No. _____

In the Supreme Court of the United States

Nathan Miller and Miller for SD9 (#18849)
Petitioners,

vs.

Republican Party of Minnesota,
Respondent,

Attorney General Keith Ellison,
Intervenor.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE COURT OF APPEALS OF THE
STATE OF MINNESOTA

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Federal and state courts have considered several different state statutes banning false campaign speech, but are in conflict on whether such state statutes are unconstitutional content-based restrictions on political speech. *See, e.g., Susan B. Anthony List v. Driehaus,* 814 F.3d 466, 476 (6th Cir. 2016); *281 Care Comm. v. Arneson,* 766 F.3d 774, 796 (8th Cir. 2014); *Linert v. MacDonald*, 901 N.W.2d 664, 670 (Minn. Ct. App. 2017); *Make Liberty Win v. Cegavske*, 499 F.Supp.3d 794, 803 (D.Nev. 2020). To resolve an important, constitutional question, the question presented is:

> Whether state statutes broadly banning false campaign speech, such as Minnesota Statutes § 211B.02, are unconstitutional, if not narrowly tailored to meet a compelling state interest.

PARTIES TO THE PROCEEDINGS

The petitioners are Nathan Miller and his campaign committee Miller for SD9 (#18849) (collectively, "Miller"). They were the respondents in the lower administrative proceedings before the Minnesota Office of Administrative Proceedings, and petitioners before the Minnesota Court of Appeals. The Republican Party of Minnesota was the complainant before the Minnesota Office of Administrative Proceedings, and the respondent before the Minnesota Court of Appeals. Minnesota Attorney General Keith Ellison intervened as a party in the Minnesota Court of Appeals proceeding.

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CORPORATE DISCLOSURE STATEMENT

Nathan Miller and his committee Miller for SD9 (#18849) are not corporate entities, nor affiliated with a corporate entity.

LIST OF RELATED CASES

The Minnesota Supreme Court issued an order of denial of petition for review on April 16, 2024. This order is included in the appendix at A-1. The Minnesota Court of Appeals issued its opinion on January 16, 2024. *Republican Party of Minnesota v. Miller*, 2024 WL 159126 (Minn. Ct. App. 2024). This opinion is included in the appendix at A-2 through A-17. The Findings of Fact, Conclusions of Law and Order issued by the Minnesota Office of Administrative Hearings, File No. 60-0320-38740, is dated December 9, 2023. This document is included in the appendix at A-18 through A-31.

PETITION FOR A WRIT OF CERITORARI

The Petitioner Nathan Miller respectfully petitions for a writ of certiorari to review the decision of the Minnesota Court of Appeals.

OPINIONS BELOW

The Minnesota Supreme Court issued an order of denial of petition for review on April 16, 2024. This order is included in the appendix at A-1. The Minnesota Court of Appeals issued its opinion on January 16, 2024. *Republican Party of Minnesota v. Miller*, 2024 WL 159126 (Minn. Ct. App. 2024). This opinion is included in the appendix at A-2 through A-17. The Findings of Fact, Conclusions of Law and Order issued by the Minnesota Office of Administrative Hearings, File No. 60-0320-38740, is dated December 9, 2023. The document is included in the appendix at A-18 through A-31.

JURISDICTION

The jurisdiction of this Court rests on 28 U.S.C. § 1257 which cover petitions for writ or certiorari from final judgment or decrees reviewed by the highest court of a State in which a decision could be had where the validity of a statute—here, Minnesota Statutes § 211B.02—is claimed to be "repugnant to the Constitution." 28 U.S.C. § 1257.

CONSTITUTIONAL AND STATUTORY PROVISIONS AT ISSUE

The First Amendment, as incorporated against the states through the Fourteenth Amendment,

provides that states "shall make no law…abridging the freedom of speech."

Minnesota Statutes § 211B.02, provides in relevant part, "A person or candidate may not knowingly make, directly or indirectly, a false claim stating or implying that a candidate or ballot question has the support or endorsement of a major political party or party unit or of an organization."

STATEMENT OF THE CASE

Generally, the issue of whether different state statutes banning false campaign speech were unconstitutional was left open after the Court's decisions in *U.S. v. Alvarez*, 567 U.S. 709 (2012) and *Susan B. Anthony List v. Driehaus*, 573 U.S. 149 (2014). The Court in *Alvarez* held that a provision in the Stolen Valor Act constituted a content-based restriction on free speech, in violation of the First Amendment. The Court in *Susan B. Anthony List* held that organizations had standing under Article III for a pre-enforcement challenge based on the threat of future enforcement of statutory ban on false campaign speech. Since then, federal and state courts have considered several different state statutes banning false campaign speech, but are in conflict on whether such state statutes are unconstitutional content-based restrictions on political speech. *See, e.g., Susan B. Anthony List v. Driehaus,* 814 F.3d 466, 476 (6th Cir. 2016); *281 Care Comm. v. Arneson,* 766 F.3d 796 (8th Cir. 2014); *Linert v. MacDonald*, 901 N.W.2d 664, 670 (Minn. Ct. App. 2017); *Make Liberty Win v. Cegavske*, 499 F.Supp.3d 794, 803 (D.Nev. 2020).

The concern under the Free Speech Clause is penalizing all falsehoods will, at least theoretically, discourage open debate and chill truthful speech. *See Gertz v. Robert Welch, Inc.,* 418 U.S. 323, 340–41 (1974). This case presents these concerns as it relates to political campaigns and independent candidates, who as politicians have philosophical alignments with national political parties, yet expressing those alignments results in charges, fines and prosecutions for identifying with those political party beliefs.

Perhaps a state may seek to curtail fraudulent statements during campaigns regarding endorsements or support as a compelling governmental interest, but Minnesota Statutes § 211B.02 forbids a candidate, or non-candidate, from aligning or identifying a candidate with a national party's political philosophy. Such alignment or identification of a candidate—even any perceived implication of a third party that the candidate has the support or endorsement of a state defined major political party—will lead to civil or criminal enforcement.

A "major political party" is defined by Minnesota law under Minnesota Statutes § 200.02. Notably, under Minnesota law, a "major political party" can lose its status and fall under the category of a minor political party. *Martin v. Simon*, 6 N.W.3d 443 (Minn. 2024). Petitioner Nathan Miller was civilly prosecuted, under threat of criminal prosecution, for repeating a notice on a website of a different person that placed the phrase "Republican Party" under Miller's name announcing a rally for conservative candidates. Ultimately, Miller was fined $250 for this truthful statement on another person's website.

