No. 22O159, Original

IN THE
Supreme Court of the United States

State of MISSOURI,
Plaintiff,
v.
State of NEW YORK,
Defendant.

BRIEF IN OPPOSITION TO MOTION FOR LEAVE TO FILE BILL OF COMPLAINT AND IN OPPOSITION TO MOTION FOR PRELIMINARY INJUNCTION

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Sprint Commc'ns, Inc. v. Jacobs, 571 U.S. 69 (2013) 25

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Cases **Page(s)**

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Documents from New York Cases

Indictment, *People v. Trump*, Ind. No. 71543-2023, https://manhattanda.org/wp-content/uploads/2023/04/Donald-J.-Trump-Indictment.pdf 4

Statement of Facts, *People v. Trump*, Ind. No. 71543-2023, https://manhattanda.org/wp-content/uploads/2023/04/2023-04-04-SOF.pdf 4

Petition, *Matter of Trump v. Merchan*, No. 2024-04013 (N.Y. App. Div. 2024) 6, 23

Miscellaneous Authorities **Page(s)**

Other Sources

Donald J. Trump (@realDonaldTrump), *Truth Social* (May 30, 2024, 1:03 p.m.), https://truthsocial.com/@realDonaldTrump/posts/112531119749772546 14

Donald J. Trump (@realDonaldTrump), *Truth Social* (May 30, 2024, 3:56 p.m.), https://truthsocial.com/@realDonaldTrump/posts/112531797445934111 14

Michael R. Sisak, *Donald Trump Assails Judge and His Daughter After Gag Order in New York Hush-Money Criminal Case,* Associated Press (Mar. 27, 2024), https://apnews.com/live/trump-trial-updates-day-20 32

Press Release, *D.A. Bragg Announces 34-Count Felony Trial Conviction of Donald J. Trump* (May 30, 2024), https://manhattanda.org/district-attorney-bragg-announces-34-count-felony-indictment-of-former-president-donald-j-trump 6

Press Release, *District Attorney Bragg Announces 34-Count Felony Indictment of Former President Donald J. Trump* (Apr. 4, 2023), https://manhattanda.org/d-a-bragg-announces-34-count-felony-trial-conviction-of-donald-j-trump/ 4

Trump Speaks After Court and Attacks Prosecutor, in Donald Trump's Hush Money Trial: Highlights from Day 20, Associated Press (May 21, 2024), https://apnews.com/live/trump-trial-updates-day-20#0000018f-9cee-d795-a3df-beee01410000 32

INTRODUCTION

The State of Missouri seeks leave to file a Bill of Complaint and moves for preliminary relief against the State of New York under this Court's original and exclusive jurisdiction to adjudicate disputes between sovereign States. But Missouri's allegations and requested injunctive relief are based entirely on a single, ongoing criminal prosecution brought more than a year ago by an independently elected county prosecutor, Manhattan District Attorney Alvin Bragg (Manhattan DA), against an individual defendant, former President Donald J. Trump. For multiple independent reasons, the Court should deny leave to file Missouri's Complaint and dismiss or deny the request for preliminary relief.

First, Missouri's putative suit does not present an actual dispute between sovereign states, as required for this Court's original jurisdiction under 28 U.S.C. § 1251(a).

A. On the plaintiff's side, the complaint consists of generalized and speculative grievances of Missouri residents who wish to hear former President Trump speak in person at rallies in Missouri and fear that their ability to do so will be impaired by any sentence imposed on him, or by restrictions that have been imposed on his extrajudicial statements. But that is not the kind of concrete harm to sovereign interests that is required for the State of Missouri to bring this original action as Plaintiff or to establish Article III standing. It is speculative, because the potential sentence and speech restrictions may prove no obstacle to the interests of people who wish to hear from former President Trump. Sentencing has already been adjourned to September at the earliest and may not occur if the trial court grants former President Trump's

pending motion to set aside the verdict. And he already can speak about all of the topics that Missouri's declarants have attested they want to hear—including his views on the Manhattan DA, witnesses, jurors, and the trial court judge. Missouri's purported injury is also generalized, rather than concrete, because it is an interest that could be asserted by anyone. Ultimately, the purported injury is not *sovereign* because Missouri is clearly and impermissibly seeking to further the individual interests of former President Trump.

B. On the defendant's side, the complaint fails to identify a sovereign State as the party whose actions are allegedly causing harm. The Complaint seeks relief from certain orders obtained by the Manhattan DA and from the trial court in a still-pending prosecution. But that relief can be granted, if at all, only by the Manhattan DA or through the courts that are considering former President Trump's own appeals. As set forth below, the Manhattan DA, who is not a party here, is a local elected official who possesses plenary prosecutorial authority in just one of New York's sixty-two counties.[1] Accordingly, a lawsuit challenging his actions or seeking relief from them is not properly brought as a suit against the State of New York under this Court's original jurisdiction. Indeed, even if the DA is viewed as a state officer, suing to enjoin the way a state officer is enforcing state law is not the same as suing the State for purposes of this Court's original jurisdiction. Allowing Missouri to file this suit for such relief against New York would permit an extraordinary and dangerous

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[1] New York City contains five counties, each of which elects its own DA. This case concerns a prosecution brought by the District Attorney of New York County, also known as the Borough of Manhattan, who is referred to here as the "Manhattan DA."

end-run around former President Trump's ongoing state court proceedings and the statutory limitations on this Court's jurisdiction to review state court decisions.

Second, this Court's exercise of original jurisdiction is unwarranted for additional independent reasons. There is an alternative forum available to adjudicate the First Amendment issues that Missouri seeks to raise because former President Trump is currently litigating those issues in the New York appellate courts. Missouri's Complaint is also squarely barred by both *Younger* abstention, *see Younger v. Harris*, 401 U.S. 37 (1971), and the Anti-Injunction Act, 28 U.S.C. § 2283, which each require federal courts to refrain from interfering in ongoing criminal prosecutions in state court.

Lastly, Missouri's request for preliminary relief should be dismissed as moot if the Court denies leave to file Missouri's Complaint. But even if the Court grants leave to file, it should deny the request for preliminary relief because Missouri lacks standing, is exceedingly unlikely to succeed on its claims, and the balance of harms and public interest independently foreclose Missouri's requested relief.

STATEMENT

A. The Manhattan District Attorney's Criminal Prosecution of Former President Trump

In April 2023, the Manhattan DA—a locally elected county prosecutor who exercises independent discretion to bring criminal cases arising solely out of New York County (see *infra* at 16-18)—announced the indictment of former President Trump on thirty-four counts of falsifying business records in the first degree, in violation of New York Penal Law § 175.10.[2] The charges arose from then-candidate Trump's alleged role in "a scheme with others to influence the 2016 presidential election by identifying and purchasing negative information about him to suppress its publication and benefit [his] electoral prospects."[3] In February 2024, the trial court, Supreme Court, New York County (Merchan, J.), denied former President Trump's motions to dismiss the indictment, in which he alleged, inter alia, pre-indictment delay and selective prosecution. *See People v. Trump*, No. 71543- 2023, 2024 WL 1624427, at *2-3, *13 (N.Y. Sup. Ct. Feb. 15, 2024).

