the jury that it need not unanimously agree about what other conduct Trump allegedly committed.[8]

25. The day before the jury was set to deliberate, the President of the United States sponsored a press conference in front of the courthouse where his campaigners demanded the jury convict Trump. Unlike the voters in November, the jurors had the power to "vot[e] him out once and for all."[9]

26. The jury issued guilty verdicts two days later.

27. Before trial, the judge issued a gag order.[10]

28. That order, as a prior restraint, was presumptively unconstitutional.

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trump-criminal-37026; https://www.nycourts.gov/LegacyPDFS/press/PDFs/People%20v.%20DJT%20Jury%20Instructions%20and%20Charges%20FINAL%205-23-24.pdf

[8] Jury Instructions at 31

[9] Elena Schneider, *Biden Camp Brings in De Niro to Go After Trump at the Site of His Trial*, Politico (May 28, 2024), https://www.politico.com/news/2024/05/28/biden-campaign-robert-de-niro-trump-trial-courthouse-00160139

[10] Gag Order, *New York* v. *Trump*, Ind. No. 71543-23 (April 1, 2024), https://s3.documentcloud.org/documents/24528568/2024-04-01-dec-and-order-re-clarification-of-order-restricting-extrajudicial-statements.pdf

29. Among other things, it prohibited Trump from publicly challenging the credibility and political motivations of the witnesses against him, and it prevented him from publicly drawing attention to the connections between the prosecution and Trump's election opponent. The order permitted Judge Merchan to send Trump to jail upon violation of the order.

30. Judge Merchan let the gag order stay in place for a month after trial. On June 25, he amended the gag order but refused to lift it. For example, the gag order still prohibits Trump from criticizing the prosecutors (other than Bragg). That includes prosecutor Matthew Colangelo, formerly the third-highest-ranking attorney in the U.S. Department of Justice, who resigned his federal post specifically so he could go prosecute Trump.

31. Sentencing originally was scheduled for July 11 but, as of July 2, has been rescheduled for September 18. Any sentence, even probation, is likely to interfere with Trump's ability to freely campaign across the country.

II. Pattern of "lawfare" against Trump

32. Bragg's criminal charges are only the latest example in an eight-year pattern of lawfare brought against Trump. A full account is far too lengthy to include here, so a brief snapshot is provided instead.

33. The lawfare began at least as early as 2016. The recently released Special Counsel report by John Durham confirms that in 2016 the FBI criminally fabricated evidence to obtain a warrant to spy on the Trump campaign.

34. The FBI never had any "actual evidence" justifying an investigation into the 2016 campaign; instead, "FBI attorney Kevin Clinesmith committed a criminal offense by fabricating language in an email that was material to the FBI obtaining a FISA surveillance order."[11]

35. The investigation was launched by people who had "a predisposition to investigate Trump." *Id.*, at 44. "For example, Peter Strzok and Lisa Page were directly involved in matters relating to the opening of Crossfire Hurricane." *Id.*, at 48 (footnotes omitted). When Page messaged Strzok, "[Trump's] not going to become president, right? Right?!," Strzok replied, "No. No, he's not. We'll stop it." *Id.*, at 50. As soon as he obtained the opportunity to launch an investigation aimed at "stopping" Trump, "Strzok opened Crossfire Hurricane immediately." *Id.*, at 9.

36. Following the FBI's criminal fabrication of evidence to spy on the Trump campaign, political opponents then harassed President Trump by pressing a baseless conspiracy theory that Trump was a "Russian asset." Special Counsel Robert Mueller concluded in March 2019 that there was no evidence of any conspiracy between Trump and Russia.[12] But the very existence of the special counsel investigation

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[11] John Durham, *Report on Matters Related to Intelligence Activities and Investigations Arising Out of the 2016 Presidential Campaigns* 8, 17 (May 12, 2023), https://www.justice.gov/storage/durhamreport.pdf

[12] Robert Mueller, III, *Report on the Investigation into Russian Interference in the 2016 Presidential Election*, at 1–2 (March 2019), https://www.justice.gov/archives/sco/file/1373816/dl

interfered with the ability to exercise unchilled executive authority in a way Justice Scalia famously warned about. *Morrison* v. *Olson*, 487 U.S. 654, 730 (1988) (Scalia, J., dissenting) ("Does this not invite what Justice Jackson described as 'picking the man and then searching the law books, or putting investigators to work, to pin some offense on him'?").

37. Then, in 2020, the FBI again intervened to try to damage the Trump campaign. For a year, the FBI had the Hunter Biden laptop in its possession, and it knew a story was about to be written about the contents of that laptop—a story that would be politically embarrassing to then-candidate Joseph Biden. So the FBI "badgered platforms … to adopt policies to censor supposed 'hacked materials'" in order to induce those platforms to censor the story. Br. Missouri at 15, *Murthy* v. *Missouri*, No. 23-411 (Feb. 2, 2024). It worked.

38. The lawfare continued this election cycle, with several States relying on an off-the-wall, novel theory to remove Trump from the ballot and deny the American people their ability to vote. This Court was forced to step in and—unanimously—put a stop to that attempt. *Trump* v. *Anderson*, 601 U.S. 100 (2024). Similarly, one prosecutor in Georgia has tried to use racketeering laws in an unprecedented way to go after Trump. The Georgia Court of Appeals had to put that case on pause.

