No. 24A262

IN THE

Supreme Court of the United States

NEVADA GREEN PARTY, a Nevada Political Party Committee,
Applicant,

v.

FRANCISCO V. AGUILAR, in his Official Capacity as Nevada Secretary of State, and NEVADA STATE DEMOCRATIC PARTY,
Respondents.

RESPONDENT NEVADA STATE DEMOCRATIC PARTY'S OPPOSITION TO EMERGENCY APPLICATION TO VACATE

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INTRODUCTION

Applicant Nevada Green Party seeks extraordinary—indeed, seemingly unprecedented—relief so that it can be excused from its undisputed failure to comply with the clear, longstanding requirements of Nevada's ballot access laws. Those laws require petition circulator affidavits to include attestations that the circulators believe each signatory is a registered voter in the county of his or her residence. Applicant entirely failed to satisfy that requirement. Instead, Applicant's circulators attested (falsely) to circulating a nonexistent ballot initiative or referendum petition. At issue is not a mere technical violation for the use of the wrong form. As the Nevada Supreme Court explained, the required affirmation serves the State's important interests in preventing fraud, assuring compliance with Nevada requirements regarding the numbers of signatures in each congressional district, and protecting the fairness and integrity of the political process.

Applicant principally contends that due process excuses the deficiency in its petitions because a civil servant in the Secretary of State's office mistakenly emailed it a sample form with the affidavit for ballot initiative petitions instead of the one used for candidate petitions. The Nevada Supreme Court properly rejected this argument for several reasons, including on the grounds that the mistake was inadvertent, that the attestation requirement is plain on the face of the law, that Applicant was clearly aware of the legal requirement, and that Applicant should have discovered the error based upon even a "cursory review" of the form.

There is no procedural or substantive basis for disturbing the Nevada Supreme Court's decision and disrupting the ongoing printing of ballots just days before they

are to be sent out. Applicant identifies no procedural basis for the extraordinary relief it seeks: an "emergency" "vacatur" of a state-court injunction and declaratory judgment. Such relief would be tantamount to summary reversal on the merits, which cannot be granted on an application to an individual Justice, exceeds the authority of the All Writs Act, and is beyond the Court's jurisdiction because there has been no state-court appeal of the Nevada district court's declaratory judgment. *See* Section I, *infra*.

Even if the Court were to overlook these procedural defects and treat the application similarly to a request for an emergency injunction, the Application would still fail. The Court is not likely to grant certiorari. Applicant does not point to any conflict with the decisions of this Court or any other court. This case is a poor vehicle for addressing any purported constitutional issue because it presents a highly unusual factual scenario that is unlikely to recur, and Applicant's primary constitutional argument is forfeited. Applicant disregards the Court's proper role and at most seeks fact-bound error correction. *See* Section II, *infra*.

Applicant also cannot show that it is indisputably entitled to relief on the merits, as is required if the Court were to treat the Application as a request for an affirmative injunction. Applicant's due process theory—raised for the first time before this Court—seeks to break new ground by extending two criminal cases to the ballot access context. But those cases turned on ambiguous legal requirements, active misleading by the government, and/or criminal-law concerns about fair warning and entrapment. Here, the Nevada statute is clear; the government mistake

was inadvertent; and Applicant could easily have complied with the relevant attestation requirement with even minimal review of the law or the form used by its circulators. Extending these criminal-law precedents to this novel context would run headlong into the well-settled principle that the government cannot be estopped from enforcing its laws. A civil servant's mistake does not give rise to a due process right to be excused from the strictures of a clear law. *See* Section III.A, *infra*.

Applicant's equal protection claim also fails because, as the Nevada Supreme Court explained, proponents of petitions for candidates are not similarly situated to proponents of petitions for ballot initiatives and referenda. *See* Section III.B, *infra*.

Finally, granting the Application would harm the public interest by disrupting the electoral process. Ballots are already being printed and are scheduled to be distributed in a matter of days. *See* Application at 4 (requesting relief "before more ballots are printed"). There is no "powerful reason" for disrupting this process, *Purcell v. Gonzalez*, 549 U.S. 1, 5–6 (2006) (per curiam), especially given that Applicant did not file this Application until a full week after the Nevada courts' orders were issued. *See* Section IV, *infra*. To the contrary, there is powerful reason for the Court to adhere to the principles that traditionally guide its review.

The Application should be denied.

STATEMENT

A. Factual Background

Applicant is a certified minor political party in Nevada that attempted to place its candidates for President and Vice President on the 2024 general election ballot. This is the eighth presidential cycle in which Applicant has sought access to the Nevada ballot.[1]

Nevada law prescribes three methods by which a minor party may qualify for ballot access. Nev. Rev. Stat. § 293.1715(2). As relevant here, a minor party may qualify for the ballot by gathering a minimum number of valid signatures "from voters in each congressional district." App. 24a (citing Nev. Rev. Stat. § 293.1715).[2]

A minor party's ballot-access petition must include affidavits from those who circulate its petitions for signatures attesting to six statements. One of those statements is that the circulator believes that "each person who signed was at the time of signing a registered voter in the county of his or her residence." App. 71a; Nev. Admin. Code § 293.182(2)(b).

This attestation requirement has not changed since it was adopted in 2000, aside from the addition of "or her" in 2011. *Compare* Nev. Admin. Code § 293.182,

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[1] *See, e.g.*, *Ballot Status History: Green Party of Nevada*, Green Party of the United States Elections Database, https://perma.cc/GF5M-XR78.