As the trial date approached, the Manhattan DA moved to restrict former President Trump from making extrajudicial statements that could foreseeably interfere with the integrity of the criminal proceedings. Former President Trump opposed the motion. *See People v. Trump*, 211 N.Y.S.3d 744, 745 (N.Y. Sup. Ct. 2024).

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[2] *See* Press Release, *District Attorney Bragg Announces 34-Count Felony Indictment of Former President Donald J. Trump* (Apr. 4, 2023); Indictment, Ind. No. 71543-23.

[3] Statement of Facts at 1, Ind. No. 71543-23.

In March 2024, the trial court granted the motion, ordering former President Trump to refrain from making public statements about three narrowly defined categories of participants in the criminal proceedings. *First*, the order prohibited statements about "reasonably foreseeable witnesses concerning their potential participation in the investigation or in this criminal proceeding." *Id.* at 747. *Second*, the order prohibited statements about counsel in the case other than the Manhattan DA, members of the DA's or court's staff, and staff members' families, when those statements were "made with the intent to materially interfere with, or to cause others to materially interfere with, counsel's or staff's work in this criminal case, or with the knowledge that such interference is likely to result." *Id. Third*, the order prohibited statements about prospective or actual jurors. *Id.* The trial court later clarified that the second category also included statements about the families of the Manhattan DA and trial judge—though the order continued not to apply to the DA himself, the trial judge, or the court. *See People v. Trump*, No. 71543-23, 2024 WL 1747946, at *3 (N.Y. Sup. Ct. Apr. 1, 2024).

Former President Trump has already challenged, and continues to challenge, the March 2024 order. For example, he filed a petition for writ of prohibition against enforcement of the order. *See Matter of Trump v. Merchan*, 227 A.D.3d 518, 519 (N.Y. App. Div. 2024). The First Department of the New York Supreme Court, Appellate Division denied the petition, concluding that the order properly balanced the "court's historical commitment to ensuring the fair administration of justice in criminal cases, and the right of persons . . . [to be] free from threats, intimidation, and harassment, and harm," with former President Trump's asserted harms to his "ability to engage in protected political

speech" and to campaign. *Id.* at 520-21. The New York Court of Appeals dismissed former President Trump's attempt to appeal from the denial as a matter of right. *Matter of Trump v. Merchan*, 41 N.Y.3d 1013 (2024). He then sought leave, as a matter of discretion, to appeal. (Ex. A, Notice of Mot. for Lv. to Appeal, *Matter of Trump v. Merchan*, No. 2024-521 (N.Y. Ct. App. July 15, 2024).) That motion is pending.

In May 2024, following a six-week trial, the jury returned a guilty verdict on all thirty-four counts of the indictment.[4]

After the jury verdict, in June 2024, the trial court largely granted former President Trump's motion to terminate the March 2024 order restricting his extra-judicial statements. *See People v. Trump*, No. 71543-23, 2024 WL 3237554, at *3 (N.Y. Sup. Ct. June 25, 2024). Over the Manhattan DA's objection, the court lifted most of the restrictions, including the bar on publicly attacking witnesses and jurors. *Id.* The trial court maintained only the narrow category of restrictions which prohibit former President Trump from publicly attacking the court's or Manhattan DA's staff, their families, and the families of the Manhattan DA and trial judge. *Id.* The court explained that, while sentencing proceedings were ongoing, these individuals "must continue to perform their lawful duties free from threats, intimidation, harassment, and harm." *Id.* Former President Trump challenged the portion of the order continuing this narrow category of restrictions by filing a petition for writ of prohibition against enforcement of that portion. *See* Petition, *Matter of Trump v. Merchan*, No.

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[4] *See* Press Release, *D.A. Bragg Announces 34-Count Felony Trial Conviction of Donald J. Trump* (May 30, 2024).

2024-04013 (N.Y. App. Div. 2024), NYSCEF No. 2. That petition is pending.

Former President Trump is also already challenging the jury verdict. In July 2024, the trial court granted former President Trump leave to file a motion to set aside the verdict based on this Court's decision in *Trump v. United States*, 144 S. Ct. 2312 (2024). (*See* Ex. B, Ltr. from Hon. Juan M. Merchan to Counsel at 1 (July 2, 2024).) The trial court indicated that it would render a decision on that motion on September 6, and adjourned the matter to September 18, "for the imposition of sentence, if such is still necessary, or other proceedings." (Ex. B at 2.)

B. Missouri's Motion for Leave to File an Original Action Against New York

On July 3, 2024, the State of Missouri moved this Court for leave to file a Bill of Complaint against the State of New York. Although Missouri attempts to invoke this Court's original and exclusive jurisdiction under 28 U.S.C. § 1251(a) to resolve disputes among sovereign States, the Complaint challenges the Manhattan DA's criminal prosecution of former President Trump. (Compl. ¶¶ 14, 16-18, 22-23, 40-49.) Missouri alleges that the Manhattan DA brought the prosecution "principally for the purposes of assisting Joseph Biden's campaign"—a purported intent that Missouri attributes to the State of New York.[5] (Compl. ¶ 14.) Missouri challenges the constitutionality of the "timing" of the prosecution and sentencing as purportedly impeding Trump's ability to travel for his campaign. (Compl. ¶¶ 3,

[5] Although New York vigorously disputes the factual allegations in Missouri's Complaint, New York assumes their truth for purposes of opposing the motion for leave to file.

44-45.) And Missouri challenges the few remaining restrictions on Trump's extrajudicial statements as purportedly impeding Trump's ability to speak about the trial and why he should be elected. (Compl. ¶¶ 67, 83.)

Based on these allegations, Missouri seeks to bring three causes of action. *First*, Missouri claims that the now-adjourned sentencing and few remaining restrictions on former President Trump's extrajudicial statements "interfere[] with the presidential election in other States" (Compl., Count I (capitalization omitted)). However, Missouri fails to specify any actual interference with Missouri's administration of its election processes. (*See* Compl. ¶¶ 65-73.) *Second*, Missouri alleges that these aspects of the criminal proceedings violate *Purcell v. Gonzalez*, 549 U.S. 1 (2006) (per curiam) (Compl., Count II), despite acknowledging that the Court has "typically applied *Purcell*" only "in the context of a federal court interfering in election administration" (Compl. ¶ 79). *Third*, Missouri asserts First Amendment violations on behalf of Missourians whose rights of association and ability to "receive information and ideas" are purportedly undermined by former President Trump's ongoing criminal proceedings. (Compl. ¶¶ 62, 81-85.)

Missouri's Complaint asks this Court to issue the extraordinary remedy of declaratory and injunctive relief against the Manhattan DA's ongoing criminal prosecution, specifically, a stay of the (now adjourned) sentencing proceedings and the (mostly terminated) restrictions in the March 2024 order until after the November election. (Compl. at 22 (Prayer for Relief).)

Missouri also moved for preliminary relief staying the potential sentencing and remaining limitations in

the March 2024 order until after the November election (Mot. for Prelim. Inj. or Stay ("PI Mot.") 35), though such preliminary relief would give Missouri essentially all of the relief requested in its Complaint. Missouri sought expedited consideration, and New York proposed a schedule to oppose Missouri's motions. The Court ordered New York to respond to both of Missouri's motions by July 24. Order, *Missouri v. New York*, No. 22O159 (July 12, 2024).