39. New York's actions continue this pattern of lawfare. Indeed, Bragg is not the only official in New York who has targeted Trump. The New York Attorney General brought a case against Trump's businesses to the tune of hundreds of millions of dollars and received a judgment susceptible to being

overturned as a punitive, excessive fine in violation of the Eighth Amendment.

III. Further background of investigation and criminal charges

40. New York County District Attorney Alvin Bragg was previously involved in more than 100 cases against President Trump while working at the New York Attorney General's Office. He campaigned on a promise to prosecute President Trump. Then he recruited the former third-highest ranking official in the Department of Justice from the Biden administration to lead his trial court efforts against President Biden's political opponent.

41. Bragg resurrected the "hush money" investigation against President Trump under a legal theory that his predecessor had previously sent "back into the grave," out of concerns that the felony charges would not hold up in court.[13]

42. The facts surrounding Bragg's indictment have "been known for years."[14] Michael Cohen, President Trump's disgraced former lawyer, pleaded guilty over five years ago to charges based on

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[13] *See* Erica Orden, *How a Hush Money Scandal Turned into a Criminal Case: The Whirlwind History of People v. Trump*, Politico (Apr. 15, 2024), https://www.politico.com/news/2024/04/15/trump-hush-money-case-history-00152172

[14] Mark Berman, et al., *The Prosecutor, the Ex-President and the 'Zombie' Case That Came Back to Life*, Wash. Post (Mar. 17, 2023), https://www.washingtonpost.com/national-security/2023/03/17/alvin-bragg-stormy-daniels-trump

the same alleged facts at issue in the indictment.[15] By July 2019, federal prosecutors determined that no additional people would be charged alongside Cohen. *Ibid*. Both the U.S. Attorney's Office for the Southern District of New York and the New York County District Attorney's Office declined to investigate further.

43. It was not until *after* President Trump announced his White House run that New York, led by Bragg, revived the investigation.[16]

44. The timing and basis for Bragg's prosecution of President Trump indicate political motivation. The facts at the center of the case have not changed since 2018, and no new witnesses have emerged between then and the filing of the indictment.

45. The timing is especially suspicious in light of evidence that Trump's opponent, President Joe Biden, has encouraged prosecution of Trump.

46. For example, after the FBI and DOJ declined to prosecute Trump for more than a year,[17]

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[15] Shawna Chen, *Timeline: The Probe into Trump's Alleged Hush-Money Payments to Stormy Daniels*, Axios (Apr. 12, 2023), https://www.axios.com/2023/03/18/trump-stormy-daniels-hush-money-trial-timeline

[16] *See, e.g.*, William K. Rashbaum et al., *Manhattan Prosecutors Begin Presenting Trump Case to Grand Jury*, N.Y. Times (Jan. 30, 2023), https://www.nytimes.com/2023/01/30/nyregion/trump-stormy-daniels-grand-jury.html

[17] Carol D. Leonnig & Aaron C. Davis, *FBI Resisted Opening Probe into Trump's Role in Jan. 6 for More than a Year*, Wash.

word "leaked" to *The New York Times* that President Biden thought President Trump "should be prosecuted."[18] Around the same time "the Justice Department [became] suddenly interested in the fake electors evidence it had declined to pursue a year earlier."[19]

47. After this new directive "leaked" from the White House, and one month after Trump announced he was running for President in 2024, Bragg hired Colangelo, the former number-three at the DOJ, to "jump-start" his office's investigation of President Trump. Colangelo had a "history of taking on Donald J. Trump and his family business"[20] and was purportedly hired for this reason.

48. To elevate a misdemeanor, time-barred bookkeeping offense into a felony, Bragg had to charge Trump with falsifying business records to commit another crime.

49. The prosecution advanced a theory that Trump had violated the Federal Election Campaign

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Post (June 20, 2023), www.washingtonpost.com/investigations/2023/06/19/fbi-resisted-opening-probe-into-trumps-role-jan-6-more-than-year

[18] Katie Benner, et al., *Garland Faces Growing Pressure as Jan. 6 Investigation Widens*, N.Y. Times (Apr. 2, 2022), https://www.nytimes.com/2022/04/02/us/politics/merrick-garland-biden-trump.html

[19] *Leonnig*

[20] Jonah E. Bromwich, *Manhattan D.A. Hires Ex-Justice Official to Help Lead Trump Inquiry*, N.Y. Times (Dec. 5, 2022), https://www.nytimes.com/2022/12/05/nyregion/alvin-bragg-trump-investigation.html.

Act. But federal prosecutors declined to charge Trump with a violation of that Act, and that Act includes an express, strong preemption clause: "the provisions of this Act … supersede and preempt any provision of State law with respect to election to Federal office." 52 U.S.C. § 30143(a).

50. Despite New York's attempt to enforce a federal statute that expressly preempts efforts by States to enforce federal law, Attorney General Garland evidently took no action to intervene, even though "Bragg has effectively usurped the jurisdiction that Congress has explicitly reserved for federal authorities."[21]

51. "[U]nredacted FEC documents show that the DOJ had no issues with intervening in eight pending investigations being conducted by the FEC into the supposed $130,000 payment that was alleged to be misreported on a campaign finance report" involving Trump. *Id.*, at 2 (footnote omitted). So "DOJ counsel knew the extent to which they themselves had exercised federal jurisdiction, investigated, and found no illegal activity by anyone other than Michael Cohen." *Id.*, at 3.