Based on these facts, the Minnesota Court of Appeals upheld the constitutionality of the disputed law and its application to the petitioner. *Republican Party of Minnesota v. Miller*, No. A23-0029, 20124 WL 1569126, at *4-5 (Minn. Ct. App. 2024). The decision aligned itself with *Ashcroft v. Am. Civ. Liberties Union*, 542 U.S. 656, 666 (2004), to suggest "[a] statute is narrowly tailored if it advances a compelling state interest in the 'least restrictive means among available, effective alternatives.'" The Minnesota appellate court concluded Minnesota can enact statutes to protect the public from false statements during election campaigns and, even by applying a strict scrutiny analysis, the statute is not violative of the First Amendment. *Miller,* 2024 WL159126, at *4-5. *See McIntyre v. Ohio Elections Commn.*, 514 U.S. 334, 349 (1995). But, this Court has never placed knowingly false campaign speech categorically outside the protection of the First Amendment.

Specifically, Miller was running as a write-in candidate with a republican or Republican Party philosophy. Miller spoke truthfully of his beliefs and was not affiliated with the state major political party known as the Republican Party of Minnesota. Miller's attributed statement is non-falsifiable. Only statements that are falsifiable may constitutionally be the subject of fines for "false" speech. Falsifiability requires that a statement may be proven false. Because Miller's attributed statement of being a "Republican" write-in candidate is non-falsifiable, his attributed statement cannot possibly be proven to be "false" speech. As an example, under Minnesota's statutory scheme—by definition— the Republican Party of Minnesota is *not* the national Republican

Party or the "Grand Old Party," the "GOP."[1]

Petitioner Nathan Miller, a write-in candidate, having lost a Republican primary election, was civilly prosecuted under Minn. Stat. § 211B.02, with the threat of criminal prosecution, in an action commenced by the RPM for being identified as a "Republican Party" candidate in a third-party notice Miller republished on his campaign website. As a write-in candidate, although no longer affiliated as a RPM candidate, Miller still campaigned as an ultra-conservative Republican. Based on these truthful campaign statements, he was civilly sanctioned and fined $250 for knowingly making, directly or indirectly, a false claim stating or implying that he had the support or endorsement of a "major political party." While he maintained Republican beliefs expounded by the national party as an ultra-conservative, Miller as a write-in candidate did not align himself with the RPM. Miller was fined anyway.

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[1] Republican Party, by name Grand Old Party (GOP), in the United States, is one of the two major political parties. The other is the Democratic Party. The Republican National Committee (RNC), headquartered in Washington, D.C., is the political organization that oversees the activities of the Republican Party, including organizing the party's national convention, developing its political platform, coordinating campaign strategies, and fundraising. The RNC was founded in 1856, two years after the organization of the modern Republican Party, to aid in the presidential campaign of John C. Frémont. The RNC also oversees activities of the Republican state committees and coordinates activities with its two national legislative committees—the National Republican Congressional Committee and the National Republican Senatorial Committee. https://www.britannica.com/topic/Republican-Party (last visited July 11, 2023).

Resolution of the question presented is important as it relates to core political speech of candidates and non-candidates. During campaigns, candidates seek to reach the electorate and educate the public as to their political beliefs that may align with political philosophies of other national parties. But many of these candidates do not have endorsements of state parties. Candidates cannot be faced with, nor should they fear, the threat of prosecution—civil or criminal—because of their truthful speech to the electorate, even if state parties do not like it.

A. Minnesota has a history of civilly and criminally enforcing its ban on false campaign speech.

Minnesota has a history of civilly and criminally enforcing Minnesota Statutes § 211B's bans on false campaign speech. The applicable administrative complaint process and the threat of criminal prosecution chills truthful political speech because no political participant will risk civil and criminal fines.

The petitioner is challenging the constitutionality of Minn. Stat. § 211B.02 because the section limits what any person may say regarding the support or endorsement of a "major political party," "party unit," or any other organization:

> A person or candidate may not knowingly make, directly or indirectly, a false claim stating or implying that a candidate or ballot question has the support or endorsement of a major political party or party unit or of an organization.

Anyone may file a complaint alleging a violation of § 211B.02 with the Minnesota Office of Administrative Hearings (OAH). *See* Minn. Stat. §§ 211B.31 (defining "office" to mean "the Office of Administrative Hearings" for purposes of Minn. Stat. §§ 211B.32–36), 211B.32, subd. 1(a) (requiring that a complaint alleging a violation of ch. 211B be filed with "the office," i.e., the OAH, but placing no limit on who may file); *281 Care Comm.*, 766 F.3d at 790 (recognizing "that *anyone* may lodge a complaint with the OAH alleging a violation of § 211B.06").

Within three business days after the OAH receives a complaint, an administrative law judge (ALJ) must make a preliminary determination about what to do with it. Minn. Stat. § 211B.33, subd. 1. The ALJ must dismiss the complaint if it fails to "set forth a prima facie violation of chapter 211A or 211B." *Id.*, subd. 2(a). If "the complaint sets forth a prima facie violation of" § 211B.02, and if "the complaint was filed within 60 days before the primary or special election or within 90 days before the general election to which the complaint relates, the [ALJ], on request of any party, must conduct an expedited probable cause hearing under section 211B.34." *Id.* § 211B.33, subd. 2(c). If "the complaint sets forth a prima facie violation of" § 211B.02, and if the complaint "was filed more than 60 days before the primary or special election or more than 90 days before the general election to which the complaint relates, the [ALJ] must schedule an evidentiary hearing under section 211B.35." *Id.* § 211B.33, subd. 2(d).

If, at the probable cause hearing, the ALJ determines that the complaint isn't supported by

probable cause, the ALJ must dismiss the complaint. *Id.* § 211B.34, subd. 2(intro.)-2(a). If, at the hearing, the ALJ determines that the complaint is supported by probable cause, the chief ALJ must schedule an evidentiary hearing on the complaint under § 211B.35. *Id.*, subd. 2(intro.), 2(b).

If an evidentiary hearing is required, the chief ALJ must assign the complaint to a panel of three ALJs who will preside at the hearing. *Id.* § 211B.35, subd. 1. How soon the hearing must be held depends on several factors. *Id.*

After the hearing, the three-judge panel must make one of several dispositions, which include dismissing the complaint, issuing a reprimand, imposing a civil penalty of up to $5,000, or criminally referring the complaint to a county attorney. *Id.*, subd. 2.