ARGUMENT

I. THE COURT SHOULD DENY MISSOURI'S MOTION FOR LEAVE TO FILE ITS COMPLAINT.

The Court should deny leave to file Missouri's Complaint because the Court lacks jurisdiction over this suit. Missouri fails to present a proper controversy between sovereign States that falls within this Court's original and exclusive jurisdiction under 28 U.S.C. § 1251(a). And Missouri lacks standing under Article III of the U.S. Constitution.

Even if the Court were to have jurisdiction, it should exercise its discretion to deny leave to file the Complaint. Contrary to Missouri's contentions (Br. in Supp. of Lv. Mot. (Lv. Br.) 16-17), the Court's exercise of original jurisdiction over disputes among States is "obligatory only in appropriate cases," *Mississippi v. Louisiana*, 506 U.S. 73, 76 (1992) (quotation marks omitted).[6] In making that assessment, the Court looks

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[6] The Court has repeatedly declined invitations to construe its jurisdiction as mandatory, including in a lawsuit challenging States' administration of the 2020 presidential election. *See* Lv. Br. 34, *Texas v. Pennsylvania*, No. 22O155 (Dec. 7, 2020); *see also* Lv.

(*continues on next page*)

to "the nature of the interest of the complaining state, focusing on the seriousness and dignity of the claim," and whether another forum is available to adjudicate the issues raised. *Id.* at 77 (citation and quotation marks omitted).

Each factor independently warrants denying leave to file Missouri's Complaint. Missouri's suit is based entirely on an ongoing criminal case between the Manhattan DA and former President Trump and does not present an actual controversy between sovereign States. Moreover, former President Trump has already raised, and the New York state courts are already adjudicating, the same issues Missouri seeks to raise. And Missouri's claims are patently meritless because, inter alia, they are barred by *Younger* abstention and the Anti-Injunction Act.

A. Missouri Fails to Present Any Controversy Between Sovereign States and Lacks Standing.

Missouri seeks to bring an original action against New York under 28 U.S.C. § 1251(a), which gives this Court original and exclusive jurisdiction over disputes between sovereign States. (Compl. ¶ 7.) But § 1251(a) applies only where one State has allegedly harmed the sovereign interests of another State. *See Maryland v. Louisiana*, 451 U.S. 725, 735-36 (1981). And like any other federal court litigant, the plaintiff State must demonstrate Article III standing. *See id.* As the Court

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Br. 33-34, *New Hampshire v. Massachusetts*, No. 22O154 (Oct. 19, 2020); Lv. Br. 13 n.1, *Missouri v. California*, No. 22O148 (Dec. 4, 2017). Missouri offers no special justification to depart from the Court's longstanding approach. *See Kisor v. Wilkie*, 588 U.S. 558, 587 (2019).

has explained, "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." *Massachusetts v. Missouri*, 308 U.S. 1, 15 (1939).

Here, Missouri's Complaint fails to satisfy these basic requirements: Missouri has not experienced any concrete sovereign injury at all, let alone one that satisfies Article III standing, and New York as a sovereign entity has not taken the actions that are the subject of this Complaint.

1. Missouri has not demonstrated any concrete and particularized harm to its sovereign interests.

Missouri fails to establish any harm to its sovereign or quasi-sovereign interests that could warrant the exercise of this Court's original jurisdiction or establish Article III standing. A "State is not permitted to enter a controversy as a nominal party in order to forward the claims of individual citizens." *Maryland*, 451 U.S. at 737; *see Oklahoma ex rel. Johnson v. Cook*, 304 U.S. 387, 396 (1938) (denying leave to file complaint on this basis); *New Hampshire v. Louisiana*, 108 U.S. 76, 91 (1883) (same). And no plaintiff has standing to assert the rights of others unless the plaintiff has a "close relationship with the person who possesses the right" and can demonstrate the existence of "a hindrance to the possessor's ability to protect his own interests." *Kowalski v. Tesmer*, 543 U.S. 125, 130 (2004) (quotation marks omitted).

Here, although the Complaint nominally asserts claims on behalf of Missouri, the suit clearly and

impermissibly seeks to further the claims of an individual—former President Trump. Indeed, most of Missouri's allegations concern the events underlying the criminal proceeding against him. (*See* Compl ¶¶ 14-31, 40-53.) Missouri's claims are premised on the same arguments that former President Trump is already making in state court. See *infra* at 23-24. And Missouri requests declaratory and injunctive relief against his ongoing prosecution. (*See* Compl. at 22.) The Court should not allow Missouri to improperly pursue the claims and interests of former President Trump, who is plainly able to assert his own interests.

There is no merit to Missouri's attempts to identify a cognizable sovereign injury distinct from the individual interests of former President Trump. *First*, Missouri contends that the Manhattan DA's ongoing criminal prosecution undermines the State's interest in the integrity of the upcoming presidential election. *See* Lv. Br. 3. But this conclusory assertion is unsupported by any factual allegations of actual interference with any election process in Missouri—for example, the selection of electors or the casting or counting of ballots. Missouri instead complains that the ongoing criminal proceedings limit *former President Trump's* ability to campaign. *See id.* This "general legal, moral, ideological or policy objection" to his prosecution is precisely the kind of generalized grievance that "Article III standing screens out." *See Food & Drug Admin. v. Alliance for Hippocratic Med.*, 602 U.S. 367, 381 (2024). Indeed, the Complaint asserts that the purported harms from the prosecution affect "millions" of individuals and other States. (*See, e.g.*, Compl. ¶ 60 ("millions of citizens have the same interest in hearing campaign speech"); Compl. at 15 (asserting irreparable harm "to Missouri and other States").) Missouri lacks standing to raise a grievance

purportedly shared by "a large number of citizens in a substantially equal measure," *Duke Power Co. v. Carolina Env't Study Grp., Inc.*, 438 U.S. 59, 80 (1978).

Second, Missouri asserts that it is directly harmed by the adjourned sentencing and remaining restrictions on former President Trump's extrajudicial statements because Missouri's electors, who Missouri contends are state officers, are purportedly unable "to receive all information relevant to their decision to choose for whom to vote." Lv. Br. 3. But the three individuals to whom Missouri points are *not* Missouri's electors and thus are *not* state officers because, as Missouri acknowledges, no electors have been designated yet. *Id.* at 4.

In any event, the purported injury to these hypothetical future electors and to any Missouri voters is far too abstract and speculative to constitute a concrete sovereign injury that warrants exercise of this Court's original jurisdiction or that establishes Missouri's standing. *See New York v. New Jersey*, 256 U.S. 296, 309 (1921) ("threatened invasion of rights must be of serious magnitude" and "be established by clear and convincing evidence"); *see also Alliance*, 602 U.S. at 381. Missouri's theory of informational harm stemming from the (now-adjourned) sentencing, for example, turns on a chain of speculative inferences, including the assumption that: sentencing will proceed in September; former President Trump will receive a sentence that restricts his travel; this sentence will not be stayed pending appeal; as a result, he will be unable to travel to Missouri when he otherwise might have; and, in turn, Missouri's electors or voters will not be able to receive information from him personally from within Missouri. Such a "highly attenuated chain of possibilities" is clearly insufficient to establish actual or imminent sovereign injury. *See*

Clapper v. Amnesty Int'l USA, 568 U.S. 398, 410 (2013); *see also New York*, 256 U.S. at 309.