[2] To qualify via petition, minor parties must gather signatures of registered voters totaling at least 1 percent of the number of Nevada voters who voted in the prior general election, equally apportioned among the State's congressional districts, Nev. Rev. Stat. § 293.1715(2)(c), while major parties must gather signatures totaling at least 10 percent of that number, *id.* § 293.128(1)(b).

with id. (2000), *and id.* (2011). Applicant has sought ballot access under these rules in each of the last three general-election cycles.[3]

In July 2023, Applicant sent its proposed ballot-access petition papers, including the petition circulator's affidavit, to the Secretary of State's office for approval. App. 3a, 86a, 87a; *see* Nev. Rev. Stat. § 293.1715(4). A civil servant in the Secretary's office replied within minutes, confirming receipt, advising Applicant that it "may now begin collecting signatures," and directing Applicant to the Secretary of State's Minor Party Qualification Guide (the "Guide"). Supp. App. 4sa.

The Guide cites and reproduces the relevant provision of the Nevada Administrative Code, Nev. Admin. Code § 293.182, which includes the correct form of the ballot-access signature affidavit with the required attestations, App. 53a, 57a, 71a. The Guide's preface advises interested citizens to consult the underlying laws and cautions, in boldface type, that the Guide is for "general information only" and "does not have the force and effect of Nevada law, regulation, or rule." App. 47a.

Unfortunately, the Guide also contains an erroneous "Sample of Minor Political Party Ballot Access Petition" that is accompanied by a sample circulator's

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[3] *See* Howie Hawkins for Our Future, *NV Ballot Access*, https://perma.cc/2L37-P75M (Applicant's 2020 ballot-access petition was "declined" for failure to obtain enough valid signatures); *Nev. Green Party v. Cegavske*, No. 2:16-cv-01951-JAD-CWH, 2016 WL 4582050, at *2, *4 (D. Nev. Sept. 1, 2016) (same in 2016, because Applicant "was not diligent in its signature-gathering effort"). Applicant appears to have also unsuccessfully petitioned in 2012, when it was ineligible to qualify via the other methods prescribed by Nev. Rev. Stat. § 293.1715 (a),(b). *See* Jill Stein for President, *Our Ballot Access Priorities* (Aug. 16, 2012), https://web.archive.org/web/20120912103802/http://www.jillstein.org/ballot (Applicant sought ballot access in 2012); *Ballot Status History: Green Party of Nevada*, *supra* (Applicant "failed to gain statewide ballot status" heading into the 2012 election).

affidavit in the form prescribed not for minor party ballot access, but for ballot initiatives or referenda. App. 57a, 59a. Unlike the ballot-access affidavit, the referendum affidavit does not require circulators to attest to their belief that the signatories are registered to vote in their county of residence. *Compare* Nev. Admin. Code § 293.182(2)(b), *with id.* § 295.020(2). Instead, it requires circulators to attest that each signatory "had an opportunity before signing to read the full text of the act or resolution on which the initiative or referendum is demanded." Nev. Admin. Code § 295.020(2).

Applicant's email to the Secretary of State's office containing the proposed petition included a ballot-access affidavit with the correct attestations, but the papers omitted a line for identifying the petition district in which the signatures were collected. App. 78a–79a. Shortly after sending the acknowledgement email with the link to the Guide, the civil servant replied again, flagging the omission of a line for the petition district: "It appears the petition documents you may have are an older version. They do not have the petition district on them. Please use the documents attached to begin collecting signatures. If you have questions, please contact me." App. 74a. Unfortunately, the attachments included the same affidavit form as the Guide's sample, *i.e.*, for ballot referenda rather than for minor party access. *See* App. 4a, 59a, 82a.

Over the next ten months, Applicant collected and submitted 29,584 signatures, each of which was accompanied by the wrong affidavit. App. 4a, 18a–19a. Accordingly, every Nevada Green Party petition circulator attested, under penalty of

perjury, that signatories had an opportunity to review "the act or resolution on which the initiative or referendum is demanded." App. 4a. And no circulator affidavit included the required attestation to a belief that the signatories were registered to vote in their county of residence. *See* App. 4a.

County officials reviewed the signatures, using random sampling for counties receiving more than 500 signatures. App. 5a; Nev. Rev. Stat. § 293.1277(2). Under Nevada law, this process did not involve verification of whether any of the signatories were registered to vote in the county of their residence. App. 23a–24a. Nor does the law direct county officials to inspect the validity of the circulators' affidavits. The law merely requires county clerks to tally those signatures that are from registered voters, that are in the petition district, and that are signed in ink, and to verify discrepancies with signatures and addresses in the voter rolls. Nev. Rev. Stat. §§ 293.1277(1),(5), 293.12758(4); Nev. Admin. Code § 293.185(1).[4]

Based on the county officials' signature tallies, from samples taken of the petitions submitted, the Secretary of State's office deemed Applicant's petition for ballot access to have qualified on June 12, 2024. App. 111a.[5]

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[4] County clerks' certificates of signature examination contain several rationales for excluding a signature, none of which specifically pertains to deficient affidavits. *See, e.g.*, App. 92a–93a.

[5] Applicant's candidates for President and Vice President would thus appear on the Nevada ballot alongside other candidates and the option to select "none of these candidates." Nev. Rev. Stat. § 293.269(1).