A violation of § 211B.02 is a misdemeanor. *See* Minn. Stat. § 211B.19 (providing that a violation of chapter 211B is a misdemeanor unless a different penalty is provided). Thus, a violation of § 211B.02 is punishable by imprisonment for up to 90 days or a fine of up to $1,000. *See id.* § 609.03 (providing for punishment for crimes for which no other punishment is provided), 609.03(3) (describing the punishment for a misdemeanor); *id.* § 609.015, subd. 2 (providing that chapter 609 applies to crimes created by other provisions of the Minnesota Statutes).

A county attorney may prosecute any violation of chapter 211B, including a violation of § 211B.02, even without a panel referral. *Id.* § 211B.16, subd. 3.

Sections 211B.02 and 211B.06 were enacted as sections of the same article of the same statute. 1988 Minn. Sess. Law Serv. 578, art. 3 § 2 (enacting § 211B.02), § 6 (enacting § 211B.06). Section 211B.06 was later amended, 1998 Minn. Sess. Law Serv. 376 § 3, but the original version, like the amended version, restricted false statements about a candidate's "character or acts" or about "the effect of a ballot question," 1988 Minn. Sess. Law Serv. 578, art. 3 § 6.

In 2003, Michael Fahey, who was then the Carver County Attorney, prosecuted a man named John Knight for violating Minn. Stat. § 211B.06. *Republican Party of Minn., Third Cong. Dist. v. Klobuchar*, 381 F.3d 785, 787-88 (8th Cir. 2004) (discussing the prosecution as background to a civil-rights suit). Mr. Fahey did this after Amy Klobuchar, who was then the Hennepin County Attorney, referred a complaint to Mr. Fahey because her office had a conflict of interest. *Republican Party*, 381 F.3d at 787-88.

In 2002, the Ramsey County Attorney prosecuted Eugene Copeland for violating § 211B.06 on the ground that he had falsely claimed to be "the only pro-life candidate" in a special election for a Minnesota state senate seat. *Minnesota v. Copeland*, Ramsey County District Court Case No. 62-k1-02-003123).

Since 2014, the OAH has enforced § 211B.02 through a civil penalty in at least four cases, including this case. First, in *Niska v. Clayton*, the OAH imposed a civil penalty of $600 on Appellant Bonn Clayton for violating § 211B.02 through statements on a website endorsing and recommending judicial candidates, and the Court of Appeals affirmed. *Niska v. Clayton*, 2014

WL 902680, No. A13–0622 (Minn. Ct. App. 2014), *rev. denied* (Minn. 2014), *cert. denied*, 135 S.Ct. 1399 (2015). Second, in *City of Grant v. Smith*, No. A16–1070, 2017 WL 957717 (Minn. Ct. App. 2017), *rev. denied* (2017), the Minnesota Court of Appeals upheld an OAH order under § 211B.02 imposing a civil penalty of $250 on John Smith for distributing a campaign flyer and campaign brochure that resembled the City of Grant, Minnesota's newsletters and other city documents. Third, in *Linert v. MacDonald*, an OAH three-judge panel ruled that Appellant Michelle MacDonald "knowingly violated Minn. Stat. § 211B.02 by falsely claiming to be endorsed by the 'GOP Judicial Selection Committee 2016'" and ordered MacDonald to pay a $500 civil penalty. *Linert v. MacDonald*, 901 N.W.2d 664 (Minn. Ct. App. 2017). The Minnesota Court of Appeals affirmed the OAH's order. *Id.*

Then, in this case, *Republican Party of Minnesota v. Miller*, a three-judge OAH panel imposed a $250 penalty on Nathan Miller and his campaign committee for violating § 211B.02 in the 2022 race for a state senate seat. A-31 (Findings of Fact, Conclusions of Law, and Order, *Republican Party of Minnesota v. Miller*, OAH 60-0320-38740 (Minn. OAH, Dec. 9, 2022)). Miller had sought, but failed to obtain, the Republican Party's nomination. *Id.,* A-20. The panel found that Miller violated § 211B.02 because he, as a write-in candidate, posted on his campaign website an image of a flyer advertising a political rally that displayed Miller's name followed by the descriptor "(SD9 – Republican Party)":

> --Nathan Miller
> (SD 9 -- REPUBLICAN PARTY)

Id., A-21, A-30, A-31. The Panel concluded:

> The Panel finds Respondent's violation was negligent and may have had some impact on voters. However, given that Respondent Miller was a write-in candidate, it is not likely that many voter were misled or confused. Moreover, Respondent Miller widely publicized the fact that he was a write-in candidate running against the RPM-endorsed candidate.

Id., A-30, A-31.

So, even if the statement was negligent and had little or no impact on voters, the official OAH website threatens the public with civil fines and criminal prosecution for violating chapter 211B, including § 211B.02, as evidenced by the OAH's penalty matrix:

Possible Penalties

Every case is unique and each penalty will be selected to reflect the specific facts of the case. In order to assure some consistency from one case to the next, the three judge panel uses a presumptive penalty matrix as guidance. In any case, the three judge panel may depart from the presumptive penalty listed below and will explain the reasons for any departures.

	Gravity of Violation		
Willfulness	Minimal/no impact on voters, easily countered	Some impact on several voters, difficult to correct/counter	Many voters misled, process corrupted, unfair advantage created
Deliberate, multiple violations in complaint, history of violations, clear statute, unapologetic	$600 - 1,200	$1,200 – 2,400 and/or Refer to County Attorney	$2,400 – 5,000 and/or Refer to County Attorney
Negligent, ill-advised, ill-considered	$250 - 600	$600 - 1,200	$1,200 – 2,400 and/or Refer to County Attorney
Inadvertent, isolated, promptly corrected, vague statute, accepts responsibility	$0 - 250	$400-600	$600 - 1,200

A-30; *Fair Campaign Practices*, Minnesota Office of Administrative Hearings, https://mn.gov/oah/self-help/administrative-law-overview/fair-campaign.jsp.

It is the penalty matrix that the Minnesota Office of Administrative Hearings (OAH) uses to guide a three-judge panel's imposition of penalties for chapter-211B violations. The matrix provides for

criminal referral to a county attorney as an appropriate penalty for certain categories of violations. *Id*.