Missouri also fails to establish any concrete harm stemming from the remaining category of restrictions on extrajudicial statements. The declarations Missouri provided reflect that three potential electors and six voters want to hear "Mr. Trump's perspective on what happened at his trial, how he was treated by the system, and why [they] should still vote for him" as well as his "side of the story about the judge, prosecutor, and witnesses against him." (*See* A-1, A-3, A-5, A-7, A-9, A-11; *see also* A-17, A-19, A-21.) But he is already able to speak on all of these topics.

Indeed, former President Trump was never prohibited from speaking about the court, trial judge, or Manhattan DA—a right he repeatedly has exercised.[7] And after trial, the court *lifted* the restrictions barring him from attacking jurors and witnesses. Thus, all that remains is a limited prohibition against publicly commenting on the DA's or court's staff, their families, and the families of the DA and trial judge, *if* those statements are intended to materially interfere with the case. *See People v. Trump*, 2024 WL 3237554, at *3. None of the potential electors or voters have identified any specific information they seek to hear from former President Trump that falls in this limited category, let alone attested that hearing this particular information is essential to facilitate their right to vote. Missouri's generalized contention that potential electors or voters are listening to campaign speech now (Lv. Br. 4) thus falls far short of showing any information or voting

[7] *See, e.g.*, Donald J. Trump (@realDonaldTrump), *Truth Social* (May 30, 2024, 1:03 p.m.) (commenting on Manhattan DA); *id.* (May 30, 2024, 3:56 p.m.) (commenting on trial judge).

injury that is "real and not abstract."[8] *See Alliance*, 602 U.S. at 381; *see also Murthy v. Missouri*, 144 S. Ct. 1972, 1996 (2024) (finding no particularized informational injury where plaintiffs failed to identify specific topics).

Third, Missouri incorrectly asserts (Lv. Br. 7) that it can sue as *parens patriae* on behalf of the subset of potential electors and voters who purportedly want to hear from former President Trump about the few narrow topics still subject to the March 2024 order. Missouri may not proceed *parens patriae* when it does not seek to further the interests of a substantial portion of its citizenry. *See Alfred L. Snapp & Son, Inc. v. Puerto Rico,* 458 U.S. 592, 607 (1982). Missouri's assertions of informational injury are based on declarations from only ten Missouri residents. (*See* A-1–A-22.) And, at best, the suit seeks to further the interests of a small, discrete subset of Missouri's citizenry: those seeking to see and hear from former President Trump in particular ways and on the particular topics that his ongoing prosecution might potentially interfere with. (*See* Compl. ¶¶ 70, 83.)

In any event, Missouri cannot proceed as *parens patriae* without demonstrating that "its sovereign or quasi-sovereign interests are implicated." *Pennsylvania v. New Jersey*, 426 U.S. 660, 665 (1976). No such interests are at stake here. Indeed, Missouri wholly fails to explain how the potential inability of certain voters to see and hear from former President Trump as

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[8] Missouri misplaces its reliance (Lv. Br. 3) on *Federal Election Commission v. Akins*, 524 U.S. 11 (1998). That case turned on the Court's recognition that plaintiffs suffer an injury in fact when they fail "to obtain information which must be publicly disclosed pursuant to a statute." *Id.* at 21. Missouri identifies no such statutory entitlement—and thus no concrete deprivation—here.

much as they desire implicates any broader interest "in the health and well-being" of Missouri's residents or denies those residents "benefits that . . . flow from participation in the federal system." *See Alfred L. Snapp & Son, Inc.*, 458 U.S. at 608. The vague and speculative nature of Missouri's asserted injury to a subset of its voters stands in stark contrast to the direct and substantial injuries to the general population that this Court holds necessary to support a State's *parens patriae* standing. *Cf., e.g.*, *Pennsylvania v. West Virginia*, 262 U.S. 553, 592 (1923) (threatened withdrawal of natural gas supply); *Georgia v. Tennessee Copper Co.*, 206 U.S. 230, 238 (1907) (discharge of noxious gasses).

2. The State of New York has not taken the actions that allegedly injured Missouri.

An equally fatal flaw in Missouri's proposed original action is that the actions it challenges were taken not by the State of New York but by a local county prosecutor—the Manhattan DA. (*See* Compl. ¶¶ 14, 16-18, 22-23, 32, 40-44, 47-49.) To invoke this Court's original and exclusive jurisdiction, however, "a plaintiff State must first demonstrate that the injury for which it seeks redress was directly caused by the actions of another State." *Pennsylvania*, 426 U.S. at 664.

Contrary to Missouri's unsupported assumptions (Compl. ¶ 14), the alleged intent and actions of the Manhattan DA are not attributable to the State of New York for purposes of this Court's original jurisdiction. To determine whether a putative defendant State is responsible for an individual's or entity's actions, the Court examines whether the actions were authorized or directed by the State or "wholly within [its] control." *Missouri v. Illinois*, 180 U.S. 208, 242 (1901); *see New York*, 256 U.S. at 302. No such circumstances exist here.

In New York, DAs are independently elected by the voters in each county to prosecute criminal cases arising solely out of their respective county. The interests of the sovereign State as a whole are represented in the executive branch by statewide elected officials: principally the New York Attorney General, the Governor, and the Comptroller. Although DAs bring criminal charges in the name of "the People of the State," their local and independent nature is firmly established under New York law. The New York State Constitution, for example, expressly provides that DAs are to be "chosen by the electors" in each county, N.Y. Const. art. XIII, § 13(a), and grants counties significant power "over the nature and functions of [their] local offices," including DAs' offices, *see Matter of Kelley v. McGee*, 57 N.Y.2d 522, 536 (1982); *see also* N.Y. Const. art. IX, §§ 1-2. Additionally, the State's County Law § 700(1), grants DAs "plenary prosecutorial power," but only "in the counties where they are elected." *People v. Romero*, 91 N.Y.2d 750, 754 (1998). The prosecutorial decisions of a local DA are thus *not controlled* by the Governor, Attorney General, or any other state officer. To the contrary, "the essence of a District Attorney's constitutional, statutory and common-law prosecutorial authority is the discretionary power to determine whom, whether and how to prosecute in a criminal matter." *People v. Viviani*, 36 N.Y.3d 564, 577-78 (2021) (quotation and alteration marks omitted).