52. But when Bragg tried to enforce federal law—federal law that the Department of Justice had evidently already determined Trump had *not*

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[21] *Hearing on the Manhattan District Attorney's Office Before the H. Comm. on the Judiciary*, 118th Cong. 1 (2024) (testimony of James Trainor, Comm'r, Fed. Election Comm'n), https://www.congress.gov/118/meeting/house/117426/witnesses/HHRG-118-JU00-Bio-TrainorIIIJ-20240613-U8.pdf

violated—the Department sat idly by and let Bragg bring charges. *Ibid.*

IV. Irreparable harm to Missouri and other States

53. Trump's conviction is very likely to be overturned on appeal. But by then, the constraints New York has sought to impose on Trump to limit his ability to campaign will already have had their full effect.

54. Missouri has a strong, judicially enforceable interest in its citizens and electors being able to hear Trump's campaigning free from any gag order or other interference imposed by the State of New York.

55. For example, unlike most States, Missouri does not have "pledge laws" requiring electors to pledge to vote for a certain candidate. Although Missouri electors typically cast their Electoral College votes for the Presidential candidate representing the same party that nominated the electors, the electors remain free under Missouri law to exercise their discretion.

56. New York has interfered with the ability of Missouri's electors to obtain relevant campaign information, which they will use to decide which candidate to support in the Electoral College. The Constitution "has its fullest and most urgent application precisely to the conduct of campaigns for political office." *Fed. Election Comm'n* v. *Cruz*, 596 U.S. 289, 302 (2022) (citation omitted).

57. Missouri electors have a protectable interest in receiving this information. "[T]he informational injury at issue here, directly related to

voting, the most basic of political rights, is sufficiently concrete and specific" because the "information would help them … to evaluate candidates for public office." *Fed. Election Comm'n.* v. *Akins*, 524 U.S. 11, 21, 24–25 (1998).

58. Because Missouri's electors are state officials, *Burroughs* v. *United States*, 290 U.S. 534, 545 (1934), Missouri has authority to sue on their behalf. That is especially true here because the identity of the electors will not be known until November. Nonetheless, *prospective* electors have been picked by the political parties in Missouri and are following the campaign, and 10 of those prospective electors will be selected in November. Several prospective electors selected by the Republican Party in Missouri have submitted affidavits detailing their interest—related to their expected official duties—in listening to Trump talk in Missouri about the trial. *See* Exhibits H–J.

59. There is currently a scheduled Trump campaign event in Missouri. But under the current gag order, Trump will be limited in what he can say. From conversations with officials, Missouri understands that scheduling more Trump events in Missouri has been difficult to do because of uncertainty surrounding the impending sentence. Even if the Trump campaign could not visit Missouri, voters regularly follow social media, television, and the news to learn about campaign speech conducted in other States. New York's orders similarly prevent Trump from freely campaigning in other States.

60. Missouri's electors will be chosen by the people of Missouri through a popular vote. These millions of citizens have the same interest in hearing campaign speech, and Missourians have submitted

affidavits in this case (attached to the motion to expedite) explaining their interest in listening to Trump's speech in Missouri. *See* Exhibits A–F, K. Their interests are harmed by New York's exercising its coercive authority to limit Trump's ability to speak and travel.

61. Missouri can sue on behalf of these individuals as *parens patriae*.

62. Finally, New York's actions interfere with the associational rights of both electors and individual citizens of Missouri. As this Court has recognized, "[r]epresentative democracy in any populous unit of governance is unimaginable without the ability of citizens to band together in promoting among the electorate candidates who espouse their political views." *California Democratic Party* v. *Jones*, 530 U.S. 567, 574 (2000). So when state action negatively affects "the party [a voter] works to support, then [the voter] indeed suffers harm," under the First Amendment, "as do all other involved members of that party." *Gill* v. *Whitford*, 585 U.S. 48, 80 (2018) (Kagan, J., concurring). When "the essence of the harm alleged" is an "associational injury flowing from" state action, the complaint is that state action "has burdened the ability of like-minded people across the State to affiliate in a political party and carry out that organization's activities and objects." *Id*., at 81–82.

63. Here the associational aim of millions of Missourians is to elect Trump to the Presidency. He is currently the leader of the Republican Party. New York's actions directly interfere with that associational aim.

COUNT I: Interference with the Presidential Election in Other States

64. For over 200 years, this Court has consistently held that States cannot interfere with "impede," or "burden" legitimate federal functions. *E.g.*, *M'Culloch* v. *Maryland*, 17 U.S. 316, 436 (1819).

65. Missouri's presidential electors are state officials, but "they exercise federal functions under, and discharge duties in virtue of authority conferred by, the Constitution of the United States." *Burroughs* v. *United States*, 290 U.S. 534, 545 (1934).

66. Unlike the "32 States" that have "pledge laws" requiring electors to pledge to vote for a certain candidate, *Chiafalo* v. *Washington*, 591 U.S. 578, 585 (2020), Missouri law permits electors to exercise their "discretion and discernment," *id.*, at 592 (citation omitted), and vote for whomever they please.

67. New York's gag order and impending sentence against Donald Trump impede the ability of Missouri's electors to become fully informed before casting their ballots.

68. This "informational injury" is "directly related to voting, the most basic of political rights." *Akins*, 524 U.S., at 24–25; *id.*, at 21 ("information would help them … to evaluate candidates for public office").

69. Missouri's electors will be chosen by election in November, but those individuals running for election have already been selected by their respective political parties in Missouri.

70. Several of these prospective electors have filed affidavits expressing their prospects of becoming an elector and their interest in being able to hear

Trump's campaign free from the coercive constraints imposed by New York. *See* Exhibits H–J.