The order imposing a civil penalty on Miller for violating § 211B.02 didn't refer him to a county attorney, but the order did include the penalty matrix, thus implying that criminal prosecution is a credible threat in future cases. *Id.* The OAH notice informing Miller that the OAH was going to hold an evidentiary hearing to determine whether he had broken the law warned Miller that, after the evidentiary hearing, the panel might refer the complaint against him "to the appropriate county attorney." Notice of Panel Assignment and Order for Evidentiary Hearing, *Miller*, OAH 60-0320-38740 (Minn. OAH, Nov. 8, 2022)). The Notice stated:

BURDEN OF PROOF

The burden of proving the allegations in the complaint is on the complainant. The standard of proof for violations of Minn. Stat. § 211B.02 is a preponderance of the evidence.[6]

DISPOSITION OF COMPLAINT

At the conclusion of the evidentiary hearing, the panel must determine whether the violation alleged in the complaint occurred and must make at least one of the following dispositions:

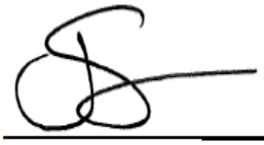
1. The panel may dismiss the complaint.
2. The panel may issue a reprimand.
3. The panel may impose a civil penalty of up to $5,000 for any violation of chapter 211A or 211B (2022).
4. The panel may refer the complaint to the appropriate county attorney.

The panel must dispose of the complaint within three (3) days after the hearing record closes.[7]

JUDICIAL REVIEW

A party aggrieved by a final decision on a complaint filed under section 211B.32 is entitled to judicial review of the decision as provided in Minn. Stat. §§ 14.63 -.69 (2022).

Dated: November 8, 2022



JENNY STARR
Chief Administrative Law Judge

Id.

B. Factual Background -- *Republican Party of Minnesota v. Miller*

The state defines a "major political party" in Minnesota under Minnesota Statutes § 200.02, subd. 7(a) as a state organization with required filings and a certification with the secretary of state. Notably, under Minnesota law, a major political party can lose its status and fall under the category of a minor political party. The state further defines who is a member of a major political party under Minn. Stat. § 200.02, subd. 17, as an individual who, supports the general principles of that party's constitution, voted for a majority of that party's candidates in the last general election, or intends to vote for a majority of that party's candidates in the next general election. Presently, there are only two state major political parties in Minnesota; the Minnesota Democratic Farmer-Labor Party and the Republic Party of Minnesota.

Miller was a write-in candidate for the Minnesota State Senate District 9 (SD9) for the November 2022 general election.[2] He also served as the chair of his candidate campaign committee, Miller for SD9 (#8849). Miller is a life-long republican.[3] He has been a member of the national Republican Party and has participated as a national Republican Party delegate.[4] Regardless, as a republican, Miller believes he is a person with principled convictions higher than the Republican Party of Minnesota. Miller expressed

[2] A-19 (Findings of Fact, Conclusions of Law, and Order, *Republican Party of Minnesota v. Miller*, OAH 60-0320-38740 (Minn. OAH, Dec. 9, 2022)).
[3] A-19, A-20.
[4] Hring Transcr. 16:1–4 (Dec. 6, 2022).

that he "holds principled convictions higher than any ruling body of individuals within the [Republican Party of Minnesota]."[5]

As a person with republican values, Miller sought the endorsement of the Republican Party of Minnesota (RPM) during its endorsement convention but failed.[6] After the convention, Miller filed for the candidacy for State Senate District 9 in the RPM's Minnesota's primary election against the endorsed Party candidate Jordan Rasmusson.[7] Even then, at the primary stage, Miller revealed his type of conservative republicanism. On his Facebook Senate page biography: "Vote August 9 – Nathan Miller – Republican–Constitutionally minded conservative running for SD9."[8] Rasmusson defeated Miller in the August 2022 Republican primary.[9] Thereafter, in September, Miller conducted a write-in campaign for Senate District 9.[10]

From the outset of his write-in campaign, Miller expressed his own Republican values while criticizing and expressing his independence from "Republican Party politics," conveying to potential voters that he would not bow down to party bosses, accept lobbyist deals or become a career politician. He spoke to the hypocrisy of government and how bureaucracy grows government and simultaneously stifles liberty, never deviating from his core political beliefs during the

[5] Miller Aff. at 7 (Dec. 5, 2022) (Hring Ex. 150).
[6] A-20.
[7] *Id.*
[8] A-21.
[9] A-20.
[10] *Id.*

course of his write-in campaign. [11]

Indeed, being an unendorsed candidate meant write-in candidate Miller could wear the label of being "unendorsed" as a "badge of honor and proof that the two-party system has disdain for grassroots candidates."[12] Moreover, despite his life-long republicanism, in his race for public office, Miller believed "it was essential to [his] chances for success that voters knew [he] was not supported by RPM or any of their GOP affiliates."[13] When Miller attended events, he never wavered from his messaging, as he described it, his "constitutional conservative mantra" and he would let people know he was a republican if people asked.[14]

During the Miller campaign, a grassroots group, Caravan of Patriots, offered Miller an opportunity to attend its "rally for conservative candidates" in Ottertail County, Minnesota.[15] Miller accepted as one of two candidates attending the rally.[16] Miller placed the flyer Caravan of Patriots had created on his website less than a week before the event.[17] The flyer stated "Nathan Miller (SD9 – Republican Party).[18] The flyer did not state "of Minnesota." Notably, the Minnesota Secretary of State's website only identifies the "Republican Party of Minnesota" as a major political party, specifically citing Minnesota Statutes §

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[11] Miller Aff. at 3 (Dec. 5, 2022) (Hring Ex. 150).
[12] *Id.*
[13] *Id.* at 7.
[14] *Id.* at 5.
[15] Miller Resp. Br. to Compl. ¶ 9.
[16] *Id.*
[17] *Id.* at ¶¶ 10, 14.
[18] A-21 (Findings of Fact, Conclusions of Law, and Order, *Republican Party of Minnesota v. Miller*, OAH 60-0320-38740 (Minn. OAH, Dec. 9, 2022)).