This separation and independence of local DAs is further settled under New York judicial precedent. New York state courts have repeatedly recognized that the legal positions taken by DAs in criminal proceedings do not give rise to collateral estoppel against the State in civil suits. *See, e.g.*, Decision & Order at 9, *Jones v. State*, Claim No. 133075 (N.Y. Ct. Cl. July 25, 2022),

NYSCEF No. 82, *aff'd*, 222 A.D.3d 406 (N.Y. App. Div. 2023); *Pinchback v. State*, 59 Misc. 3d 368, 377-78 (N.Y. Ct. Cl. 2017). And the New York Court of Appeals—the State's highest court—has held that DAs do not represent the State itself "in any such sense" that would render their actions in criminal proceedings attributable to the State under the theory of respondeat superior. *See Fisher v. State*, 10 N.Y.2d 60, 61 (1961). Thus, Missouri's complaints against the Manhattan DA do not create any genuine inters-State controversy with New York.[9]

This Court's decision in *Spielman Motor Sales Co. v. Dodge*, 295 U.S. 89 (1935), is not to the contrary. There, the Court concluded that New York DAs were "state officers" for purposes of a since-repealed federal statute, which required the convening of a three-judge court to hear a suit to restrain a state officer from enforcing an allegedly unconstitutional state law. *Id.* at 94-95. The suit in *Spielman* followed in the established tradition of using suits against state officers as a vehicle to get around the problem that sovereign immunity would block a suit against the State itself. *See Ex parte Young*, 209 U.S. 123, 159-60 (1908); *see also Spielman*, 295 U.S. at 95 (citing *Ex parte Young*). Accordingly, in *Spielman*, the Court was recognizing both that the DA is *not* the sovereign State itself, and thus can be sued without triggering sovereign immunity, and that there are nonetheless important state interests involved when

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[9] Although the Court might have original (but not exclusive) jurisdiction over a suit by Missouri against the Manhattan DA, *see* 28 U.S.C. § 1251(b)(3), Missouri did not bring such a lawsuit here. And such a suit would suffer from Missouri's lack of standing and the other defects that render this case an inappropriate vehicle for the exercise of this Court's original jurisdiction.

a DA is sued in order to challenge a state statute as unconstitutional. *See* 295 U.S. at 94-95.

Spielman did not address whether the DAs' actions are attributable to the State as a distinct sovereign entity for purposes of this Court's original and exclusive jurisdiction, or for any purpose other than the federal statute at issue. Indeed, the statute in *Spielman* allowed a suit *against the relevant DA*, not a suit against the State itself, and only when the suit alleged that the DA was enforcing an *unconstitutional state statute*, not that specific actions of the DA in a particular case were unconstitutional. And the New York Court of Appeals distinguished *Spielman* in holding that the State is not liable for DAs' actions in criminal proceedings in a subsequent civil suit. *See Fisher*, 10 N.Y.2d at 62.

Indeed, this Court's decision in *Louisiana v. Texas*, 176 U.S. 1 (1900), confirms that there is no direct controversy between sovereign States where a suit challenges the actions of an officer—including one who is indisputably a state officer—that are not endorsed by the State through, for example, a state statute or other affirmative act. In *Louisiana*, the Court held that Louisiana had failed to establish the requisite controversy between States when its complaint against Texas challenged the acts of a Texas health officer in establishing a quarantine as a purported abuse of power, *id.* at 4, without establishing that Texas had "authorized or confirmed the alleged action of her health officer as to make it her own," *id.* at 22. The Court explained that such allegations against a state official do not "commit[] one state to a distinct collision with a sister state" because, to invoke this Court's original and exclusive jurisdiction, "something more must be put forward than that the citizens of one state are injured by the maladministration of the laws of another." *Id.* So too here. Missouri

alleges that the Manhattan DA's prosecution of former President Trump exceeded his proper authority (*see* Compl. ¶¶ 14, 22, 41), but Missouri does not aver any facts that suggest New York "authorized or confirmed" these purportedly ultra vires acts, *see Louisiana*, 176 U.S. at 22. Missouri thus fails to establish that it has "suffered a wrong through the action" of New York. *See Massachusetts*, 308 U.S. at 15.

Missouri's conflation of the Manhattan DA with the State of New York also raises traceability and redressability problems. Missouri appears to ask this Court to restrain the Manhattan DA's actions (*see* Compl. at 22, Prayer ¶ B), but the Manhattan DA is not a party here and his interests are not represented by the State of New York. The New York Attorney General—the state officer tasked with representing the State's legal interests—does not represent the Manhattan DA.

Nor can Missouri avoid this problem by claiming to seek relief against the state court itself. (*See* Compl. at 22, Prayer ¶ B.) This extraordinary request likewise contravenes basic jurisdictional principles. This Court's jurisdiction to review state-court decisions raising federal constitutional or statutory questions extends only to *final* judgments or decrees by a *State's highest court*. *See* 28 U.S.C. § 1257; *see also Cox Broad. Co. v. Cohn*, 420 U.S. 469, 476-77 (1975). Missouri cannot circumvent the ordinary appellate process by filing an original action to raise issues arising from criminal proceedings that have not yet reached a final determination by the New York Court of Appeals—particularly when former President Trump is currently litigating these issues. See *supra* at 5-7.

In any event, whether the actions challenged by Missouri are regarded as taken by the State of New

York, the Manhattan DA, or the state court, Missouri lacks standing because it fails to state any injury that is legally and judicially redressable at all. A litigant must show that a putative "dispute is traditionally thought to be capable of resolution through the judicial process." *United States v. Texas*, 599 U.S. 670, 676 (2023) (quotation marks omitted). The Court examines "precedent, history, or tradition" as a guide for "the types of cases that Article III empowers federal courts to consider." *Id.* at 676-77 (quotation marks omitted).

Missouri fails to adduce "any precedent, history, or tradition of courts" here that permits one State to enjoin an ongoing criminal prosecution in another sovereign's courts. On the contrary, this Court previously held in *Texas* that the plaintiff States lacked standing to challenge the exercise of prosecutorial discretion by the federal government. *See id.* at 677. Although the plaintiff States in *Texas* sought to compel the Executive Branch to prosecute *more* noncitizens, and here, Missouri seeks to restrain a prosecution, the Court's fundamental teaching is the same: "a party lacks a judicially cognizable interest in the prosecution of another." *Id.* (quotation and alteration marks omitted). And as explained *infra* (at 24-26), under *Younger v. Harris*, 401 U.S. 37 (1971), the federal courts have an extensive history and tradition of turning away cases seeking an injunction against ongoing criminal proceedings in state court.

B. The Availability of Another Forum Renders Exercise of Original Jurisdiction over This Case Unnecessary and Inappropriate.

Even where the Court may have original jurisdiction, the Court is reluctant to adjudicate the dispute where, as here, an alternative forum is available to resolve the issues raised. *See, e.g.*, *Arizona v. New Mexico*, 425 U.S. 794, 797 (1976) (pending state-court action raising same issues); *Illinois v. City of Milwaukee*, 406 U.S. 91, 99, 108 (1972) (availability of federal district courts to hear dispute); *Massachusetts*, 308 U.S. at 19-20 (availability of federal or state courts to hear dispute). As the Court has explained, "considerations of convenience, efficiency, and justice" counsel against the exercise of the Court's original jurisdiction "where there is no want of another suitable forum." *Massachusetts*, 308 U.S. at 19 (quotation marks omitted).