71. New York has no authority under the Constitution to interfere with the ability of Missouri electors to perform their constitutionally created, federal function.

72. New York of course has authority to conduct its own criminal proceedings, but "the timing" of those proceedings must not interfere with the office of the Presidency or a Presidential campaign, absent substantial justification. *See Clinton* v. *Jones*, 520 U.S. 681, 707 (1997). There is no substantial justification here.

73. Missouri is therefore entitled to an order under Section 2 of Article III, 28 U.S.C. § 1251, and the inherent equitable powers of this Court, staying New York from using coercive authority to prevent Trump from freely campaigning in the months leading up to the election.

COUNT II: Violation of *Purcell*

74. "Court orders affecting elections, especially conflicting orders, can themselves result in voter confusion and consequent incentive to remain away from the polls." *Purcell* v. *Gonzalez*, 549 U.S. 1, 4–5 (2006) (per curiam).

75. For that reason, such orders are generally prohibited in the months leading up to an election. *See ibid.*

76. There is no doubt that New York's actions greatly "affect" the upcoming presidential election and create confusion—both for ordinary voters and electors.

77. Publications, such as *The New York Times*, have run articles asking many questions about the effect of New York's coercive power, such as whether Trump can even run for President now. He can, but these articles highlight the amount of confusion that New York is sowing.

78. Questions in the press also abound about how a sentence and gag order would affect the exercise of executive authority.

79. While this Court has typically applied *Purcell* in the context of a federal court interfering in election administration, there is no reason why the same principle should not apply when a State interferes in the administration of an election held in a different State. *Purcell* did not limit its principles to federal court orders enjoining election statutes, but instead announced a broader principle concerning "[c]ourt orders affecting elections." *Purcell*, 549 U.S., at 4.

80. Missouri is therefore entitled to an order under Section 2 of Article III, 28 U.S.C. § 1251, and the inherent equitable powers of this Court, staying New York from using coercive authority to prevent Trump from freely campaigning in the months leading up to the election.

COUNT III: Violation of the First Amendment

81. Citizens of Missouri have a well-established "right to 'receive information and ideas'" to the speech of others. *Va. State Bd. of Pharmacy* v. *Va. Citizens Consumer Council*, *Inc.,* 425 U.S. 748, 757 (1976) (quoting *Kleindienst* v. *Mandel*, 408 U.S. 753, 762-63 (1972)).

82. This right is at its apex in the context of a Presidential campaign. After all, "it is only through free debate and free exchange of ideas that government remains responsive to the will of the people." *Terminiello* v. *City of Chicago*, 337 U.S. 1, 4 (1949).

83. New York's gag order and impending sentence interfere with the ability of others to receive campaign speech from Trump. Where governmental action interferes with speech indirectly rather than directly, that conduct is constitutional "so long as the *neutral* regulation promotes a substantial government interest that would be achieved less effectively absent the regulation." *United States* v. *Albertini*, 472 U.S. 675, 689 (1985) (emphasis added).

84. Nothing about this prosecution has been neutral in speech sense. New York law has never been enforced in this way.[22] *Cf. Gonzalez* v. *Trevino*, No. 22-1025, 2024 WL 3056010, at *2 (U.S. June 20, 2024) (retaliatory arrest claim allowed to proceed in light of evidence that the "statute had never been used" to criminally charge somebody for taking a nonbinding, expressive government document). Trump was specifically targeted for the purpose of trying to impose political damage and interfere in Trump's political campaign. And there is no reason for New York to impose a gag order and sentence *now* rather than waiting and permitting the Presidential election to proceed unimpeded.

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[22] David Nakamura, *This Obscure N.Y. Election Law Is at the Heart of Trump's Hush Money Trial*, Wash. Post (May 6, 2024),

85. Missouri is therefore entitled to an order under Section 2 of Article III, 28 U.S.C. § 1251, and the inherent equitable powers of this Court, staying New York from using coercive authority to prevent Trump from freely campaigning in the months leading up to the election.

PRAYER FOR RELIEF

WHEREFORE, because Missouri cannot make reprisal by embargo, engage in diplomatic relations, nor attempt force, but must resort to the judicial power of this Court provided by Section 2 of Article III and 28 U.S.C. § 1251(a) for resolving controversies among States, Missouri respectfully requests that this Court issue the following relief:

A. Declare that New York's existing and impending restrictions on Trump's ability to campaign unlawfully interfere with the Presidential election.

B. Stay or enjoin any gag order, sentencing order, or any other order or exercise of coercive authority by New York that would limit or interfere with Trump's ability to freely campaign.

C. Keep that stay or injunction in place until after the November election.

D. Grant such other relief as the Court deems just and proper.

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https://www.washingtonpost.com/politics/2024/05/06/trump-hush-money-trial-election-law/

July 3, 2024

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No. _____, Original

In the
Supreme Court of the United States

STATE OF MISSOURI,

Plaintiff,

v.

STATE OF NEW YORK,

Defendant.

BRIEF IN SUPPORT OF MOTION TO FILE BILL OF COMPLAINT

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July 3, 2024

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INTRODUCTION

No doubt it is true that the Constitution would not have tolerated a future Confederate state gagging and sentencing Abraham Lincoln in 1860 to interfere with his campaign for the Presidency. Doing so obviously would have interfered with federal interests the same way Maryland's attempt to tax the Bank of the United States did 40 years earlier.