B. State Court Proceedings

Nevada law sets out procedures governing challenges to ballot-access petitions. Nev. Rev. Stat. § 293.174. In accordance with those procedures, the Nevada State Democratic Party filed suit in Nevada's First Judicial District Court on June 10, 2024, and amended the complaint on July 1. App. 2a. The suit challenged the sufficiency of Applicant's ballot-access petition because, among other things, the circulator affidavits failed to include the required attestations that the circulators believed that the signatories were registered to vote in their counties of residence. Applicant responded that the Nevada State Democratic Party failed to show that Applicant's petition did not substantially comply with the requirements for the circulator affidavits under State law, App. 9a; that the challenge to the circulator affidavits was untimely because it was made only in the amended complaint after the statutory deadline for challenging the petition, App. 6a; and that invalidating its petition would violate Applicant's substantive due process and equal protection rights, Supp. App. 46sa.

The Nevada district court concluded that the amended complaint related back to the original complaint, but nonetheless dismissed the Nevada State Democratic Party's claims on state law grounds. App. 7a. The district court held that the Nevada State Democratic Party had the burden of proof and failed to show that Applicant had not substantially complied with the requirements for the circulator affidavit prescribed by Nevada law. App. 16a. Since the district court deemed Applicant's petition sufficient under State law, it did not reach Applicant's constitutional arguments. App. 16a n.2.

On September 6, the Supreme Court of Nevada reversed. As to Nevada law issues, it held that (i) the amended complaint related back to the original complaint for purposes of complying with the statutory deadline; (ii) the district court improperly reversed the burden of proof, and Applicant was obligated to prove "substantial compliance" with the attestation requirement; and (iii) Applicant failed to substantially comply with the attestation requirement. The court underscored that "the attestation missing from the Green Party's circulator affidavits serves an essential purpose" and is a "legally required element." App. 24a, 22a. Because minor-party petitions "must bear a certain number of signatures from voters in each congressional district" and "[t]he sampling verification of signatures does not confirm whether a person is registered in the county of his or her residence," the attestation "provides an additional verification that is not addressed at all through the county clerk's signature verification process." App. 23a–24a. Indeed, in counties that only verify a random sample of signatures, "the circulator's attestation in the affidavit serves as the only level of fraud prevention for those signatures not included in the random sampling." App. 23a.[6] The Nevada Supreme Court concluded that the Nevada Green Party's alleged reliance on the mistaken form from the Secretary of State's office cannot excuse the failure to comply with Nevada law: "the Green Party

[6] Applicant filed declarations by the CEO of its circulating company and "some of [its] circulators" in an unsuccessful attempt to cure this deficiency. App. 24a. The Nevada Supreme Court held that those declarations "[did] not demonstrate what each employee circulator did when collecting signatures for the Green Party's petition," and thus they "did not demonstrate substantial compliance with the circulator affidavit requirements in practice." App. 24a.

still had a duty to comply with the legal requirements for circulator affidavits, and it did not do so." App. 25a.

Next, the Nevada Supreme Court rejected Applicant's contention that denying it ballot access here would "shock[] the conscience" and therefore violate "substantive due process." App. 27a. The court concluded that the transmittal of the wrong form was "inadvertent[]" and an "unfortunate mistake." App. 26a. The court observed, however, that "the Green Party was clearly aware of the legal requirements for the affidavit considering it had used the correct affidavit in its original petition," and that the Secretary's office had also transmitted the Guide, which included citations to the relevant laws and guidance concerning the proper affidavit. App. 26a, 27a. Thus, the relevant laws were "readily available" to the Nevada Green Party, and "cursory review" would have revealed the mistake. App. 26a. In this factual scenario, the court concluded that there was a mutual "unfortunate oversight" by both Applicant and the Secretary's office, and the government's conduct did not shock the conscience and constitute a substantive due process violation. App. 27a.

The court also rejected Applicant's equal protection claim, which "focuses on differences between the requirements for circulator affidavits that apply to minor party ballot access petitions and those that apply to initiative and referendum petitions." App. 27a. The court concluded that, because minor party petitions and ballot access petitions "implicate different interests and legal requirements," "minor parties seeking ballot access and proponents of initiative or referendum petitions" are not similarly situated. App. 27a.

Two justices of the Nevada Supreme Court concurred in part and dissented in part. While these justices agreed that Applicant had the burden of proving substantial compliance, they would have held that Applicant substantially complied with the law. App. 30a–32a. The dissenting justices also would have held that invalidation of the petition violated Applicant's substantive due process rights. App. 33a–35a.

The Nevada Supreme Court remanded the case "for the district court to enter an order granting injunctive relief" enjoining the Secretary of State from placing Applicant's candidates for President and Vice President on the general-election ballot. App. 126a. The Nevada Supreme Court directed the clerk to issue the remittitur immediately because of the deadline to print ballots. App. 29a.

Later on September 6, the district court complied with the Nevada Supreme Court's mandate by enjoining the Secretary of State from placing the Green Party's candidates on the general election ballot. App. 37a. The district court's order also granted the other form of relief the Nevada Democratic Party had requested: declaring that the Green Party's ballot-access petition is invalid under Nevada law. App. 36a. Applicant did not appeal that declaratory judgment entered on September 6.

On September 13, one week after permanent relief was entered and just five business days before local officials were required to begin transmitting ballots to overseas military personnel, Applicant filed the instant emergency application to vacate. *See* Nev. Rev. Stat. § 293D.320(1); 52 U.S.C. § 20302(a)(8)(A).

ARGUMENT

Applicant does not cite or address the appropriate standard for the extraordinary relief it seeks, nor does Applicant acknowledge the heavy burden it bears. Applicant fails to satisfy any of the requirements for its emergency application.

The Application seeks the unprecedented "emergency relief" of "vacatur" of the Nevada district court's final declaratory judgment and injunction. Application 1–2. This relief cannot be ordered by a single Justice and is unavailable under the All Writs Act in any event.