200.02, subd. 7 for the definition of a "major party."[19]

The well-attended Caravan of Patriots flag-waving event took place on October 15, 2022.[20] No evidence revealed that anyone believed nor confused Miller as a RPM candidate.[21]

C. Legal proceedings—*Republican Party of Minnesota v. Miller*

The day before the event, on October 14, 2022, the RPM filed a complaint with the Minnesota Office of Administrative Hearings alleging that Miller had violated § 211B.02.[22] The RPM contended that Miller and his campaign committee had engaged in speech that would lead others to believe Miller had the support of the RPM.[23]

After finding a prima facie violation of § 211B.02 on October 19, 2022, and then by order dated October 27, 2022 finding probable cause, the OAH set

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[19] Office of the Minnesota Sec. of State, https://www.sos.state.mn.us/elections-voting/how-elections-work/political-parties/ (last visited May 8, 2023). Other identified political parties in Minnesota include the Democratic-Farmer-Labor Party and the Legal Marijuana Now Party. A major party in Minnesota can also lose its status under Minn. Stat. § 200.02, subd. 7(2)(e): "A major political party whose candidates fail to receive the number and percentage of votes required under paragraph (a) and that fails to present candidates as required by paragraph (b) at each of two consecutive state general elections described by paragraph (a) or (b), respectively, loses major party status as of December 31 following the later of the two consecutive state general elections."

[20] Miller Aff. At 6.

[21] *Id.*

[22] A-22.

[23] OAH Comp. ¶¶ 9, 10, ADD. 15-16.

the matter for an evidentiary hearing after the November general election, on November 18, 2022.[24] The parties would waive the evidentiary hearing and submit the matter on the record and other submissions. The OAH tribunal rendered its decision on December 9, 2022.[25]

Meanwhile, Rasmusson, the endorsed Republican Party of Minnesota candidate would eventually win the November 2022 general election receiving nearly 63% of the vote.[26] Miller received about 9% of the vote as a write-in candidate.[27]

The OAH tribunal concluded that Miller violated § 211B.02. The OAH found the Republican Party had established by a preponderance of the evidence that Miller and his campaign committee violated § 211B.02, because Miller had knowingly falsely implied that he had the support or endorsement of a major political party.[28] The OAH concluded that the Caravan for Patriots created flyer using the phrase "Republican Party", posted by Miller, "without qualification by an unendorsed candidate falsely implies support or endorsement of a major political party."[29] The tribunal fined Miller $250 for the violation.[30]

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[24] A-22 (Findings of Fact, Conclusions of Law, and Order, *Republican Party of Minnesota v. Miller*, OAH 60-0320-38740 (Minn. OAH, Dec. 9, 2022)).
[25] *Id.*
[26] Miller Resp. Br. To Compl. ¶ 16.
[27] *Id.*
[28] A-24, A-25 (Findings of Fact, Conclusions of Law, and Order, *Republican Party of Minnesota v. Miller*, OAH 60-0320-38740 (Minn. OAH, Dec 9, 2022)).
[29] A-29, A-30.
[30] A-25, A-30.

On appeal to the Minnesota Court of Appeals, Miller challenged the constitutionality of § 211B.02 on the grounds that it violated the First Amendment's protection of core political speech and the right of association. The appellate court would find that § 211B.02 did not violate Miller's free-speech or associational rights under the First Amendment. *Miller*, 2024 WL 159126, at *4. The court found that under strict scrutiny analysis the offending statute is constitutional. The court did not adopt Miller's contention that any governmental interest is not served because the statute penalizes him for "truthful, non-falsifiable speech." Miller characterizes the challenged statement found within the published notice "Republican Party" as expressing that he is a "republican" who has "Republican Party virtues but as a constitutional conservative." *Miller,* 2024 WL 159126, at *5. However, Miller's argument was to no avail since the OAH had found the statement as implying support or endorsement of the RPM. *Id.*

In addition, the appellate court would further construe § 211B.02, relying upon *Ashcroft*, 542 U.S. at 666, that "[a] statute is narrowly tailored if it advances a compelling state interest in the 'least restrictive means among available, effective alternatives.'" The court would not accept Miller's finding of effective alternatives, some of which were offered by the Minnesota Secretary of State. Here, this would include access to several political party websites, and the Secretary of State website, to determine whether Miller had won the RPM primary. The court should have considered this speech as "counterspeech." But, counterspeech as an argument was previously rejected as an effective, less restrictive means by the Minnesota Court of Appeals in an earlier attempt to

challenge the constitutionality of § 211B.02. *Linert*, 901 N.W.2d at 668 (facial challenge).

The Minnesota Court of Appeals also outright rejected Miller's association claim under the First Amendment. *Miller*, 2024 WL 159126 at *6. The court found the statute did not interfere with Miller's right to associate with others. *Id*. It only prohibited him from making false statements about his support or endorsement that furthered the compelling governmental interest of "promoting informed voting." *Id*.

The Minnesota Supreme Court denied Miller's petition for review of the appellate court's decision. A-1. This petition followed that denial.

REASONS FOR GRANTING THE PETITION

This case presents the question of whether the government can ban the political speech of candidates for their affiliation with the political philosophies of political parties, even if not endorsed or supported by a state defined "major political party." In conflict with decisions in the Sixth Circuit and in the Eighth Circuit, including precedent of this Court, the Minnesota Court of Appeals holds a conflicting principle that false campaign speech is categorically outside the protection of the First Amendment when it involves political parties. Candidates and non-candidates are routinely prosecuted for even truthful statements made on the campaign trail. In Minnesota, people are prosecuted if it is implied—as alleged by any third-party, within or without the state—that a write-in candidate has a political party's values whenever a competing candidate is the

nominee of a state-defined major political party within the boundaries of the state. The Minnesota appellate court decision highlights the tension of compelling governmental interests in election processes and a candidate's need for core political speech protection from governmental intrusion in efforts to associate with voters.

I. A conflict exists in the lower courts on whether bans on false campaign speech are content-based restrictions violating the Free Speech Clause.

Federal and state courts have considered several different state statutes banning false campaign speech, but are in conflict on whether such state statutes are unconstitutional content-based restrictions on political speech. *See, e.g., Susan B. Anthony List,* 814 F.3d 466; *281 Care Comm.,* 766 F.3d 774; *Linert*, 901 N.W.2d 664; *Make Liberty Win,* 499 F.Supp.3d 794. The petitioner, agreeing with the Sixth and Eighth Circuit, alleges that the State of Minnesota's adjudication and enforcement of a $250 fine against him for violating Minnesota Statutes § 211B.02 is facially unconstitutional because § 211B.02 broadly bans candidate and non-candidate false political speech relating to political party and organizational support for a candidate. The result is the elimination of honest debate and chilling of truthful speech.

