No. 23-924

In the

Supreme Court of the United States

JOHN ANTHONY CASTRO,

Petitioner,

v.

ADRIAN FONTES, Secretary of State;
DONALD J. TRUMP, ARIZONA REPUBLICAN PARTY,

Respondents.

On Petition for Writ of Certiorari Before Judgment To the United States Court of Appeals for the Ninth Circuit

PETITION FOR WRIT OF CERTIORARI BEFORE JUDGMENT

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February 21, 2024

QUESTIONS PRESENTED FOR REVIEW

Does an Arizona ballot-placed Republican Presidential Candidate, whose direct and current competition for votes evidenced by thousands of dollars in Arizona-specific campaign expenses, lack Article III standing if a lower court determines that he is not "genuinely" competing based on hearsay in unverified news reports?

Did the lower court abuse its discretion in denying Plaintiff's motion to amend his complaint to ensure all facts were properly before the court?

STATEMENT OF RELATED PROCEEDINGS

In accordance with Supreme Court Rule 14.1(b)(iii), the following is a list of all proceedings in state and federal trial and appellate courts that are directly related to this case:

United States District Court for the District of Arizona. Docket No. No. 2:23-cv-01865. John Anthony Castro v. Donald J. Trump et al. Judgment entered December 5, 2023.

United States Court of Appeals for the Ninth Circuit. Docket No. 23-3960. John Anthony Castro v. Donald J. Trump et al. Judgment pending.

United States District Court for the District of New Hampshire. Docket No. No. 1:23-cv-00531. John Anthony Castro v. Donald J. Trump et al. Judgment entered January 19, 2024.

United States Court of Appeals for the First Circuit. Docket No. 24-1097. John Anthony Castro v. Donald J. Trump et al. Judgment pending.

United States District Court for the District of New Mexico. Docket No. 1:23-cv-00766. John Anthony Castro v. Donald J. Trump et al. Judgment entered January 12, 2024.

United States Court of Appeals for the Tenth Circuit. Docket No. 24-2007. John Anthony Castro v. Donald J. Trump et al. Judgment pending.

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PETITION FOR WRIT OF CERTIORARI

John Anthony Castro, a current candidate for the Republican nomination for the Presidency of the United States, respectfully petitions this Honorable Court for a Writ of Certiorari, pursuant to 28 U.S.C. § 2201(e) and Supreme Court Rule 11, to review the judgment of the United States District Court for the District of Arizona, which implicates the eligibility of former President Donald J. Trump to pursue and hold public office given his provision of aid and comfort to the insurrectionist that violently attacked our United States Capitol on January 6, 2021. To delay this case risks a constitutionally ineligible individual holding public office in direct conflict with the United States Constitution. As such, it is unquestionably a matter of imperative public importance to such a grave extent as to justify deviation from normal appellate practice and to require immediate determination in this Court.

OPINIONS BELOW

The decision by the United States District Court for the District of Arizona dismissing Petitioner John Anthony Castro's civil action on the grounds that he lacks constitutional standing to sue another candidate who is unqualified to hold public office in the United States pursuant to Section 3 of the 14th Amendment to the United States Constitution.

The decision by the United States Court of Appeals for the Ninth Circuit denying Petitioner John Anthony Castro's motion for expedited consideration

and determining it will not hear the case until after the primary election.

JURISDICTION

United States District Court for the District of Arizona entered judgment on December 5, 2023. *See* App. 1-18. This petition is filed pursuant to Supreme Court Rule 11. This Court has jurisdiction under 28 U.S.C. § 2201(e).

CONSTITUTIONAL PROVISIONS INVOLVED

This case involves Section 3 of the 14th Amendment to the United States Constitution, which is self-executing and provides independent grounds for a federal cause of action.

STATEMENT OF THE CASE

Course of Proceedings and Dispositions Relevant to Standing and Recusal

Prior to filing his civil action on September 5, 2023, Petitioner incurred campaign expenses attributable to the targeting of voters in the state of Arizona, which included his Presidential campaign website that incurred hundreds of dollars in website hosting fees, the launching of a show called "The Truth Addict" that required thousands of dollars in equipment and productions costs, and cultivating a substantial and active following on multiple social media platforms that includes thousands of voters in Arizona, and Petitioner raised several hundred dollars

in campaign contributions from unknown and unrelated small donors throughout the United States, which Petitioner made the lower court aware of in his November 1, 2023, affidavit.[1]

On September 5, 2023, Petitioner John Anthony Castro filed a Verified Complaint for Declaratory and Injunctive Relief before the U.S. District Court for the District of Arizona[2] to challenge the constitutional eligibility of Respondent Donald John Trump for having provided aid and comfort to the insurrectionists that attacked the United States Capitol on January 6, 2021.