Even if the Court were to overlook these defects and construe the Application as a request for an affirmative injunction (which it should not), such a request would still fail. For such relief, Applicant would need to show (a) a "reasonable probability" that certiorari will be granted, *Maryland v. King*, 567 U.S. 1301, 1302 (2012) (Roberts, C.J., in chambers); and (b) that "the legal rights at issue are 'indisputably clear.'" *Wisc. Right to Life, Inc. v. Fed. Election Comm'n*, 542 U.S. 1305, 1306 (2004) (Rehnquist, C.J., in chambers) (citation omitted). Applicant cannot meet these high burdens. Finally, Applicant's unjustified delay in seeking emergency relief from this Court is an independent reason to deny relief that would interfere with the orderly printing of ballots and preparations for the upcoming election.

I. Applicant's Emergency Request for Vacatur Is Procedurally Improper.

Applicant seeks "vacatur" of the Nevada courts' issuance of declaratory and injunctive relief "pending . . . further proceedings in this Court." Application 1. But

"vacatur" of a state court's judgment is not available on an application to an individual Justice, and it is not available under the All Writs Act. The Application should be rejected on this ground alone.

A. An individual Justice may not vacate a final judgment.

Under this Court's Rule 22, an individual Justice may grant only interim relief, such as a stay or injunction pending appeal, rather than the vacatur of a final judgment that Applicant seeks. This is not the first time a dissatisfied litigant has improperly asked a single Justice to summarily reverse a decision of the Supreme Court of Nevada about the constitutionality of the State's ballot. As then-Justice Rehnquist explained, "[i]t scarcely requires reference to authority to conclude that a single Circuit Justice has no authority to 'summarily reverse' a judgment of the highest court of a State; a single Justice has authority only to grant interim relief in order to preserve the jurisdiction of the full Court to consider an applicant's claim on the merits." *Kimble v. Swackhamer*, 439 U.S. 1385, 1385 (1978) (Rehnquist, J., in chambers); *see also, e.g.*, *Blodgett v. Campbell*, 508 U.S. 1301, 1304 (1993) (O'Connor, J., in chambers) ("Because I do not believe I have the authority to vacate the [lower court's] order unilaterally in my capacity as Circuit Justice, the application is dismissed without prejudice."). Applicant cites no authority supporting the power of an individual Justice to order such relief.

The relief that Applicant requests—"vacatur of the Nevada Supreme Court's ruling . . . [and] the state district court's order," Application 1—is not interim relief that would have the effect of preserving the jurisdiction of the full Court. A "vacatur" of the Nevada Supreme Court's judgment would leave nothing left for the full Court

to review on the merits. The facial impropriety of the request for relief alone compels denial of the Application.

B. The All Writs Act does not allow vacatur of the Nevada district court's final judgment.

Applicant invokes the All Writs Act, 28 U.S.C. § 1651(a), to request vacatur of the Nevada district court's final judgment declaring the Green Party's ballot-access petition invalid and enjoining the Nevada Secretary of State from placing the Green Party on the ballot. Application 4; *see* App. 36a–37a. The All Writs Act does not authorize the relief sought here.

First, a writ may issue under the All Writs Act only where it is "necessary or appropriate in aid of [the Court's] jurisdiction[]." 28 U.S.C. § 1651(a). But the requested relief of "vacatur" will leave nothing more for the Court to decide, and thus will not be "in aid of" this Court's jurisdiction. "[A] petitioner cannot use that Act to circumvent statutory requirements or otherwise binding procedural rules." *Shoop v. Twyford*, 596 U.S. 811, 820 (2022). Vacating the orders' "exclusion of the Green Party from ballots" while those ballots are printed for imminent distribution to voters is not a mere "pause," Application 4, but complete, irreversible relief. Applicant's request for supposedly temporary relief is thus a forbidden end-run around the Court's process for certiorari review. Because the emergency relief sought "would be tantamount to a decision on the merits in favor of the applicants," it "seems clear that [emergency relief] should not be granted." *Nat'l Socialist Party of Am. v. Vill. of Skokie*, 434 U.S. 1327, 1328 (1977) (Stevens, J., in chambers).

Second, this Court lacks jurisdiction to review the district court's declaratory judgment. Under 28 U.S.C. § 1257(a), the Court may issue a writ of certiorari only to review "[f]inal judgments or decrees rendered by the highest court of a State in which a decision could be had." Applicant contends that "[t]he state district court is bound by the state supreme court," Application 1, which is true—but the Nevada Supreme Court did not direct the district court to issue a declaratory judgment. *See* App. 126a (remanding with instructions to "enter an order granting injunctive relief"). To give rise to jurisdiction in this Court, Applicant was thus required to appeal the district court's issuance of relief beyond the scope of the Nevada Supreme Court's mandate. *See Gorman v. Washington Univ.*, 316 U.S. 98, 100–01 (1942) ("[N]o decision of a state court should be brought here for review either by appeal or certiorari until the possibilities afforded by state procedure for its review by all state tribunals have been exhausted."). Applicant failed to do so, depriving this Court of jurisdiction to review the judgment or grant emergency relief pending review.

Third, Applicant identifies no writ that could provide the relief of vacating a state court's declaratory judgment. *Cf. United States v. Texas*, 599 U.S. 670, 698 (2023) (Gorsuch, J., concurring) ("[W]hat exactly would a 'form of legal action' seeking vacatur look like anyway? Would it be a creature called a 'writ of vacatur'?"). And Applicant identifies no precedent for this Court to stay a state court's declaratory judgment. Because a stay of only the state court's injunction would not disturb the declaratory judgment, and the Secretary would comply with an undisturbed

declaratory judgment under which Applicant is to be excluded from the ballot, Applicant cannot obtain the relief requested here.