A. *Susan B. Anthony List v. Driehaus,* 814 F.3d 466 (6th Cir. 2016) holds that a statute banning false campaign speech is an unconstitutional restriction on political speech.

In *Susan B. Anthony List*, this Court considered whether plaintiffs had standing to challenge the constitutionality of Ohio statutory provisions that, like Minnesota Statutes § 211B.02, prohibited making certain false statements about a candidate for office. 573 U.S. at 151-52, 157-67 (2014). Like § 211B.02, the Ohio provisions could be enforced through both criminal prosecutions and private complaints to an administrative tribunal, specifically the Ohio Elections Commission. *Id*. at 152-53.

Plaintiff Susan B. Anthony List (SBA) sued the Commission and Steve Driehaus in federal district court to challenge the Ohio provisions on First Amendment grounds after then-Congressman Driehaus filed a complaint alleging that SBA had made a false statement about him. *Id*. at 153-54. Driehaus withdrew his complaint before the Commission made a final determination, but SBA proceeded with its federal suit. *Id*. at 155. The district court dismissed the suit for lack of standing, and the Sixth Circuit upheld the dismissal because the court found an insufficient threat of future enforcement action against SBA or the other plaintiff. *Id*. at 156-57.

In a unanimous opinion, this Court reversed the Sixth Circuit's decisions and held that the plaintiffs had shown a sufficient threat of enforcement of the challenged provision to establish standing. *Id*. at 157-67, 168. In keeping with judicial minimalism, this

Court explicitly declined to hold that the threat of enforcement through administrative proceedings before the Commission was sufficient to establish standing, and this Court instead held that the *combination* of the threat of administrative enforcement and the threat of criminal prosecution was sufficient:

> Although the threat of Commission proceedings is a substantial one, we need not decide whether that threat standing alone gives rise to an Article III injury. The burdensome Commission proceedings here are backed by the additional threat of criminal prosecution. We conclude that the combination of those two threats suffices to create an Article III injury under the circumstances of this case.

Id. at 166.

With the hurdle of establishing standing behind them, the *Susan B. Anthony List* plaintiffs went on to win on the First Amendment merits. When the case was sent back to the district court to consider the merits, the district court held the challenged provisions unconstitutional, granted the plaintiffs summary judgment, and permanently enjoined the Commission and its members from enforcing the provisions. *List v. Ohio Elections Comm'n*, 45 F. Supp. 3d 765, 779, 781 (S.D. Ohio 2014), *aff'd sub nom. Susan B. Anthony List v. Driehaus*, 814 F.3d 466, 476 (6th Cir. 2016). By that time, the plaintiffs had dismissed all of their claims against Driehaus. *Id*. at 770 n.4. So, the plaintiffs in *Susan B. Anthony List*

ultimately obtained relief in a pre-enforcement challenge against government enforcement authorities because of the threat of enforcement.

B. *281 Care Comm. v. Arneson,* 766 F.3d 774 (8th Cir. 2014), holds that a statute banning false campaign speech is an unconstitutional restriction on political speech.

In *281 Care Committee v. Arneson*, Minnesota advocacy organizations sued the Minnesota Attorney General and four county attorneys, alleging that their free speech rights were violated by a provision of the Minnesota Fair Campaign Practices Act (FCPA), Minnesota Statutes § 211B.06, making it a crime to knowingly or with reckless disregard for the truth make a false statement about a proposed ballot initiative. The United States District Court for the District of Minnesota, 2010 WL 610935, dismissed the complaint for lack of subject-matter jurisdiction, held in the alternative that it would dismiss cthe omplaint for failing to state a claim, and denied organizations' motion for summary judgment. The organizations appealed. The Eighth Circuit, 638 F.3d 621, reversed in part, vacated in part, and remanded. On remand, the district court denied the organizations' motion for summary judgment, granted summary judgment in favor of defendants, and dismissed all claims with prejudice. The organizations appealed again. Then, the Eighth Circuit held, in part, that: the statute making it a crime to make false statements about proposed ballot initiative was subject to strict scrutiny and the statute was not narrowly tailored to meet a compelling government interest. *281 Care Committee v. Arneson*, 766 F.3d at 796.

C. To the contrary, the Minnesota Court of Appeals in *Linert v. MacDonald*, 901 N.W.2d 664 (Minn. Ct. App. 2017) holds that a statute banning false campaign speech is a constitutional restriction on campaign speech.

In *Linert v. MacDonald*, a civil complaint was brought against candidate for Minnesota Supreme Court, alleging that candidate violated provision of Minnesota FCPA, Minnesota Statutes § 211B.02, by falsely claiming that a party's judicial-election committee endorsed her. A panel of three administrative law judges from the Office of Administrative Hearings determined that the candidate violated the statute by knowingly claiming an endorsement that she had not in fact received. The candidate appealed. Then, the Minnesota Court of Appeals held, in part, that the campaign statute was not overbroad in violation of the First Amendment and the threat of prosecution under campaign statute did not chill truthful speech. *Linert v. MacDonald*, 901 N.W.2d at 670.

D. To the contrary, the federal district court in *Make Liberty Win v. Cegavske*, 499 F.Supp.3d 794 (D.Nev. 2020) suggests that a statute banning false campaign speech is a constitutional restriction on campaign speech.

In *Make Liberty Win v. Cegavske*, 499 F.Supp.3d 794 (D.Nev. 2020), a political action committee sued the Secretary of State of Nevada, alleging that the Secretary's demand that the committee refrain from utilizing the term "reelect" in campaign materials for

a former legislator's campaign to reclaim her seat violated the committee's constitutional free speech rights. The committee moved for preliminary injunction. The district court held that: the committee had Article III standing to pursue facial and as-applied free-speech challenges to Nevada statutes; Nevada statutes were content-based restrictions subject to strict scrutiny; the committee did not prove a likelihood of success on their argument that Nevada statutes were facially unconstitutional content-based restrictions on free speech; Nevada statutes were unconstitutional content-based restrictions on speech as applied to the committee; and the committee did not prove likelihood of success on their argument that the Nevada statutes were facially unconstitutional viewpoint-based restrictions on speech. *Id.* at 803.

II. The Court should resolve the Free Speech Clause issues considering that penalizing all campaign falsehoods discourages open debate and chills truthful speech.