In said Verified Complaint, Petitioner John Anthony Castro alleged that he was "directly and currently completing against Donald J. Trump for the Republican nomination for the Presidency of the United States."[3]

In the Verified Complaint's Verification Page, Petitioner John Anthony Castro also stated "I intend to appear on the 2024 Republican primary ballot in this state."[4] At the time of filing this case, Petitioner John Anthony Castro was unable to file his ballot access documentation due to an arbitrary state law that sets the timeframe for filing between the 130th day before the primary and the 100th day before the

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[1] *See* ECF 53.

[2] *See* ECF 1.

[3] *See* ECF 1 ¶ 19.

[4] *See* ECF 1, Verification, Page 18 of 18, ¶ 2.

primary, which, accounting for weekend and holidays, created a timeframe of November 13 through December 11, 2023.[5] Petitioner John Anthony Castro, a *pro se* litigant, determined that delaying filing the civil action until then risked the lower court being unable to enjoin the acceptance of Respondent Donald John Trump's ballot access documentation if Respondent Donald John Trump chose to file on the first day. On that basis, Petitioner also filed a Motion for a Temporary Restraining Order ("TRO").

On September 25, 2023, the lower court held a video conference regarding the TRO. After the conference, it was agreed that the TRO would be construed as a Motion for Preliminary Injunction with an Expedited Bench Trial on the Papers.

On October 2, 2023, Petitioner John Anthony Castro was the first Republican to file his Nevada Declaration of Candidacy in-person at the Reno, Nevada, office of the Secretary of State.

On October 11, 2023, Petitioner John Anthony Castro was the first Republican to file his New Hampshire Declaration of Candidacy in-person at the Concord, New Hampshire, office of the Secretary of State and paid the $1,000 filing fee.

On November 14, 2023, Petitioner John Anthony Castro was the first Republican to file this Arizona Declaration of Candidacy in-person at the Phoenix, Arizona, office of the Secretary of State.

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[5] *See* Ariz. Rev. Stat. § 16-242(B).

On November 14, 2023, the same day, the lower court held an expedited trial and heard oral arguments. At that hearing, Petitioner testified about his ground campaign activities including placing yard signs at many homes in Arizona as well as being the only candidate with a billboard in downtown Phoenix. In fact, the lower court took implied judicial notice of Petitioner John Anthony Castro's campaign yard signs placed on streets by the name of "Calle Tuberia" and "Calle Jokake" in Phoenix as evidenced in the transcript of the expedited trial.

On December 4, 2023, Petitioner filed a Motion to Amend along with a full copy of his proposed First Amended Verified Complaint to comply with the *Time of Filing Rule* and ensure that all facts to-date, including Petitioner's post-filing ballot placement, grassroots campaigning and placing of campaign yard signs in Arizona, and digital billboard in downtown Phoenix, were properly before the lower court. In the motion to amend, Petitioner clarified his position that the Original Complaint properly alleged direct and current competition with a later-filed affidavit providing more definitive statements to support that verified factual allegation in the Original Complaint; nevertheless, out of an abundance of caution given the First Circuit's decision that the *Time of Filing Rule* barred consideration of facts occurring after the filing of the complaint, Petitioner wishes to amend the complaint to neutralize that risk.[6] Petitioner explained how neither side had argued the *Time of Filing Rule* either in New Hampshire or Arizona, all

[6] *See* ECF 73.

sides briefed their positions under the presumption those facts were properly before the Court, and since there were no new claims being added, there would be no prejudice to any party for the amendment that was operating more as a formality to avoid undue delay.

On December 5, 2023, the lower court denied the motion to amend and granted Respondent Donald John Trump's motion to dismiss for lack of subject matter jurisdiction on the basis that Petitioner John Anthony Castro, although a ballot-placed candidate with thousands of dollars in Arizona-specific campaign expenses, was not a "genuine" candidate "genuinely competing" with Respondent Donald John Trump. The lower court took the unprecedented position that a "concrete" injury is one that is "genuine" and not "manufactured."

That same day, Petitioner filed his Notice of Appeal.

REASONS FOR GRANTING THE WRIT

I. THE RULING WAS BASED ON AN UNPRECEDENTED THEORY FOR DISGREARDING A PARTICULARIZED AND CONCRETE INJURY

The lower court's Order to Dismiss relied entirely on two cases: *Clapper v. Amnesty International*[7] from the U.S. Supreme Court and *La Asociacion de Trabajadores de Lake Forest v. City of*

[7] *See Clapper v. Amnesty Int'l USA*, 568 U.S. 398 (2013).