II. The Court Is Unlikely to Grant Certiorari.

Even if the Court were to construe the Application as seeking an emergency injunction, it would still fall far short of the appropriate standards for granting such extraordinary relief.

A "reasonable probability" that certiorari will be granted is required for the issuance of emergency relief. *Maryland*, 567 U.S. at 1302 (Roberts, C.J., in chambers). The Court is unlikely to grant certiorari for a host of reasons. Applicant points to no split in authority over the questions presented. And this case would be a poor vehicle for the Court to address Applicant's asserted "issue of public importance." *See* Application 15. Applicant's request presents little more than its disagreement with the Nevada Supreme Court's determination that the application of Nevada law under these exceedingly unique factual circumstances does not amount to a constitutional violation. This Court does not intervene to "correct [the] injustice" that every unsuccessful litigant sees in their case. *See* Application 16.

It is therefore unlikely that the Court would grant certiorari to review the Nevada Supreme Court's decision. For the same reasons, the Court should reject Applicant's alternative request to grant certiorari.

A. Courts are not split over the issues presented.

Applicant has not raised any split in authority that merits this Court's attention. The Nevada Supreme Court's decision is squarely in line with other due process and equal protection decisions. *See* Sections III.A.ii, B, *infra*. Thus, there is

no "conflict[] with the decision of another state court of last resort or of a United States court of appeals." S. Ct. R. 10(b).

Certiorari is "rarely granted when the asserted error consists of … the misapplication of a properly stated rule of law." S. Ct. R. 10. Here, Applicant's claims are at most fact-bound requests for error correction. Applicant has not shown that the Nevada Supreme Court misstated the law, or that the decision below conflicts with the precedents of any other court. Nor has Applicant identified any open and important federal question that should be settled by this Court. *See* S. Ct. R. 10(c). The traditional considerations governing review on certiorari therefore counsel strongly against granting Applicant's requested relief. *See Packwood v. Sen. Select Comm. on Ethics*, 510 U.S. 1319, 1321 (1994) (Rehnquist, J., in chambers) ("Applicant does not quarrel with the legal standard applied by the District Court, only with its conclusion. Because this claim thus also involves only a factbound determination, I do not think certiorari would be granted to review it").

Applicant argues that it presents issues "of such imperative public importance" that the Court should "deviat[e] from normal appellate practice." Application 15 (quoting S. Ct. R. 11).[7] Specifically, Applicant argues that the Nevada Supreme Court decision introduces a "patchwork" of state election laws, citing *Trump v. Anderson,* 601 U.S. 100, 116 (2024) (per curiam). Application 15–16. But *Trump v. Anderson* dealt with whether states may enforce the disqualification provision of Section 3 of

[7] Applicant cites incorrectly to Supreme Court Rule 11, which concerns certiorari to a federal court of appeals prior to judgment. *See* Application 15.

the Fourteenth Amendment with respect to federal officeholders and candidates. The Court did not review, much less reject, the notion that laws governing ballot access may vary by state. *See* 601 U.S. at 116. By constitutional design, election laws concerning the presidential ballot may vary state to state. *See* U.S. Const. art. II, § 1, cl. 2 ("Each State shall appoint, in such Manner as the Legislature thereof may direct, a Number of Electors," who elect the President.). While the Court has long recognized that ballot access laws cannot unduly burden First and Fourteenth Amendment rights, the Court has never required those laws to be uniform. *Cf. Anderson v. Celebrezze*, 460 U.S. 780, 788 (1983) ("States have enacted comprehensive and sometimes complex election codes" governing "the selection and eligibility of candidates, [and the voting process itself."). Nothing in *Trump v. Anderson* changes this.

Thus, there is no split of authority or other important federal issue meriting the Court's review. The Court is not likely to grant certiorari simply because Applicant maintains that the Nevada Supreme Court reached the wrong conclusion on the unique sets of facts presented.

B. This case would be a poor vehicle to address any asserted issues of public importance.

The Court should reject Applicant's invitation to broadly "revisit the correct balancing of interests and rights" with respect to ballot access for minor and independent parties. Application 16. This case would be a poor vehicle to develop election law.

First, Applicant injected a jurisdictional defect into this case by failing to appeal the Nevada district court's declaratory judgment within the state court system. *See supra*, Section I.B. That independent source of Applicant's injuries would make any decision by this Court about the parallel injunction a mere advisory opinion. At a minimum, the jurisdictional question that Applicant is responsible for introducing would complicate this Court's ability to reach the merits, making it even more unlikely that the Court would grant certiorari.

Second, the fact-bound nature of the case precludes any possible benefit of certiorari. Applicant presents a highly unusual case, in which the Court's review would not meaningfully extend beyond the facts here. Applicant's Due Process claim does not generally challenge Nevada election law's attestation requirement. There is only Applicant's claim that an email error amounts to a constitutional violation. Applicant presents no "recurring question" that has divided courts, *Clay v. United States*, 537 U.S. 522, 524 (2003), and there is no opportunity for the Court to offer a "uniform rule on the point" raised, *Comm'r v. Bilder*, 369 U.S. 499, 501 (1962). Applicant has not shown that this sort of dispute is likely to recur.

Third, this case presents a poor vehicle because Applicant's primary legal theory is entirely new. As discussed more fully below, Applicant's due process theory has shifted from arguing a shocks-the-conscience substantive due process violation to now presenting—for the first time in this Court—a different and novel theory borrowed entirely from criminal law cases. *See* Application 9–10 (citing *Cox v. Louisiana*, 379 U.S. 559 (1965), and *Raley v. Ohio*, 360 U.S. 423 (1959)). Accordingly,

even if the questions presented by the application were otherwise worthy of this Court's review (they are not), the Court is unlikely to grant certiorari to decide those issues when at best Applicant's current arguments were not developed and vetted below, and at worst they will be found to be forfeited.