Content-based speech regulations—laws that "'target speech based on its communicative content'"—are subject to strict scrutiny. *Nat'l Inst. of Family Life Advocates v. Becerra* (*NIFLA*), 138 S.Ct. 2361, 2371 (2018) (quoting *Reed v. Town of Gilbert*, 135 S.Ct. 2218, 2226 (2015)). A speech regulation is content-based if the "law applies to particular speech because of the topic discussed or the idea or message expressed." *Reed*, 135 S.Ct. at 2227.

In general, false speech is constitutionally protected. *Alvarez*, 567 U.S. at 722 (plurality opinion) (advocating strict scrutiny for prohibitions of false speech outside of narrow traditional categories, such

as fraud, perjury, defamation, and lying to the government); *id.* at 732 (Breyer, J., concurring) (advocating intermediate scrutiny for prohibitions on false speech about "easily verifiable facts," if the facts are outside of certain categories deserving heightened protection). Prohibitions on false political speech, like other content-based restrictions on political speech, are subject to strict scrutiny. *281 Care Comm.*, 766 F.3d at 784 (explaining that, under the *Alvarez* plurality opinion and concurring opinion, strict scrutiny continues to apply to prohibitions on false *political* speech—which it already did under earlier Supreme Court precedents).

And, this Court has recognized that although false speech has traditionally received little protection,[31] it has never been deemed categorically unprotected. *Alvarez,* 567 U.S. at 722, *id.* at 732 (Breyer, J., concurring); *id.* at 749 (Alito, J., dissenting). Penalizing all falsehoods theoretically discourages open debate and chills truthful speech. *Gertz,* 418 U.S. at 340–41. This Court has intimated that false statements are unprotected only when the statements are associated with related harms, such as defamation or fraud. *Alvarez,* 567 U.S. at 718. (plurality opinion).

But, here, there is no false speech. There is no falsifiable speech. Notably, because there is no falsifiable speech there can be no compelling governmental interest to curtail, or here, ban core political speech. Miller's expressed constitutional conservative political views as a life-long member of

[31] *See Hustler Magazine, Inc. v. Falwell,* 485 U.S. 46, 52 (1988); *Gertz v. Robert Welch, Inc.,* 418 U.S. at 340–41.

the national Republican Party—not the RPM—was his own interpretation of those facts. This means that any statement attributed to his republican constitutional conservative political beliefs are non-falsifiable and necessarily nonactionable. Yet, the statute penalizes such truthful, non-falsifiable statements.

Moreover, Minnesota Statutes § 211B.02, by its plain terms, applies to a statement made at any time, in any place, to any person. It applies to statements made in public, and applies with equal force to personal, whispered conversations within a home, but overheard by a visitor. In short, it applies to statements made during limitless times and settings.

Miller never stated or otherwise indicated that he was endorsed by the Republican Party *of Minnesota.* As explained above, the national Grand Old Party (GOP) "Republican Party" is *not* a "major political party" defined and recognized by the Minnesota Secretary of State. Minn. Stat. § 200.02, subd. 7. Thus, § 211B.02 is overly broad because it does substantially sweep outside the government's expressed statutory purpose. *United States v. Williams,* 553 U.S. 285, 292 (2008).

There is no dispute that Minn. Stat. § 211B.02 is content-based as a speech restriction on candidates and subject to strict scrutiny. *Reed, Ariz.*, 576 U.S. at 155. To be sure, Minnesota interests in preserving the integrity of its elections, protecting "voters from confusion and undue influence," and "ensuring that an individual's right to vote is not undermined by fraud in the election process" are compelling. *Burson v. Freeman,* 504 U.S. 191, 199 (1992) (plurality opinion). But, it cannot be the end of a court's inquiry as the

Minnesota appellate court suggests. *Susan B. Anthony List,* 814 F.3d 466, illustrates the point that § 211B.02 fails to support a governmental interest in protecting the integrity of an election. *Susan B. Anthony List,* examined the administrative process of complaints filed against candidates, finding it lacking a compelling governmental interest. Like an action in Minnesota, under the Ohio administrative scheme, complaints could be filed outside the election-campaign period and linger accordingly. *Id.,* at 474; *see* Minn. Stat. 211B.32, subd. 2 (complaint must be filed with the office within one year after the occurrence of the act or failure to act). Miller's administrative complaint adjudication occurred after the election was over. Hence, consistent with the concern of this Court that "an ultimate decision on the merits will be deferred until after the relevant election" (*Susan B. Anthony List*, 573 U.S. at 165), a "final finding that occurs *after* the election does not preserve the integrity of the election." *Id.*

Indeed, like Ohio, it is Miller's contention that a filed complaint under Minn. Stat. § 211B.02, causes damage to a campaign that ultimately may not be in violation of the law, beginning with a prima facie (probable cause) ruling. Minn. Stat. § 211B. It "does not preserve the integrity of the elections and in fact undermines the state's interest in promoting fair elections." *Id.,* at 475. "At the same time, the law may not timely penalize those who violate it, nor does it provide for campaigns that are the victim of potentially damaging false statements. '[A] law cannot be regarded as protecting an interest of the highest order, and thus as justifying a restriction on truthful speech, when it leaves appreciable damage to that supposedly vital interest unprohibited.'" *Id.,* quoting

Reed, 576 U.S. at 172 (internal quotation marks and citation omitted).

When a court assumes that certain protected speech may be regulated, it must then ask what is the least restrictive alternative that can be used to achieve the governmental interest. "The purpose of the test is not to consider whether the challenged restriction has some effect in achieving [the government's} goal, regardless of the restriction it imposes." *Ashcroft,* 542 U.S. at 666. The importance of the test is to "ensure that legitimate speech is not chilled or punished." *Id.* Hence, "for that reason, the test does not begin with the status quo of existing regulations, then ask whether the challenged restriction has some additional ability to achieve [the government's] legitimate interest. Any restriction on speech could be justified under that analysis." *Id.* Here, a "court should ask whether the challenged regulation is the least restrictive means among available, effective alternatives." *Id.*