Lake Forest [8] from the 9th Circuit for the unprecedented and novel legal theory that an individual who is a ballot-placed candidate actively competing against another candidate on principle does not have standing to challenge that person's constitutional eligibility because competing on principle is not "genuine" competition but rather improper manufacturing of standing that should be disregarded by the federal judiciary.[9]

While lower courts are free to invent new doctrines, as Petitioner will delineate herein, neither *Clapper* nor *La Asociacion* support the lower court's unprecedented and novel legal theory to ignore Petitioner's clearly established injury, obvious traceability, and unquestionable redressability. As such, the new legal doctrine manufactured by the lower court is unprecedented.

THE 9TH CIRCUIT *LA ASOCIACION* CASE

The Ninth Circuit's decision in *La Asociacion* explained that an "organization suing on its own behalf can establish an injury when it suffered both a diversion of its resources and a frustration of its

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[8] *See La Asociacion de Trabajadores de Lake Forest v. City of Lake Forest*, 624 F.3d 1083 (9th Cir. 2010).

[9] Based upon this logic, a civil rights activist in the 1950s would not have had standing for choosing to voluntarily sit in a "whites only" restaurant since he knew he would be injured as a result. He entered the restaurant not to eat, but to be forcibly removed and charged with criminal trespass in order to manufacture standing. This the logic the Court's Order relies upon. This is the danger the lower court created by adopting this flawed reasoning.

mission. It cannot manufacture the injury by incurring litigation costs or simply choosing to spend money fixing a problem that otherwise would not affect the organization at all. It must instead show that it would have suffered some other injury if it had not diverted resources to counteracting the problem."[10]

The Ninth Circuit's decision in *La Asociacion* was absolutely correct. First, to establish associational standing, an organization needs to show either diversion of resources or frustration of its mission; both of which would "affect" the organization. The organization could not show any frustration to its mission, so it cited the litigation costs the organization incurred to prove "diversion of resources." The Ninth Circuit's explained that the resources being diverted cannot simply be the litigation costs to pursue a claim that did not affect the organization. In other words, The Ninth Circuit's held that the source of an organization's injury cannot be the cost of accessing the court to argue it has an injury since that would be akin to the logical fallacy of circle reasoning (*i.e.*, "I have an injury because it cost me money to tell the court I have an injury.").

The lower court improperly analogized *La Asociacion* to this case solely for the proposition that Petitioner John Anthony Castro, an individual (not an organization), is "manufacturing" standing with campaign expenses and ballot placement. This analogy is without merit.

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[10] *La Asociacion*, 624 F.3d at 1088.

First, the lower court improperly analogized a specialized analysis for associational standing with regular individual standing; apples and oranges. Second, the lower court improperly analogized litigation costs with campaign expenses while missing the entire rationale behind The Ninth Circuit's ruling in *La Asociacion*. Third, the lower court improperly expanded on The Ninth Circuit's use of the term "manufacture" to give itself the power to deny standing to anyone the lower court deems not to be "genuine." These three factors stretch the logic of the *La Asociacion* decision far beyond the limits of logic.

La Asociacion stood for the proposition that, in order to establish associational standing, an organization cannot rely on costs associated with complaining about the issue. As such, *La Asociacion* could be cited to disregard the costs associated with Petitioner John Anthony Castro's multistate litigation strategy against Respondent Donald John Trump, but Petitioner John Anthony Castro has never cited these expenses as the basis for his standing.

THE SUPREME COURT'S *CLAPPER* CASE

In *Clapper v. Amnesty International*, an organization determined that the language of the Foreign Intelligence Surveillance Act could theoretically permit the government to surveil its organizational communications with non-U.S. persons and, on that basis, sued the government to seek a determination that the provision was

unconstitutional.[11] In support of their injury argument to establish standing, the organization cited increased technology costs "to protect the confidentiality of their international communications; in their view, the costs they have incurred constitute present injury that is fairly traceable to" the challenged law.[12] In other words, the organization had a fear that the government could *possibly* interpret a law to surveil their communications, so they decided to incur added technology costs to secure their communications against that *theoretical* risk. The added technology costs against the theoretical risk was the "injury" they were claiming to justify Article III standing.