Fourth, Applicant's assertion that the Court should step in to address the alleged "extreme burden on minor and independent parties" by ballot access laws and rebalance the law in this area presents no ground for granting certiorari. This case would be a uniquely poor vehicle for addressing these issues because constitutional challenges to state ballot access regulations are generally governed by the *Anderson-Burdick* doctrine. *See Timmons v. Twin Cities Area New Party*, 520 U.S. 351, 358 (1997). But Applicant does not even discuss this doctrine.[8]

III. Applicant Has Not Shown that It Is Indisputably Entitled to Relief on the Merits.

Military-overseas ballots must be sent out by this Friday, September 20, while out-of-state absentee ballots must be mailed out by September 26, in nine days. *See* Nev. Rev. Stat. §§ 293D.320(1), 293.269911(5)(a)(2); 52 U.S.C. § 20302(a)(8)(A). General election ballots without the Green Party's candidates have thus already been designed and printing has begun. As explained above, vacatur of the district court's injunction and declaratory judgment is not proper and would not in any event afford Applicant the relief it seeks: inclusion of its candidates on the 2024 general election ballot. The Court can properly deny the Application on this basis alone.

[8] Applicant cites *Anderson* only for the proposition that state regulations of ballot access have national implications for presidential elections. Application 15-16.

To the extent the Court views the Application as implicitly requesting a mandatory injunction requiring the inclusion of Green Party candidates on the Nevada ballot (which it should not), Applicant would need to satisfy the heightened standard for an injunction pending appeal and demonstrate that "the legal rights at issue are 'indisputably clear.'" *Wisc. Right to Life, Inc.*, 542 U.S. at 1306 (Rehnquist, C.J., in chambers) (citation omitted). Applicant does not come close to meeting that high bar.[9]

A. Applicant is not indisputably likely to succeed on its due process claim.

1. Applicant's new due process theory is forfeited.

Applicant's due process theory—raised for the first time in its emergency application to this Court—is entirely new and therefore forfeited.

In state court, Applicant advanced a substantive due process argument. *See* Supp. App. 46sa–47sa. Specifically, Applicant argued that the Secretary of State's actions "shock[ed] the conscious [*sic*]" and "offend[ed] judicial notions of fairness." *See* Supp. App. 46sa–47sa. All of the due process cases Applicant cited before the Nevada Supreme Court involved this theory. *See* Supp. App. 46sa–47sa (citing *Las Vegas*

[9] Even if this Court were to construe the application as requesting merely a stay of the state court judgment—which would leave existing ballots in place and would not redress Applicant's alleged injuries—Applicant cannot satisfy that standard either. Under the standard for granting a stay, the Court considers: "(1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies." *Nken v. Holder*, 556 U.S. 418, 426 (2009) (citation omitted).

Convention & Visitors Auth. v. Miller, 191 P.3d 1138 (Nev. 2008), *Eggleston v. Stuart*, 495 P.3d 482 (Nev. 2021), and *Bennett v. Yoshina*, 140 F.3d 1218 (9th Cir. 1998)).

Applicant's theory before this Court is different. In its emergency application, Applicant does not cite these cases, discuss the "shocks the conscience" standard, or even refer to "substantive" due process. Instead, Applicant relies on criminal cases resting on concerns of vagueness, fair warning, and entrapment. Applicant urges this Court to apply those criminal-law cases to this wholly distinct context because, according to Applicant, exclusion from a ballot (even where a party's candidates are free to qualify for future ballots) is "tantamount to an electoral death penalty." Application 10; *see also* Application 9–10 (citing *Cox v. Louisiana*, 379 U.S. 559 (1965), and *Raley v. Ohio*, 360 U.S. 423 (1959)). Applicant's contention—that these criminal cases prohibit "impos[ing] penalties on someone for doing what government officials said that person could do," Application 9—was not raised below. Indeed, Applicant never even mentioned these cases in the state courts.

Applicant's due process theory is therefore forfeited. *See OBB Personenverkehr AG v. Sachs*, 577 U.S. 27, 37 (2015) ("argument . . . never presented to any lower court . . . is therefore forfeited"); *see also Ford Motor Co. v. United States*, 571 U.S. 28, 30 (2013) (per curiam) ("This Court is one of final review, not of first view." (citation omitted)); *City & Cnty. of San Francisco v. Sheehan*, 575 U.S. 600, 609 (2015) ("The Court does not ordinarily decide questions that were not passed on below."). Because this Court is not likely to ultimately rule for Applicant on the merits of a forfeited

argument, Applicant is not likely to succeed on the merits—let alone show that it has an indisputable legal right.

2. Applicant's due process claim fails on the merits.

Setting aside forfeiture, Applicant's due process claim would still fail for three reasons.

First, Applicant's legal support for its alleged due process violation relies on criminal cases decided on grounds that do not apply to—and have never been extended to—questions of ballot access. *See* Application 9–10 (citing *Cox v. Louisiana*, 379 U.S. 559 (1965), and *Raley v. Ohio*, 360 U.S. 423 (1959)).