Constitutionally, it is no different with New York's attempt to use coercive power in the form of a gag order and impending sentence to interfere with Donald Trump's campaign. New York has no interest—between now and November—in continuing its gag order and imposing a sentence that will impede a major-party candidate's ability to campaign. Any gag order and sentence must be stayed until after the election.

STANDARD OF REVIEW

Because original proceedings in this Court follow the Federal Rules of Civil Procedure, S. Ct. R. 17.2, the facts for purposes of a motion for leave to file are the well-pleaded facts alleged in the complaint. *See Hernandez* v. *Mesa*, 582 U.S. 548, 550 (2017).

ARGUMENT

The Court should grant Missouri's Motion to File a Bill of Complaint because 1) Missouri has standing to bring their claims against New York; 2) this Court has exclusive and mandatory jurisdiction over the claims, or in the alternative, this Court should exercise its discretion to hear the claims because this case presents constitutional questions of immense national

consequence; and 3) the important, time-sensitive, and straightforward questions of law warrant expedited review.

I. Missouri Has Standing.

An original action must meet Article III requirements: "it must appear that the complaining State has suffered a wrong through the action of the other State, furnishing ground for judicial redress, or is asserting a right against the other State which is susceptible of judicial enforcement according to the accepted principles of the common law or equity systems of jurisprudence." *Maryland* v. *Louisiana*, 451 U.S. 725, 735–36 (1981) (internal quotations omitted). This requires identifying either a "sovereign" or "quasi-sovereign" interest harmed by another State. *Pennsylvania* v. *New Jersey*, 426 U.S. 660, 665 (1976). Missouri has met this standard.[1]

A. New York's actions impose a sovereign harm to the ability of Missouri's 10 electors to exercise their federal authority.

Unlike the "32 States" that have "pledge laws" requiring electors to pledge to vote for a certain candidate, *Chiafalo* v. *Washington*, 591 U.S. 578, 585

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[1] In addition, once a State has standing to challenge New York's unlawful actions, it often may press any legal theory that undermines those actions. *See, e.g.*, *Duke Power Co.* v. *Carolina Envtl. Study Grp., Inc.*, 438 U.S. 59, 78-81 (1978); *DaimlerChrysler Corp.* v. *Cuno*, 547 U.S. 332, 353 n.5 (2006).

(2020), Missouri law permits electors to exercise their "discretion and discernment," *id.*, at 592 (citation omitted), and vote for whomever they please. That means *both* the millions of citizens of Missouri *and* the 10 prospective electors will be paying attention to the campaign into November. Missouri "indisputably has a compelling interest in preserving the integrity of [this] election process." *Purcell* v. *Gonzalez*, 549 U.S. 1, 4 (2006) (per curiam).

New York has interfered with this process. By imposing constraints on the ability of one major-party candidate—and only one—to campaign nationwide, New York impairs the ability of Missouri's electors to receive all information relevant to their decision to choose for whom to vote. In the voting context, that is a classic form of injury: "the informational injury at issue here, directly related to voting, the most basic of political rights, is sufficiently concrete and specific." *Fed. Election Comm'n.* v. *Akins*, 524 U.S. 11, 24–25 (1998); *id.*, at 21 ("information would help them … to evaluate candidates for public office"). The Constitution "has its fullest and most urgent application precisely to the conduct of campaigns for political office." *Fed. Election Comm'n* v. *Cruz*, 596 U.S. 289, 302 (2022) (citation omitted).

And by injuring Missouri's electors, New York necessarily injures the sovereign interests of the State of Missouri itself. Although presidential electors "exercise a federal function," they are state officials; they act "by authority of the state that in turn receives its authority from the federal constitution." *Ray* v. *Blair*, 343 U.S. 214, 224–25 (1952). Because they are state officials, the State can sue on their behalf. *E.g.*, *Biden* v. *Nebraska*, 143 S. Ct. 2355, 2365–67

(2023). And the Missouri Attorney General is authorized by Missouri law to do so. Mo. Rev. Stat. § 27.060.

It makes no difference that Missouri's electors will not be formally selected until November. New York's actions impose harm *now* that will make it more difficult for Missouri electors to exercise their legal functions later this year. The harms thus will affect whoever is selected to hold that office, so Missouri has standing to sue on behalf of those prospective officials no matter who those officials will be. In addition, prospective electors have already been selected by the Missouri political parties. They simply await formal selection by the voters in November. To exercise their votes later this year, they are paying attention to campaign speech now.

Several of those prospective electors have issued sworn affidavits, attached to the motion to expedite, expressing their high likelihood of becoming electors and their interest in being able to hear Trump's campaign free from the coercive constraints imposed by New York. For example, Dean Brookshier, Thomas J. Salisbury, and William Dane Roaseau have each been selected "by the Missouri Republican Party to be an elector in the Electoral College for the State of Missouri" and will become electors in November if Missourians choose Trump. Ex. H, I, J. "In order to faithfully carry out [their] duties," all of them "take steps now to be well informed about the policies, positions and character of the candidates," including by attending "live political rallies" and following "news and social media coverage of campaign events in other states." *Ibid.* All of them "plan to attend as

many Missouri Trump rallies as possible during the 2024 election cycle." *Ibid.*

Indeed, that Missouri electors will not be formally chosen until November reinforces that original jurisdiction is proper. By November, all the harm Missouri currently complains of would have already occurred. Missouri has an interest in ensuring that prospective electors are able to receive all the information they need to exercise their legal function later this year. *See Purcell*, 549 U.S., at 4.