An alternative forum is plainly available here because former President Trump is *currently challenging* both the jury verdict and the remaining restrictions on his extrajudicial statements in New York state courts. Missouri errs (Lv. Br. 15-16) in arguing that these state court proceedings are inadequate because Missouri is not a party. The proper inquiry is whether there is "an alternative forum in which *the issue tendered* can be resolved," not whether a plaintiff State can sue elsewhere.[10] *Mississippi*, 506 U.S. at 77 (emphasis added). For example, in *Arizona v. New*

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[10] Missouri also fails to explain why it cannot sue the Manhattan DA—the party bringing the prosecution—in federal district court. Although that suit would suffer from the same standing and merits defects as this one, the availability of the federal district courts further counsels against granting Missouri leave to file its Complaint.

Mexico, the Court declined to hear a dispute between the two States over New Mexico's taxation of electricity production because there was a pending state-court action brought by power companies to challenge the tax on the same constitutional theories raised by Arizona's proposed complaint. *See* 425 U.S. at 797.

Here, Missouri's claims all turn on the same constitutional theories that former President Trump is currently advancing in state court and seek to stay the same aspects of the criminal proceedings that he is already challenging. For example, Missouri's purported election interference and First Amendment claims (Compl., Counts I & III) are premised on the assertion that former President Trump has a First Amendment right to speak—and therefore, Missourians have a First Amendment right to hear—certain statements that are prohibited by the few remaining restrictions on his extrajudicial speech. PI Mot. 13, 29. But that First Amendment issue is already squarely presented by former President Trump's pending litigation in the New York appellate courts. *E.g.*, Petition ¶¶ 60-61, *Matter of Trump*, No. 2024-04013 (arguing that remaining restrictions burden "President Trump's *campaign* speech" and violate "free-speech rights of President Trump's audiences").

Missouri's claims about the now adjourned sentencing, including its purported *Purcell* claim (Compl., Count II) fare no better. Former President Trump has already filed a motion to vacate the jury verdict, which, if he succeeds, would obviate his sentencing. Even if the motion is denied, he can appeal his conviction, and his sentence may well be stayed pending appeal. Moreover, Missouri's *Purcell* claim purportedly turns on whether the Manhattan DA unlawfully delayed in bringing former President Trump's prosecution (PI

Mot. 23) and whether the proceedings violated his due process rights (*id.* at 24-28). But former President Trump has already raised these issues in his trial court proceedings. *See, e.g.*, *Trump*, 2024 WL 1624427, at *2-5 (denying motion to dismiss indictment based on alleged pre-indictment delay); *Matter of Trump v. Merchan*, 227 A.D.3d 569, 569-70 (N.Y. App. Div. 2024) (dismissing petition for writ of mandamus to compel trial judge's recusal). And he may advance these theories on appeal, as Missouri acknowledges. *See* PI Mot. 28.

Accordingly, "considerations of convenience, efficiency, and justice" counsel strongly against permitting Missouri to use an original action against New York to duplicate former President Trump's own efforts to challenge various aspects of his criminal prosecution. *See Massachusetts*, 308 U.S. at 19.

C. The Meritless Nature of Missouri's Claims Further Counsels Against Hearing This Case.

To the extent the Court considers the merits of Missouri's lawsuit, its lack of merit likewise weighs decisively in favor of denying leave to file Missouri's Complaint. *Cf. Alabama v. Texas*, 347 U.S. 272, 278 (1954) (Black, J., dissenting). Missouri's suit is barred by *Younger* abstention and the Anti-Injunction Act, 28 U.S.C. § 2283. And the Complaint further fails to state any valid claim.

1. *Younger* abstention bars Missouri's claims.

Younger abstention bars Missouri's claims because Missouri improperly seeks to stay or enjoin the ongoing criminal proceedings brought by the Manhattan DA against former President Trump. Under *Younger*, federal courts must refrain from enjoining pending

criminal proceedings in state court. *See Sprint Commc'ns, Inc. v. Jacobs*, 571 U.S. 69, 72 (2013).[11] The doctrine arises out of the longstanding and fundamental policy against federal interference with criminal prosecutions in state court for violations of state law. *Younger*, 401 U.S. at 46; *see also id.* at 43-46 (tracing history and tradition). This Court observed in *Younger* that exceptions to the mandatory bar are warranted only in extraordinary circumstances, *id.* at 45, 53—for example, when prosecutions are brought in bad faith without "any expectation of securing valid convictions," *id.* at 48 (quotation marks omitted), or when the statute under which a criminal defendant is charged is "flagrantly and patently violative of express constitutional prohibitions," *id.* at 53 (quotation marks omitted).

No such circumstances are present here. Notwithstanding Missouri's bare assertions of bad faith, former President Trump was in fact convicted by a jury of his peers. And Missouri has not argued that the statute under which he was convicted—Penal Law § 175.10—is unconstitutional, let alone flagrantly so. There is, therefore, no basis for this Court's intervention in an ongoing criminal proceeding in state court, especially when former President Trump is presently contesting the validity of the jury verdict and of the narrow remaining restrictions on his extrajudicial statements.

Moreover, although *Younger* abstention is typically invoked in a case where a criminal defendant seeks relief from the ongoing state prosecution, Missouri cannot circumvent the bar by litigating in former President

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[11] *Younger* abstention also bars Missouri's request for declaratory relief (Compl. at 22, Prayer ¶ A), which has the same effect as an impermissible injunction. *See Samuels v. Mackell*, 401 U.S. 66, 72 (1971).

Trump's stead. This Court squarely rejected a similar attempt in *Kowalski*, 543 U.S. 125. There, two attorneys sought to challenge the state court's denial of appellate counsel to indigent criminal defendants after the criminal defendants' own challenge was dismissed based on *Younger*. *See id.* at 128-29. The Court observed that the dismissal was appropriate because the criminal defendants "had ongoing state criminal proceedings and ample avenues to raise their constitutional challenge in those proceedings." *Id.* at 133. And the Court further held that the attorneys lacked third-party standing to bring suit, emphasizing an "unwillingness to allow the *Younger* principle to be thus circumvented." *Id.* Accordingly, *Kowalski* further confirms that Missouri either lacks standing to bring suit, or, if Missouri has standing, its claims are barred by the fundamental principles underlying *Younger*.

2. The Anti-Injunction Act bars Missouri's claims.

The Anti-Injunction Act, 28 U.S.C. § 2283, independently bars Missouri's claims. That statute expressly provides that "[a] court of the United States may not grant an injunction to stay proceedings in a State court except as expressly authorized by Act of Congress, or where necessary in aid of its jurisdiction, or to protect or effectuate its judgments." The Court has "made clear that the statute imposes an absolute ban upon the issuance of a federal injunction against a pending state court proceeding, in the absence of one of the recognized exceptions." *Mitchum v. Foster*, 407 U.S. 225, 228-29 (1972).

Missouri improperly seeks precisely the kind of relief that the Anti-Injunction Act prohibits. The Complaint asks the Court to "[s]tay or enjoin any gag order,

sentencing order, or any other order" in the ongoing criminal proceedings in state court.[12] (Compl. at 22, Prayer ¶ B.) Moreover, none of the enumerated exceptions apply. Missouri identifies no federal statute authorizing the relief it seeks. *See* 28 U.S.C. § 2283. And its requested injunction is plainly not in furtherance of preserving this Court's jurisdiction over an existing dispute or to "protect or effectuate" an existing judgment. *See id.* Accordingly, the Anti-Injunction Act provides a separate and independent reason why Missouri's suit, even if accepted, must be dismissed.