Cox involved a criminal conviction under a law prohibiting protests "near" a courthouse. While the Court held that the law was not unconstitutionally vague, it concluded that the law contemplated "on-the-spot administrative interpretation by officials charged with responsibility for administering and enforcing it." 379 U.S. at 568. Thus, when the "highest police officials" in the city told the demonstrators (in the presence of the Mayor and Sheriff) that they could protest 101 feet from the courthouse, it violated due process to convict the demonstrators for adhering to that direction. No such interpretive or enforcement discretion is present here. The Nevada legal requirement of the circulator affidavit is indisputably clear, as Applicant has known for over a decade from its extensive experience seeking to qualify under the same law. The act of a civil servant emailing the wrong form was unfortunate but did not interpret or modify the clear statute. To the contrary, the civil servant also attached the Secretary of State's Minor Party Qualification Guide, which included the controlling legal provision containing the correct affidavit and

directed readers to consult the law. As the Nevada Supreme Court held, the mistake by the civil servant here was plainly inadvertent and the Nevada Green Party could have easily complied with the clear statute had it conducted even a "cursory review." App. 26a. These facts do not give rise to a due process violation under *Cox*, let alone an indisputably clear violation.

In *Raley*, there was "no fair warning" of what conduct might subject the defendants to criminal sanctions because of "active misleading" by government officials. 360 U.S. at 438. Again, the civil servant here noted only a missing line in Applicant's petition papers and mistakenly provided the wrong form to fix Applicant's error. That the referendum affidavit—which contains a different attestation expressly referring to referenda and initiatives—was the wrong form was clear on its face, and the civil servant's error would have been caught and remedied had Applicant conducted even minimal diligence, as the Guide squarely recommended. Further, any petition circulator properly complying with his or her attestation should have quickly noticed the obvious mismatch between the purpose of the petition and the language about signatories reviewing proposed initiative language.

Applicant's argument to extend these criminal cases to the ballot access context—on very different facts here, including a clear statute and inadvertent guidance rather than "active misleading" or a vague statute requiring government discretion—is, at a minimum, not "indisputably clear."

Second, Applicant's theory that the Due Process Clause estops a state from enforcing the law whenever one of its employees makes a mistake conflicts with this

Court's decisions. As Justice Holmes wrote: "Men must turn square corners when they deal with the Government." *Rock Island, A. & L.R. Co. v. United States*, 254 U.S. 141, 143 (1920). And "those who deal with the Government are expected to know the law and may not rely on the conduct of Government agents contrary to law." *Heckler v. Cmty. Health Servs. of Crawford Cnty., Inc.*, 467 U.S. 51, 63 (1984). Applying this principle, the Court has long "recognized that equitable estoppel will not lie against the Government as it lies against private litigants." *Off. of Pers. Mgmt. v. Richmond*, 496 U.S. 414, 419–20 (1990). Specifically, negligence—the only alleged misconduct here—is an insufficient basis to estop the government from enforcing its laws. *I.N.S. v. Miranda*, 459 U.S. 14, 18 (1982).

Applicant's contrary rule would mean bureaucratic mistakes trigger a constitutional right to avoid the strictures of law, giving rise to innumerable new demands on governments. For example, in *Heckler*, the Court held that the government was not estopped from recovering Medicare funds based on its agent's "incorrect interpretation of rather complex federal regulations." 467 U.S. at 53. The Court held that the recipient of public funds "had a duty to familiarize itself with the legal requirements." *Id.* at 64. But in Applicant's telling, the recipient could have kept the improper Medicare funds if only it had framed its claim as one of due process. The same goes for government negligence in "enforcing the immigration laws," *Miranda*, 459 U.S. at 19, "payments of money from the Federal Treasury," *Richmond*, 496 U.S. at 416, and "distribution of welfare benefits," *Schweiker v. Hansen*, 450 U.S. 785, 788 (1981). It cannot be that the challengers and the Court in each of these cases

(and more) missed valid claims for denial of liberty or property without due process of law based on government officials' honest mistakes. If the Court adopts Applicant's due process right not to receive inadvertently incorrect information from the government—despite clear contrary law and other government guidance repeatedly referencing that law—countless constitutional claims will result and government interactions with the public would be paralyzed.

Third, even if due process could create a right to ballot access for a party that reasonably relied on a public official's error, Applicant's reliance here was *not* reasonable. A political party with "a rich history of ballot access in Nevada" cannot reasonably plead ignorance of longstanding election laws. *Cegavske*, 2016 WL 4582050, at *9. As the Nevada Supreme Court held, the statute and regulations were "readily available" to Applicant, as they were provided to it in the Guide; Applicant was "clearly aware" of the requirement based on the use of the correct affidavit in the petition originally mailed to the Secretary's office; and a "cursory review" of the circulator affidavit would have found the mistake. App. 26a–27a. Moreover, the Guide explicitly stated that it did not have the force of law and urged readers to consult legal authorities, App. 47a, and the Supreme Court of Nevada previously held that reliance on incorrect Secretary of State guidance containing a substantially similar disclaimer to that in the 2024 Minor Party Guide "was not reasonable," *Las Vegas Convention & Visitors Auth. v. Miller*, 191 P.3d 1138, 1158 (Nev. 2008). In addition, the incorrect attestations in the form that Applicant used—referring to an

opportunity to review the full text of an initiative or referendum, App. 82a—should have alerted Applicant and its circulators to the error.

B. Applicant is not indisputably likely to succeed on its equal protection claim.

Applicant contends that the attestation requirement violates the Equal Protection Clause because referenda petitions have a different attestation requirement. This argument is entirely meritless and far from "indisputably" likely to succeed.