B. New York's actions impose a quasi-sovereign harm on Missouri by depriving millions of Missourians of the information needed to vote.

New York has similarly imposed an informational harm on the millions of Missourians who will vote for electors in November. The Missouri General Assembly has delegated authority to the people of the State, by popular vote, to choose presidential electors. New York's decision to impose restraints on Trump's ability to travel the country and campaign creates an "informational injury" on the people of Missouri, which, because it affects "the most basic of political rights, is sufficiently concrete and specific." *Akins*, 524 U.S., at 21, 24–25.

This Court's recent decision in *Murthy* v. *Missouri*, 603 U.S. ___ (2024), reinforces this theory of standing. There, the Court concluded that a plaintiff can assert standing based on a "right to listen" theory where "the listener has a concrete, specific connection to the speaker," such as a consumer wanting to see

advertisements for drugs that they purchase. *Id.*, at 27–28 (slip op.).

Here, Exhibits A through F (attached to the motion to expedite) are representative, sworn affidavits from individual Missourians who are considering voting for Trump in November, state specific plans to "attend a Trump rally in Missouri during the 2024 election," and are concerned about the effect the gag order and sentence will have on their ability to hear him speak. Not only do they want to attend rallies, but they also want to hear "Mr. Trump's perspective on what happened at his trial, how he was treated by the system, and why I should still vote for him." So unlike in *Murthy* where this Court (slip op., at 28) said the plaintiffs had "not identified any specific speakers or topics" they want to listen to, this lawsuit presents Missouri residents who have identified both "speakers [and] topics." They are thus just like the consumers who were permitted to sue over prohibitions on certain advertisements. *Ibid.* (citing *Va. State Bd. of Pharmacy* v. *Va. Citizens Consumer Council*, 425 U.S. 748, 756–57 (1976)).

Missouri has learned that the Trump campaign has scheduled an event in Missouri for July or August. The campaign has plans for more events but is running into logistics problems because of the gag order and impending sentence. The campaign is currently unable to finalize further campaign stops in Missouri because even a sentence of probation would necessarily restrict Trump's ability to travel to hold and attend live campaign events.

Even if Trump could freely schedule events in September and October, the gag order would limit

Trump's speech at campaign events. Whether Trump is being unfairly targeted for prosecution by his general-election opponent and allies of that opponent is of course highly relevant to Trump's pitch about which candidate voters should support in November. But under the gag order, Trump cannot criticize the New York prosecution team for their close ties to and contacts with high-ranking officials in the Biden administration, nor can he criticize Judge Merchan's close relatives who are actively engaged in Democratic politics and stand to gain financially from a conviction.

Even if the Trump campaign could not visit Missouri, voters regularly follow social media, television, and the news to learn about campaign speech conducted in other States. New York's orders similarly prevent Trump from freely campaigning in other States.

Missouri can sue on behalf of the people of Missouri as *parens patriae*. When "a sufficiently substantial segment of [a State's] population" is injured, that harm becomes an injury to the State itself, and the State can sue as *parens patriae* to rectify its "quasi-sovereign" interests. *Alfred L. Snapp & Son, Inc.* v. *Puerto Rico*, 458 U.S. 592, 599, 607 (1982) (quasi-sovereign injury to Puerto Rico when "787" people affected). This rule is well settled. *E.g.*, *Maryland* v. *Louisiana*, 451 U.S. 725, 737–38 (1981); *Pennsylvania* v. *New Jersey*, 426 U.S. 660, 665 (1976); *Kansas* v. *Colorado*, 185 U.S. 125, 142 (1902). Indeed, this Court has held that a political party can sue on behalf of voters affected by a state law. *Crawford* v. *Marion Cnty. Election Bd.*, 553 U.S. 181, 189 n.7 (2008). It follows even more surely that a

State, which has a long history of *parens patriae* representation, can too.

That the interest in hearing campaign speech is "widely shared" among millions of Missourians does not make the injury "generalizable." *Akins*, 524 U.S., at 24. As when a large number of people suffer a "widespread mass tort" or a nuisance, each of these individuals is separately and concretely injured. *Ibid.* Indeed, that the interest is widely shared reinforces that a *parens patriae* action is appropriate; the injury to individual Missourians is so widespread that it creates a quasi-sovereign injury to the State itself. "Parens patriae standing is most likely to be recognized if there is a widespread injury to important interests of many individuals that cannot easily be calculated in monetary terms." Wright & Miller, 17 Fed. Prac. & Proc. § 4047 (3d ed.) (June 2024 update).

C. New York's actions interfere with associational rights.

Finally, New York's actions interfere with the associational rights of both electors and individual citizens of Missouri. As this Court has recognized, "[r]epresentative democracy in any populous unit of governance is unimaginable without the ability of citizens to band together in promoting among the electorate candidates who espouse their political views." *California Democratic Party* v. *Jones*, 530 U.S. 567, 574 (2000).

So when state action negatively affects "the party [a voter] works to support, then [the voter] indeed suffers harm," under the First Amendment, "as do all other involved members of that party." *Gill* v.

Whitford, 585 U.S. 48, 80 (2018) (Kagan, J., concurring). When "the essence of the harm alleged" is an "associational injury flowing from" state action, the complaint is that state action "has burdened the ability of like-minded people across the State to affiliate in a political party and carry out that organization's activities and objects." *Id.*, at 81–82.

