

IN THE SUPREME COURT OF THE UNITED STATES

Mark Miller, et al.,	:	
	:	
<i>Applicants,</i>	:	
	:	
v.	:	5th Cir. No. 23-50537
	:	
JANE NELSON, in her official capacity as	:	
Secretary of State of Texas, et al.,	:	
	:	
<i>Respondents.</i>	:	

APPLICATION TO THE HON. SAMUELA A. ALITO, JR. FOR AN EXTENSION OF TIME TO FILE A PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

Pursuant to Supreme Court Rule 13.5, and for good cause, Mark Miller, Scott Copeland, Laura Palmer, Tom Kleven, Andy Prior, America’s Party of Texas, Constitution Party of Texas, Green Party of Texas and Libertarian Party of Texas (“Applicants”) hereby move for an extension of time of 45 days, to and including January 23, 2025, to file a petition for writ of certiorari. The petition for certiorari is currently due December 9, 2024.

In support of this motion, Applicants state as follows:

1. The Judgment and Opinion of the Court of Appeals for the Fifth Circuit were entered on September 10, 2024 (Exhibit 1). Applicants seek review of that Judgment and Opinion. This Court has jurisdiction pursuant to 28 U.S.C. § 1254(1).
2. Pursuant to Supreme Court Rule 13.1, the deadline for filing a petition for a writ of certiorari is December 9, 2025. This motion for an extension of that deadline by 45 days, until January 23, 2025, is timely because it is filed 10 days before the date the petition is due.
3. This case involves a challenge to the constitutionality of Texas’s statutory scheme

governing ballot access. The undisputed facts and uncontested evidence establish that it costs a new political party or independent candidate for statewide office \$1 million or more to comply with that statutory scheme. The Court of Appeals nevertheless upheld the constitutionality of Texas's statutory scheme, based in part on its conclusion that Applicants "failed to establish that the costs amount to a *consequential* burden in this case." Ex. 1 at 9 (emphasis original).

4. The decision of the Court of Appeals reflects a confusion among the lower courts as to the proper legal standard to apply when analyzing the constitutionality of ballot access statutes. Applicants seek an extension of time to file a petition for a writ of certiorari to allow them adequate time to conduct the legal research necessary to demonstrate that lower courts are divided with respect to this issue, and to prepare a petition for certiorari demonstrating that this case is an appropriate vehicle for the Court to decide the issues it raises.

5. The undersigned counsel is Applicants' lead counsel in this matter. The undersigned counsel is also lead or co-counsel in several other pending cases. *See Ortiz, et al. v. North Carolina State Board of Elections*, No. 5:24-cv-00420 (E.D. N.C.); *Stein v. LaRose*, No. 2:24-cv-4042 (S.D. Oh.); *Indiana Green Party, et al. v. Morales*, No. 23-2756 (6th Cir.); *Brown, et al. v. Yost*, No. 24-3354 (6th Cir.). In that capacity, during the pendency of the period for filing a petition for certiorari in this matter, the undersigned counsel has: (1) researched, drafted and filed a Verified Complaint; (2) drafted and filed an emergency motion for temporary restraining order or preliminary injunction; and (3) filed and briefed an emergency appeal. The undersigned counsel also traveled out of state to defend the validity of nomination petitions in a state administrative proceeding. *See Challenge to Jill Stein's Nomination Papers by John Tackeff*, Decision BLC 2024-4 (N.H. Ballot Law Comm'n.). Additionally, as in-house counsel to the defendant in two cases

pending in the Superior Court for the District of Columbia, the undersigned counsel has dedicated substantial time to supporting and advising lead defense counsel in those cases. *See Vest v. McArdle, et al.*, No. 2024-CAB-002804 (D.C. Sup. Ct.); *Harlos v. McArdle, et al.*, No. 2024-CAB-006230. Due to these obligations, and others, the undersigned counsel has not had adequate time to devote to the preparation of a petition for certiorari in this matter.

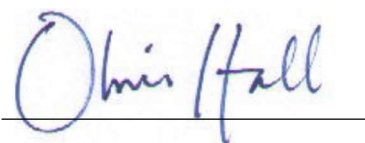
6. The undersigned counsel is lead counsel in *Indiana Green Party v. Morales, supra*, and is responsible for authoring the petition for certiorari in that matter, which currently must be filed on or before December 22, 2024. The undersigned counsel will not have sufficient time to prepare that petition, and the petition in the instant matter, within the current deadlines.

7. For the foregoing reasons, and due to the onset of the holiday season, good cause exists for the Court to grant the requested extension of time.

WHEREFORE, Applicants respectfully request that an extension of time be granted, to and including January 23, 2025, within which they may file a petition for writ of certiorari.

Dated: November 22, 2024

Respectfully submitted,



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