First, minor parties and ballot initiative and referenda proponents are not similarly situated. The Equal Protection Clause of the Fourteen Amendment "is essentially a direction that all persons similarly situated should be treated alike." *City of Cleburne, Tex. v. Cleburne Living Ctr.*, 473 U.S. 432, 439 (1985). Thus, "dissimilar treatment of those not similarly situated does not result in an equal protection violation." *Ricketts v. City of Columbia*, 36 F.3d 775, 781 n.2 (8th Cir. 1994). As the Nevada Supreme Court explained, Applicant is "more similarly situated to independent political party candidates," which do have similar attestation requirements. App. 28a. *Compare* Nev. Rev. Stat. § 293.200(2) (requiring a circulator of a petition for an independent candidate's ballot access to attest that the signatures are from "persons registered to vote in that county"), *with id.* § 293.172(1)(b) (requiring a circulator of a petition for a minor party ballot access to attest that "signers are registered voters in this State"). But petitions for initiatives and referenda "implicate different interests and legal requirements." App. 27a. Nevada law therefore classifies petitions into two types, with different affidavit requirements

for each: "petitions for initiative or referendum" and "petitions other than initiative and referendum petitions." *Compare* Nev. Admin. Code § 295.020, *with id.* § 293.182.[10]

Second, Nevada law justifiably imposes different attestation requirements in light of the differences between the types of petitions. App. 27a. For example, the attestation that initiative and referendum petition signatories have been given a chance to review the text of an initiative or referendum is "not required for minor party ballot access because the signatories are not being asked to put a substantive question to the ballot." App. 27a. Conversely, Nevada law requires that a candidate petition include signatures from a certain number of voters in each congressional district. Thus, a candidate petition reasonably must include an attestation concerning the residence of the signatory. A referendum petition need not contain certain numbers of signatures in each congressional district (and Applicant does not challenge this difference), and therefore Nevada reasonably does not require a petition for a referendum to contain an attestation regarding residence.

Third, Applicant advocates for strict or heightened scrutiny of the attestation requirement on the ground that it burdens a fundamental right. This Court reviews regulations of ballot access under the *Anderson-Burdick* framework. *See Timmons v. Twin Cities Area New Party*, 520 U.S. 351, 358 (1997); *see also Acevedo v. Cook Cnty.*

[10] Applicant errs in relying on *Illinois State Board of Elections v. Socialist Workers Party*, which addressed state election laws that imposed unequal signature requirements on *similarly situated* parties or candidates seeking ballot access in city elections compared to statewide office. 440 U.S. 173, 176–77 (1979).

Officers Electoral Bd., 925 F.3d 944, 948 (7th Cir. 2019) (Barrett, J.) ("[The *Anderson-Burdick*] test applies to *all* First and Fourteenth Amendment challenges to state election laws.").[11] A regulation is subject to strict scrutiny only if it imposes a "severe" burden on constitutional rights. *Burdick v. Takushi*, 504 U.S. 428, 434 (1992) (citation omitted). Applicant does not even argue that the attestation requirement is a "severe" burden, nor could it. In the absence of a "severe burden," election regulations pass muster if they advance "the State's important regulatory interests" and "impose[] only 'reasonable, nondiscriminatory restrictions'" upon the rights of voters. *Id.* (citing *Anderson*, 460 U.S. at 788). The burden of petition circulators attesting to their belief that signatories were registered to vote in the counties in which they resided is minimal and similar to the requirements for other ballot-access petitions. Applicant disparages the attestation requirement as "meaningless" and "formal," but it plainly serves Nevada's important interest in preventing fraud, ensuring compliance with the statutory requirements regarding the number of signatories in each congressional district, and facilitating the integrity of the political process, as found by the Nevada Supreme Court. *See* App. 23a–24a (concluding that "the attestation missing from [Applicant's] circulator affidavits serves an essential purpose").

[11] Applicant does not address *Anderson-Burdick* in its Application. Although the parties discussed this framework before the state courts, the Nevada Supreme Court did not assess Applicant's equal protection claim under *Anderson-Burdick*, noting that Applicant "[did] not assert that [Nev. Rev. Stat. §] 293.172 or [Nev. Admin. Code §] 293.182 are unconstitutional under that framework." App. 28a n.1.

IV. Granting the Application Would Disrupt the Electoral Process and Harm the Public Interest.

If there is any doubt about the impropriety of relief here, Applicant's undue delay is dispositive. Applicant did not seek emergency relief in this Court until a full week after the Nevada Supreme Court's and district court's orders—after ballots started printing and just days before the ballots start going out. Applicant offers no justification for this unreasonable delay. This is yet another independent basis to deny emergency relief. *See William v. Rhodes*, 393 U.S. 23, 34–35 (1968) (delay of "several days" warranted denying party's request for injunction to be put on ballot).

"Call it what you will—laches, the *Purcell* principle, or common sense—the idea is that courts will not disrupt imminent elections absent a powerful reason for doing so." *Crookston v. Johnson*, 841 F.3d 396, 398 (6th Cir. 2016); *see also Purcell*, 549 U.S. at 5–6. Federalism concerns strongly disfavor "federal court[s] swoop[ing] in and re-do[ing] a State's election laws in the period close to an election." *Merrill v. Milligan*, 142 S. Ct. 879, 881 (2022) (Kavanaugh, J., concurring) (noting "the State's extraordinarily strong interest in avoiding late, judicially imposed changes to its election laws and procedures"). Such changes threaten "disruption and . . . unanticipated and unfair consequences for candidates, political parties, and voters, among others," *id.*, paradigmatic examples of undercutting the public interest.

Applying that guidance here, the Court should reject Applicant's effort to inject chaos and uncertainty into Nevada's election process during the ballot-printing process just days before ballots are sent to voters.

CONCLUSION

For the foregoing reasons, the Application should be denied.

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Respectfully submitted,

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