But, this Court's analysis is not consistent within the circuits and certainly not within Minnesota's appellate courts. The Minnesota Court of Appeals construed § 211B.02, relying upon *Ashcroft,* 542 U.S. at 666, that "a statute is narrowly tailored if it advances a compelling state interest in the 'least restrictive means among available, effective alternatives.'" The Minnesota Court of Appeals would not accept Miller's finding of effective alternatives, some of which were offered by the Minnesota Secretary of State. Here, this would include counterspeech based on access to several political party websites, and the Minnesota Secretary of State's website, to determine whether Miller had been nominated by the RPM. The

court should have considered this as effective "counterspeech." Counterspeech as an argument was previously rejected as an effective less restrictive means by the Minnesota Court of Appeals in an earlier attempt to challenge the constitutionality of § 211B.02. *Linert,* 901 N.W.2d at 668 (facial challenge). Yet, this Court in *Alvarez* stated that counterspeech was preferable over "content-based mandates":

> The remedy for speech that is false is speech that is true. This is the ordinary course in a free society. The response to the unreasoned is the rational; to the uninformed, the enlightened; to the straightout lie, the simple truth. See *Whitney v. California,* 274 U.S. 357, 377, 47 S.Ct. 641, 71 L.Ed. 1095 (1927) (Brandeis, J., concurring) ("If there be time to expose through discussion the falsehood and fallacies, to avert the evil by the processes of education, the remedy to be applied is more speech, not enforced silence"). The theory of our Constitution is "that the best test of truth is the power of the thought to get itself accepted in the competition of the market," *Abrams v. United States,* 250 U.S. 616, 630, 40 S.Ct. 17, 63 L.Ed. 1173 (1919) (Holmes, J., dissenting). The First Amendment itself ensures the right to respond to speech we do not like, and for good reason. Freedom of speech and thought flows not from the beneficence of the state but from the inalienable rights of the person. And suppression of speech by the government can make exposure of falsity more difficult, not less so. Society has the right and civic duty to engage in open, dynamic, rational discourse.

> These ends are not well served when the government seeks to orchestrate public discussion through content-based mandates.

Alvarez, 567 U.S. at 726–28 (plurality opinion). The Minnesota Court of Appeals does not agree.

Seemingly, the lower courts are distinguishing the Stolen Valor Act's prohibition on false speech from statutory bans on false campaign speech in that they cover different subject areas. The Court should grant this petition for writ of certiorari to determine whether the same Free Speech Clause applies to both the Stolen Valor Act situation and campaign speech situations.

III. The Court should adjudicate the legal issue presented because a checkerboard pattern of state regulation has resulted—as legal scholars acknowledge.

The Court adjudicating the legal issue will be the legal foundation for addressing the nation's checkerboard pattern of regulation of false campaign speech. A checkerboard pattern of state regulation of false campaign speech exists. Currently, sixteen states, at least, have laws that regulate or criminalize false campaign speech. Alaska Stat. § 15.13.095 (2012); Colo. Rev. Stat. § 1-13-109 (2015); Fla. Stat. § 104.271 (2015); 10 Ill. Comp. Stat. 5/29-4 (2014); La. Stat. Ann. § 18:1463 (2008); Mass. Gen. Laws Ch. 56, § 42 (2014); Minn. Stat. § 211b.02 (2014); Miss. Code Ann. § 23-15-875 (2015); N.C. Gen. Stat. § 163-274(A)(7)-(8) (2015); N.D. Cent. Code § 16.1- 10-04 (2015); Ohio Rev. Code Ann. § 3517.21-.22 (2013); Or. Rev. Stat. § 260.532 (2013); S.D. Codified Laws § 12-

13-16 (2004); Tenn. Code Ann. § 2-19-142 (2014); Utah Code Ann. § 20a-11-1103 (2010); Va. Code Ann. § 24.2-1005.1(A) (2011); Wash. Rev. Code § 42.17a.335 (2014); W. Va. Code § 3-8-11 (2013); Wis. Stat. § 12.05 (2011). Whereas, the federal government and the other 30 states or so have not banned false campaign speech. Ross, 16 First Amend. L. Rev. at 383.[32]

As the Court knows, this Court is in the business of resolving nationwide Free Speech Clause legal issues of first impression. For example, this Court in *Republican Party of Minnesota v. White,* 536 U.S. 765 (2002) applied the Free Speech Clause for the first time to judicial candidate speech. Similarly, this Court granting the petition in this case will again afford meaningful opportunity to apply the Free Speech Clause for the first time to statutory bans on false campaign speech.

The question presented is ready for adjudication by this Court. Academics agree that, "[t]he Supreme Court has never considered whether lies in campaign speech can be regulated without violating the expressive rights of speakers." Catherine Ross, *Ministry Of Truth: Why Law Can't Stop Prevarications, Bullshit, And Straight-Out Lies In Political Campaigns*, 16 First Amend. L. Rev. 367, 391 (2017). "The decision in *Susan B. Anthony List v. Driehaus* focused on justiciability issues: standing and mootness. *Susan B. Anthony List v. Driehaus*, 134 S.

[32] There is a federal election law banning fraudulently impersonating another's campaign or political organization for monetary or other gain. 52 U.S.C. § 30124 (2012) (substantive law); 52 U.S.C. § 30109 (2012) (enforcement provisions). Research shows no reported cases involving enforcement of this federal election law. *See* Ross, 16 First Amend. L. Rev. at 382.

Ct. 2334, 2341-47 (2014). The Court did not reach the merits." *Id.,* n. 133. And, "[m]any scholars argue that campaign falsehood statutes are unlikely to survive constitutional review." *Id.* at 409 (2017). *See, e.g.*, Richard L. Hasen, *A Constitutional Right To Lie In Campaigns And Elections?*, 74 Mont. L. Rev. 53, 72-73 (2013); Jack Windsbro, *Misrepresentation In Political Advertising: The Role Of Legal Sanctions*, 36 Emory L.J. 853, 863-65 (1987) (pre-*Alvarez*); Lance Conn, *Mississippi Mudslinging: The Search For Truth In Political Advertising*, 63 Miss. L.J. 507, 514, n. 40 (1994); *Developments in the Law: Elections*, 88 Harv. L. Rev. 1111, 1296, 1296 n. 354 (1975) (questioning not the constitutionality but "rather the wisdom of a comprehensive approach encompassing all types of deceptive practices"). The fact that all these law review articles exist on this topic of statutory bans on false campaign speech shows that this petition for writ of certiorari is worthy of a grant.

CONCLUSION

The petition should be granted. Federal and state courts have considered several different state statutes banning false campaign speech, but are in conflict on whether such state statutes are unconstitutional content-based restrictions on political speech. The Court should grant the petition to resolve the important, nationwide question of the constitutionality of state statutory bans on candidate's and non-candidate's false campaign speech.

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