Here the associational aim of millions of Missourians is to elect Trump to the Presidency. He is currently the leader of the Republican Party. New York's actions directly interfere with that associational aim.

D. The sentence is sufficiently imminent that this case is ripe.

Gag order. This case is obviously ripe with respect to the gag order, which the trial court has left in place long after the verdict was issued. As originally written, that broadly written gag order prevented Trump from "mak[ing] public statements" about witnesses concerning their "participation in the investigation or in this criminal proceeding" and making "public statements" about "counsel in the case other than the District Attorney." Gag Order, *New York* v. *Trump*, No. 71543-23 (April 1, 2024).[2] On June 25, the trial court removed the part of the gag order concerning witnesses but maintained it

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[2] https://s3.documentcloud.org/documents/24528568/2024-04-01-dec-and-order-re-clarification-of-order-restricting-extrajudicial-statements.pdf

concerning counsel. Order (June 25, 2024).[3] That gag order is expected to remain in place until at least September 18. *Ibid.*

Each day, that continuing gag order limits the speech Trump can issue that is relevant to voters across the country. For example, its text appears to prohibit him from challenging the credibility and political motivations of prosecutors, including a prosecutor who was the third-highest ranking attorney in the Department of Justice before switching jobs to the DA's office so he could prosecute Trump.

Sentence. The impending sentence also is sufficiently imminent. "[A]n actual arrest, prosecution, or other enforcement action is not a prerequisite" for standing. *Susan B. Anthony List* v. *Driehaus*, 573 U.S. 149, 158 (2014). Rather, a party need only show that the threat is "sufficiently imminent." *Id.*, at 159. It is enough that the party establish a "'substantial risk' that the harm will occur." *Id.*, at 158 (citation omitted).

That is met here. On July 2, the trial court rescheduled sentencing from July 11 to September 18, the absolute height of the campaign season.[4] By the time this lawsuit is fully briefed, that date will be near at hand, and the regular appeals process in the

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[3] https://www.courthousenews.com/wp-content/uploads/2024/06/trump-post-trial-termination-gag-order.pdf

[4] https://www.nycourts.gov/LegacyPDFS/press/PDFs/People%20v.%20DJT%207-2-24%20Letter.pdf

underlying trial after September 18 will be far too slow to afford Missouri relief.

Even if the sentence is probation, Trump may be prohibited from leaving New York without preclearance from a probation officer. He would "be required to regularly report to New York City's Probation Department" and "could also be jailed immediately." Christobek, *What Penalties Does Trump Face Now That He Has Been Convicted?*, NY Times (May 29, 2024).[5] Even a suspended sentence would not necessarily deprive this case of ripeness because the trial judge in New York may be free to revisit that suspension and impose restrictions that would immediately cause irreparable harm to voters across the country. The risk of harm to Missouri is substantial and imminent enough to confer standing.

II. This Case Presents Constitutional Questions of Immense National Consequences That Warrant This Court's Discretionary Review, and There Is No Alternative Forum.

The Court considers two principal factors in deciding whether to exercise original jurisdiction over disputes between States. "Determining whether a case is 'appropriate' for [this Court's] original jurisdiction involves an examination of two factors." *Mississippi* v. *Louisiana*, 506 U.S. 73, 77 (1992) (citation omitted). "First, we look to the nature and the interest of the complaining State, focusing on the

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[5] https://www.nytimes.com/2024/05/29/nyregion/trump-convicted-jail-penalties.html

seriousness and dignity of the claim." *Id.* (citations and quotation marks omitted). "Second, we explore the availability of an alternative forum in which the issue tendered can be resolved." *Id.* Both factors support exercising jurisdiction here.

A. The interests of Missouri warrant exercise of jurisdiction.

Here, "the nature of the interest of the complaining State," and "the seriousness and dignity of the claim[s]" raised by Missouri, *Mississippi* v. *Louisiana*, 506 U.S., at 77, support granting leave to file the bill of complaint.

First, the issues are "serious." Little could be more serious than the ability of Americans to participate fully in a Presidential election. "No right is more precious in a free country than that of having a voice in the election of those who make the laws under which, as good citizens, we must live. Other rights, even the most basic, are illusory if the right to vote is undermined." *Wesberry* v. *Sanders*, 376 U.S. 1, 17 (1964). And while the right to vote is precious in any election, it is of the utmost importance in Presidential elections given "[t]he importance of his election and the vital character of its relationship to and effect upon the welfare and safety of the whole people." *Burroughs* v. *United States*, 290 U.S. 534, 545 (1934).

This Court has held that it was "beyond peradventure" that a dispute between two States involving a single Commerce Clause claim—on an issue of interest solely to those two States—satisfied the "seriousness and dignity" requirement of the Court's discretionary jurisdiction. *Wyoming* v.

Oklahoma, 502 U.S. 437, 440, 451 (1992). How much more clearly, then, it is that jurisdiction is warranted when a State files a lawsuit about one State's interference with the ability of individuals in other States to participate in a Presidential election. On November 5, 2024, over 150 million Americans are expected to go to the polls, and an overwhelming majority will vote for one of the two major-party candidates. The dispute between Wyoming and Oklahoma was no doubt important, but it pales in importance to the ability of 150 million Americans to fully participate in a Presidential election.

Second, the "dignity" of the claims also warrants this Court's review. Every State has an "interest in securing observance of the terms under which it participates in the federal system." *Snapp*, 458 U.S., at 608. State participation in the federal system finds its apex in the State's (and its people's) participation in the selection of the President of the United States. If this Court's jurisdiction is not warranted when one State interferes in another States' ability to fully participate in that election, then it is hard to imagine when original jurisdiction would ever be warranted.