3. In any event, Missouri fails to state any valid claim.

Missouri's claims also fail on the merits. Missouri identifies no statutory or constitutional violation in support of its purported election interference claim. (*See* Compl., Count I; PI Mot. 12-21.) And neither Missouri's Complaint nor the declarations in support of its request for preliminary relief identify any actual election process of Missouri that is purportedly undermined. At best, Missouri appears to assert that former President Trump's prosecution harms its general interest in the integrity of the election. But as explained, the Complaint does not allege—and the voters and potential electors do not attest—that their purported inability to hear a narrow category of extrajudicial statements intended to materially interfere with the criminal prosecution impedes their ability to vote.

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[12] The Anti-Injunction Act likewise bars Missouri's request for declaratory relief because that relief would have the same effect as Missouri's requested injunction. *See American Airlines, Inc. v. Department of Transp.*, 202 F.3d 788, 802 (5th Cir. 2000).

Missouri's alleged *Purcell* claim also lacks merit. *Purcell* does not create any standalone legal claim on which a plaintiff may sue a defendant. Instead, *Purcell* reflects a court-made doctrine that generally counsels federal courts, in adjudicating an actual underlying legal claim, against issuing relief that alters election rules on the eve of an election. *See Republican Nat'l Comm. v. Democratic Nat'l Comm.*, 589 U.S. 423, 424-25 (2020) (per curiam); *Purcell*, 549 U.S. at 4-5. *Purcell* is thus irrelevant here because it does not provide any cognizable legal claim that Missouri can bring against New York. And nothing in Missouri's Complaint remotely suggests that any election statute or rule of Missouri is being altered by the Manhattan DA's criminal prosecution.

Moreover, if *Purcell* had any relevance here, it would further undermine Missouri's claims. Although the Manhattan DA's indictment issued more than a year ago, the order restricting extrajudicial statements issued almost four months ago, and the verdict issued approximately two months ago, Missouri delayed until July 2024 to suddenly invoke an upcoming election (that is four months away) in asking the Court to intervene in the Manhattan DA's ongoing criminal proceeding. It is thus Missouri that improperly asks the federal judiciary to overturn the status quo based on an upcoming election. *See Merrill v. Milligan*, 142 S. Ct. 879, 880-81 (2022) (Kavanaugh, J., concurring in grant of stay applications); *see also Purcell*, 549 U.S. at 4-5.

Finally, Missouri's First Amendment claim also fails. That claim appears premised on Missouri's assertion that its voters have a right to hear a narrow category of extrajudicial statements from former President Trump that remain restricted under the trial court's June 2024 order—specifically, attacks on the court's or

Manhattan DA's staff, their family members, and the DA's and trial judge's family members—and to see Trump in person in Missouri.[13] (*See* Compl. ¶¶ 81-83; PI Mot. 29-31.) But Missouri's First Amendment claim fails because, as explained (*supra* at 12-15), Missouri has not plausibly identified any concrete informational injury.

In any event, Missouri's voters do not have an unfettered right to hear statements that multiple courts have confirmed former President Trump lacks a constitutional right to make. *See Matter of Trump*, 227 A.D.3d at 519 (upholding even broader restrictions that the trial court has since lifted), *appeal dismissed*, 41 N.Y.3d 1013; *see also United States v. Trump*, 88 F.4th 990, 996 (2023) (upholding substantially similar restrictions), *pet. for rehr'g en banc denied*, 2024 WL 250647 (D.C. Cir. 2024). The cases on which Missouri relies (PI Mot. 29) merely confirm that the First Amendment's protections extend to both speakers and listeners. *See, e.g.*, *Virginia State Bd. of Pharmacy v. Virginia Citizens Consumer Council, Inc.*, 425 U.S. 748, 756 (1976). The cases do not suggest that Missouri can wield its voters' putative right to listen as a sword to collaterally attack the state court decisions holding that former President

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[13] Missouri also appears to assert that New York is violating the associational rights of "millions of Missourians" who seek "to elect Trump to the Presidency." PI Mot. 10. But the cases Missouri relies on concern state administration of election procedures. *See, e.g.*, *Gill v. Whitford*, 585 U.S. 48, 81 (2018) (Kagan, J., concurring) (referencing "associational harm of partisan gerrymander"). They do not support Missouri's novel theory that any action—here a criminal prosecution in state court—that purportedly reduces a political candidate's chances of being heard gives rise to a cognizable associational injury.

Trump lacks a First Amendment right to make extrajudicial statements that threaten the integrity of the ongoing criminal proceedings—particularly when former President Trump is actively litigating the constitutionality of the remaining restrictions through the appropriate state court channels.

II. The Court Should Dismiss or Deny Missouri's Motion for Preliminary Relief.

The Court should deny leave to file the Complaint and dismiss the motion for preliminary relief as moot. But even if the Court decides to hear this case, it should deny Missouri's motion for preliminary relief.

A "preliminary injunction is an extraordinary remedy never awarded as of right." *Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7, 24 (2008). A movant must establish that it is likely to succeed on the merits, that it will suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in its favor, and that an injunction is in the public interest. *Id.* at 20. Missouri does not come close to establishing any of these factors here, particularly when it seeks the truly extraordinary relief of enjoining an ongoing criminal prosecution.

A. Missouri Has No Likelihood of Success on the Merits.

Missouri is not entitled to preliminary relief. For the reasons explained above, Missouri cannot make the requisite "clear showing" that it is likely to establish standing. *See Murthy*, 144 S. Ct. at 1986. And its claims lack merit.

B. The Equities Weigh Decisively Against Preliminary Relief.

The equities independently foreclose Missouri's request for preliminary relief. Missouri fails to establish that it "is likely to suffer irreparable harm." *Winter*, 555 U.S. at 20. Where, as here, a party is seeking to interfere with a criminal prosecution in state court, irreparable injury is alone "insufficient unless it is 'both great and immediate.'" *Younger*, 401 U.S. at 46 (citation omitted). Missouri has not alleged any cognizable injury here, and its asserted harms clearly do not meet this heightened standard of irreparable harm.

As an initial matter, Missouri's claimed injuries arising from former President Trump's potential sentencing are plainly not imminent. The sentencing has been adjourned to September 18, at the earliest. (Ex. B at 2.) A sentence may not be imposed at all if the trial court grants former President Trump's motion to set aside the jury verdict. And any sentence imposed may likely be stayed pending appeal. There is, accordingly, no present or immediate restriction on former President Trump's ability to travel to, or hold campaign rallies in, Missouri.

Missouri also fails to show irreparable harm from the June 2024 order that mostly *lifted* the restrictions on former President Trump's extrajudicial statements. Although the narrow restrictions that remain have been in place since April 1, 2024, *see Trump*, 2024 WL 1747946, at *3, Missouri waited until July 3 to file its Complaint. Missouri's unexplained and unwarranted delay fatally undermines its present assertion of irreparable harm. *See Benisek v. Lamone*, 585 U.S. 155, 159 (2018) ("a party requesting a preliminary injunction must generally show reasonable diligence"); *see also*

Brown v. Gilmore, 533 U.S. 1301, 1304-05 (2001) (Rehnquist, C.J., in chambers) (failure to pursue immediate relief is inconsistent with urgency asserted).

