

**IN THE
SUPREME COURT OF THE UNITED STATES**

No. ____

EUGENE MAZO; LISA MCCORMICK,

Applicants,

v.

NEW JERSEY SECRETARY OF STATE, et al.,

Respondents.

**APPLICATION TO THE HON. SAMUEL A. ALITO, JR.
FOR AN EXTENSION OF TIME WITHIN WHICH TO FILE
A PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT**

Pursuant to Supreme Court Rule 13(5), Eugene Mazo and Lisa McCormick (Applicants) hereby move for an extension of time of 30 days, to and including March 23, 2023, for the filing of a petition for a writ of certiorari. Unless an extension is granted, the petition for certiorari is due February 21, 2023.

In support of this request, Applicants state as follows:

1. The U.S. Court of Appeals for the Third Circuit rendered its decision on November 23, 2022 (Exhibit 1). This Court has jurisdiction under 28 U.S.C. §1254(1).

2. This case concerns New Jersey’s so-called “slogan statutes.” Under those statutes, New Jersey permits a political candidate running in a primary election to engage in political speech on the ballot by authorizing him to have a six-word slogan printed by his name; the “purpose” of the slogan is to allow the candidate to “indicat[e] either any official act or policy to which he is pledged or committed, or

to distinguish him as belonging to a particular faction or wing of his political party.” N.J. Stat. Ann. §19:23-17. But New Jersey categorically prohibits the use of any slogan that references the name of an individual or a New Jersey corporation without written consent. *See id.* If the candidate does not obtain such written consent, the state refuses to print the slogan on the ballot. *See id.* §19:23-25.1.

3. Applicants are New Jersey residents who previously sought (and who intend to continue to seek) the Democratic Party nomination for the U.S. House of Representatives in their respective congressional districts in New Jersey. Each Applicant requested slogans that named an individual or a New Jersey corporation—*e.g.*, “Bernie Sanders Betrayed the NJ Revolution”—and thereby triggered the slogan statutes, but the state refused to print ballots containing those slogans because Applicants did not obtain written consent from the individuals or corporations named. Accordingly, Applicants filed suit alleging that the slogan statutes codify content-based discrimination in violation of the First Amendment.

4. In the decision below, the Third Circuit affirmed the dismissal of Applicants’ complaint. After stating that the case presented “difficult” issues and that “the Supreme Court has never laid out a clear rule or set of criteria” to guide a case like this, the court posited that the slogan statutes do not implicate core political speech and thus are not subject to “traditional First Amendment analysis.” Ex.1 at 4, 16. Instead, the court concluded, a slogan is a “classic electoral mechanic” that triggers the “more flexible *Anderson-Burdick* balancing test.” Ex.1 at 3, 29, 33. Applying that test, the court determined that the slogan statutes do not impose a

“severe” burden on First Amendment rights, in part because they purportedly are not “content-based” regulations under *City of Austin v. Reagan National Advertising of Austin, LLC*, 142 S.Ct. 1464 (2022). Ex.1 at 15, 34, 38-44. The court next held—under “quite deferential” review—that New Jersey’s asserted interests (*e.g.*, “preventing voter confusion”) outweigh the supposedly “minimal” First Amendment burden. Ex.1 at 50, 52.

5. The Third Circuit’s conclusion that New Jersey can provide a forum for political candidates to engage in political speech at the most critical juncture of an election but prohibit candidates from naming any individual or New Jersey corporation without express written consent is irreconcilable with this Court’s First Amendment precedent vigorously protecting political speech and proscribing content-based discrimination. And that decision will have drastic consequences. For example, New Jersey’s political insiders establish corporate entities and then routinely allow favored candidates to use their names as ballot slogans, while simultaneously employing these entities to chill the speech of their political rivals. This practice threatens what a rival candidate may say to his voters, entrenches the political establishment’s power, and gravely violates the First Amendment.

6. Applicants’ counsel, Paul D. Clement, did not participate in the proceedings below and has substantial briefing and argument obligations between now and the current due date of the petition, including a reply brief in *Twitter, Inc. v. Taamneh*, No. 21-1496 (U.S.) (due Feb. 9); a reply brief in *In re Aeero Techs., LLC*, No. 22-2606 (7th Cir.) (due Feb. 15); oral argument in *Hendrix v. J-M Manufacturing*

Co., No. 21-56276 (9th Cir.) (Feb. 16); and a reply brief in *US Dominion, Inc. v. Fox News Network, LLC*, No. N21C-03-257 (Del. Sup. Ct.) (due Feb. 17).

7. Applicants' counsel thus requests a modest extension of time to familiarize himself with the record and prepare a petition that fully addresses the important and far-reaching issues raised by the decision below.

WHEREFORE, for the foregoing reasons, Applicants request that an extension of time to and including March 23, 2023, be granted within which they may file a petition for a writ of certiorari.

Respectfully submitted,



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