As explained more fully in the forthcoming preliminary injunction motion, New York's decision to continue a gag order *after* the trial and to impose a sentence in the few months before the Presidential election (rather than staying any activity until after the election) imposes serious harms to the ability of Missourians and other Americans to participate in the Presidential election.

Missouri does not doubt the interest of New York in enforcing its criminal laws. Indeed, Missouri

wishes New York would take crime *more* seriously. But—and there is no way to put this mildly—New York's prosecution of Trump appears calculated solely toward extracting political advantage for that State's favored candidate, Joe Biden. New York's charges have been panned across the political spectrum as "a disaster," "a setback for the rule of law," and "a dangerous precedent." Shugerman, *The Trump Indictment Is a Legal Embarrassment*, NY Times (Apr. 5, 2023).[6] And New York's former Attorney General and Governor just two weeks ago acknowledged what is plainly obvious to any unbiased observer, that "if he [Trump] wasn't running for president," then "that case would've never been brought." Nazzaro, *Cuomo: Trump NY Hush Money Case "Should Have Never Been Brought,"* The Hill (June 22, 2024).[7]

New York has no authority to use its criminal laws for the evident purpose of impeding a major-party candidate from campaigning in the months before an election. That is especially true where New York charged Trump under bookkeeping statutes that "had never been used" in any context remotely similar. *Gonzalez* v. *Trevino*, 602 U.S. ___ (2024) (per curiam) (slip op., at 3).

Missouri does not ask this Court to upend the underlying conviction. While Missouri believes the

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[6] https://www.nytimes.com/2023/04/05/opinion/trump-bragg-indictment.html

[7] https://thehill.com/regulation/court-battles/4734858-andrew-cuomo-donald-trump-alvin-bragg-hush-money-case-new-york.

underlying conviction is constitutionally unsound and will be overturned on appeal, that is Trump's claim to make. Missouri asks only that New York not continue to impose a gag order or sentence in the next four months that will impede Trump from campaigning freely. That modest request for a stay is claim well worth this Court's original jurisdiction.

B. Missouri has no alternate forum.

In deciding whether to exercise its original jurisdiction, this Court also "explore[s] the availability of an alternative forum in which the issue tendered can be resolved." *Mississippi* v. *Louisiana*, 506 U.S., at 77. Here, there is none because this case falls within this Court's exclusive jurisdiction under 28 U.S.C. § 1251(a). In reviewing the lower courts' jurisdiction to hear disputes between States, this Court has applied a strict interpretation to 28 U.S.C. § 1251(a) to foreclose lower-court jurisdiction. *Mississippi* v. *Louisiana*, 506 U.S., at 77. "Though phrased in terms of a grant of jurisdiction to this Court," this Court has said, "the description of our jurisdiction as 'exclusive' necessarily denies jurisdiction of such cases to any other federal court." *Id*., at 77–78.

The underlying criminal case in New York also is not an appropriate forum for three reasons. First, as explained above, Missouri is not able to challenge the underlying conviction. That is Trump's claim alone (although Missouri firmly believes he will succeed). Second, in that forum, Trump is able to assert only his own interests, not the interests of the State of Missouri. And third, because of the procedural posture of that action, Missouri is certain to face

irreparable harm before appellate review of the actions by New York that have harmed Missouri.

III. Review Is Not Discretionary.

Although this Court's precedent on original jurisdiction holds that the Court's review in original actions is discretionary, Missouri respectfully submits that those precedents are incorrect: the Court's review is mandatory. The plain text of § 1251(a) provides "original and exclusive jurisdiction of all controversies between two or more States." 28 U.S.C. § 1251(a); *see also Nebraska* v. *Colorado*, 136 S. Ct. 1034, 1035 (2016) (Thomas, J., dissenting, joined by Alito, J.) ("Federal law does not, on its face, give this Court discretion to decline to decide cases within its original jurisdiction.").

Additionally, absent review by this Court, Missouri has no other forum to pursue a remedy for this interstate challenge, and it cannot be the case that such weighty issues are entirely unreviewable. *See Mostyn* v. *Fabrigas*, 98 Eng. Rep. 1021, 1028 (K.B. 1774) ("if there is no other mode of trial, that alone will give the King's courts a jurisdiction"); *see also Nebraska*, 136 S. Ct. at 1035 (Thomas, J., dissenting) ("If this Court does not exercise jurisdiction over a controversy between two States, then the complaining State has no judicial forum in which to seek relief. When presented with such a controversy, '[w]e have no more right to decline the exercise of jurisdiction which is given, than to usurp that which is not given.'" (quoting *Cohens* v. *Virginia,* 6 Wheat. 264, 404 (1821) (Marshall, C.J.)).

Should this Court decide against discretionary review here, it should reexamine whether

discretionary review is "at odds with the statutory text." *Id.*

IV. This Case Warrants Expedited Review.

The vital importance of the issues presented and the ongoing and future harms arising therefrom necessitate an expedited resolution. Because this case presents a pure and straightforward question of law that requires neither finding additional facts nor briefing beyond the threshold issues presented here, and because the gag order continues to interfere with the Presidential campaign, Missouri will file a concurrent motion moving for expedited review.

CONCLUSION

Leave to file the Bill of Complaint should be granted.

July 3, 2024

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