Moreover, Missouri's assertion of irreparable "informational injury" is belied by its potential electors' and voters' own attestations. As explained, former President Trump is already able to speak on all of the topics that they attest they want to hear. And none of the potential electors or voters have attested that they desire to hear any statements that are actually barred by the remaining restrictions—for example, attacks on the DA's staff and the trial judge's family members—statements that only Missouri itself asserts are fundamental to informing their vote (*see* PI Mot. 11). In any event, potential electors and voters can readily access the views of those opposing former President Trump's prosecution—including Missouri's—on these topics as well as public reporting about his own views. (*See, e.g.*, Compl. ¶ 19 (allegations about trial judge's daughter); *id.* ¶¶ 30, 47 (allegations about staff prosecutor).[14]) There is thus no substantial and irreparable informational injury warranting immediate relief.

The balance of equities and public interest further counsel against granting preliminary relief. *See Winter*, 555 U.S. at 20. In contrast to the speculative nature of Missouri's asserted harms, the harms of a preliminary injunction to New York and to the public interest are grave. Missouri seeks to invoke this Court's equitable powers to stop an ongoing criminal prosecution under

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[14] *See also* Michael R. Sisak, *Donald Trump Assails Judge and His Daughter After Gag Order in New York Hush-Money Criminal Case*, Associated Press (Mar. 27, 2024); *Trump Speaks After Court and Attacks Prosecutor*, Associated Press (May 21, 2024).

New York law that the defendant himself is currently challenging and can further challenge on appeal. Such interference violates the Anti-Injunction Act and strikes at the heart of federalism and the comity between federal and state courts that is "essential to the federal design," *Kowalski*, 543 U.S. at 133. Indeed, Missouri itself has called on this Court to respect each State's sovereignty over "the general police power" within its borders. *See* Br. of Missouri and Fourteen Other States as Amici Curiae in Supp. of Resp. 4 (Oct. 20, 2023), *McElrath v. Georgia*, 601 U.S. 87 (2024) (No. 22-721). Allowing Missouri to invoke this Court's jurisdiction to interfere with the enforcement of criminal law in New York is contrary to these foundational principles and undermines New York's proud tradition of preserving the independence of local DAs. And the preliminary relief that Missouri seeks is further improper because it affords Missouri essentially all of the relief requested in the Complaint.

Missouri's requested relief also seriously undermines the integrity of the courts and risks setting a dangerous precedent that encourages a flood of similar, unmeritorious litigation. Accepting Missouri's limitless theory of standing threatens to inundate the courts with a wave of generalized grievances that Article III was intended to screen out. Indeed, under Missouri's boundless view of standing, any State or person could sue to enjoin any criminal sentencing or order restricting extrajudicial statements by asserting an interest in hearing from, or associating with, the criminal defendant. The public interest in preserving the "Judiciary's proper—and properly limited—role in our constitutional system," *Texas*, 599 U.S. at 675-76, weighs decisively against the grant of preliminary relief.

CONCLUSION

The Court should deny Missouri's motion for leave to file a bill of complaint and dismiss or deny its motion for a preliminary injunction.

Respectfully submitted,

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July 2024

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EXHIBIT A

Notice of Mot. for Lv. to Appeal,
Matter of Trump v. Merchan, No. 2024-521
(N.Y. Ct. App. July 15, 2024)

STATE OF NEW YORK
COURT OF APPEALS

In the Matter of the Application of:

DONALD J. TRUMP,

Petitioner,

For a Judgment Under Article 78 of the CPLR

-against-

THE HONORABLE JUAN M. MERCHAN, A.J.S.C., ET AL.,

Respondents.

Index No. 71543-23

AD1 Case No. 2024-02369

NOTICE OF MOTION

PLEASE TAKE NOTICE that, upon the Affirmation of Todd Blanche, dated July 12, 2024, and accompanying Memorandum of Law, dated July 12, 2024, President Donald J. Trump, as Defendant-Movant herein, will move this Court, at a Motion Part at the Courthouse located at 20 Eagle Street, Albany, NY 12207, on the 29th day of July, 2024, at 9:30 a.m., or as soon thereafter as counsel can be heard following Defendant-Movant's reply, for an order: (a) granting leave to appeal to this Court, pursuant to CPLR § 5602(a), from the Decision and Order of the Appellate Division, First Judicial Department, dated May 14, 2024, which denied and dismissed President Trump's

Article 78 Petition challenging Supreme Court's order entered on March 26, 2024, and amended and expanded on April 1, 2024; (b) reversing the First Department's Decision and vacating the Order; and (c) granting such other and further relief as this Court deems just and proper.

Dated: July 15, 2024
New York, New York

By:____________________

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To: Clerk of the Court

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Hon. Juan M. Merchan
Acting Justice - Supreme Court, Criminal Term
100 Centre Street
New York, NY 10013
646-386-3934
JMerchan@nycourts.gov

EXHIBIT B

Letter from Hon. Juan M. Merchan to Counsel,
People v. Trump, Ind. No. 71543-2023
(N.Y. Sup. Ct. July 2, 2024)

Supreme Court
of the
State of New York

[SEAL]

CHAMBERS
100 CENTRE STREET
NEW YORK, N.Y. 10013

JUAN M. MERCHAN
JUDGE OF THE COURT OF CLAIMS
SUPREME COURT, CRIMINAL TERM
FIRST JUDICIAL DISTRICT

Via Email

July 2, 2024

Emil Bove, Esq.
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New York, NY 10005

ADA Joshua Steinglass
New York County District Attorney's Office
One Hogan Place
New York, NY 10013

Re: *People v. Trump*, Ind. No. 71543-2023

Dear Counsel:

I write to you in response to your recent communications. I refer specifically to the People's e-mail of July 1,

2024, requesting permission to delay filing of the sentencing recommendation pending further guidance from this Court; Mr. Bove's pre-motion letter of July 1, 2024, seeking leave to file a motion to set aside the jury's verdict, pursuant to CPL § 330.30(1) based on the Supreme Court's decision in *People v. Trump*, 2024 WL 3237603, and requesting until July 10, 2024, to submit a memorandum of law in support of the motion; and the People's letter dated July 2, 2024, requesting a deadline of July 24, 2024, to file and serve a response to Defendant's CPL § 330.30 motion.

The People's request regarding the sentencing recommendation was granted yesterday. Defendant's request to file a CPL § 330.30 motion by July 10, 2024, is granted. The People's request for a deadline of July 24, 2024, to file a response to the motion is also granted.

The July 11, 2024, sentencing date is therefore vacated. The Court's decision will be tendered off-calendar on September 6, 2024 and the matter is adjourned to September 18, 2024, at 10:00 AM for the imposition of sentence, if such is still necessary, or other proceedings.

Very truly yours,
Juan M. Merchan
Judge Court of Claims
Acting Justice Supreme Court

HON. J. MERCHAN
JUL 02 2024

cc: Counsel of record
Assistant District Attorneys of record
Court file