The U.S. Supreme Court held "that respondents lack Article III standing because they cannot demonstrate that the future injury they purportedly fear is certainly impending and because they cannot manufacture standing by incurring costs in anticipation of non-imminent harm."[13] In other words, *Clapper v. Amnesty International* was about the realistic likelihood of a future harm. In *Clapper*, the fear of injury was theoretical and conjectural.

The lower court improperly analogized *Clapper v. Amnesty International* to this case by again exploiting the use of the term "manufacture" to support its unprecedented and novel theory that

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[11] *See* 568 U.S. 398 (2013).

[12] *Id.* at 407.

[13] 568 U.S. 398, 422 (2013).

Petitioner John Anthony Castro is not a "genuine" competitor despite the fact that that's not what *Clapper* held.

More importantly, the lower court got lost in the analysis of whether a person is a "genuine" competitor instead of focusing on whether there would be a diminution of votes, which is the source of the injury. Because basic logic and mathematics dictates there would be a diminution of votes, the lower court knew the only way to deny relief was to itself "manufacture" a new legal theory to disregard Petitioner John Anthony Castro's indisputable competitive injury.

THE TRIFLE IS THE INJURY AND THE PRINCIPLE SUPPLIES THE MOTIVATION

The lower court's order is fundamentally flawed and improperly relies on a thinly veiled exploitation of the term "manufacture" taken well out of context in order to justify the unprecedented and novel theory that a lower court can disregard an individual's injury if it determines the injury, although particularized, is not "genuine."[14] In essence, the lower court considers the term "concrete" to include "genuine." This improperly adds a new requirement without precedential support.

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[14] "The Court already has considered this information and concluded that it does not establish a genuine, concrete competitive injury. Accordingly, Castro's motion for leave to amend will be denied." Castro v. Fontes, No. CV-23-01865-PHX-DLR (D. Ariz. decided Dec. 5, 2023).

Petitioner John Anthony Castro explained in his proposed amended complaint that the initial motivation for pursuing the Republican Nomination for the Presidency of the United States was the principle that no person who engaged in, provided aid to, or provided comfort to an insurrection should serve as Commander-in-Chief of the United States Armed Forces. That motivating principle led Petitioner on this journey, and Petitioner is now doing his best, entirely on his own, to seriously pursue the Presidency of the United States. The lower court has chosen to scoff at Petitioner's efforts despite the U.S. Supreme Court clearly ruling that "an identifiable trifle is enough for standing to fight out a question of principle; the trifle is the basis for standing and the principle supplies the motivation."[15]

The lower court has inappropriately made the federal judiciary the arbiter of who is and is not a "genuine" candidate with no judicially manageable standards, which possibly violates the Political Question Doctrine. In a broader sense, the lower court's decision would permit lower courts to disregard a concrete and particularized injury on the basis that the litigant voluntarily chose to incur the injury on principle, which would threaten the standing of those that engage in civil disobedience to unjust laws. It is a disastrous ruling with far-reaching implications well beyond that of this case.

As the U.S. Supreme Court has explained, "Rule 15(a) declares that leave to amend 'shall be

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[15] *U.S. v. SCRAP*, 412 U.S. 669, 690 (1973).

freely given when justice so requires'; this mandate is to be heeded."[16]

The U.S. Court of Appeals for the 9th Circuit has elaborated that a denial of a motion to amend a complaint is proper only when the amendment would be clearly frivolous, unduly prejudicial, cause undue delay, or is being made in bad faith.[17]

In this case, the motion was not frivolous. Although the existing jurisprudence in the 1st Circuit clearly and indisputably did not support the application of the "time of filing" rule, the 1st Circuit incorrectly applied it despite the evidentiary record clearly contradicting their factual claims that Petitioner's campaign activities were "nonexistent." As such, Petitioner's concerns were not unfounded since one circuit was already convinced it could apply the *Time of Filing Rule* leaving Petitioner with no guaranteed recourse for review other than the filing of a *Petition for Panel Rehearing* and a *Writ of Certiorari*; neither of which the courts are required to consider. Moreover, the doctrine of *res judicata* could possibly apply to effectively deny any consideration of a new case although that theory is currently being tested in New Hampshire because Plaintiff re-filed his case there on Friday, December 1, 2023, to put *res judicata* to the test.

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[16] *Foman v. Davis*, 371 U.S. 178, 182 (1962).

[17] *See United Union of Roofers, Waterproofers, & Allied Trades No. 40 v. Ins. Corp. of Am.*, 919 F.2d 1398 (9th Cir. 1990)

In this case, the motion would not have been unduly prejudicial. The 9th Circuit has held that in absence of prejudice to opposing parties, leave to amend should be freely given.[18] The amendment in this case only intended to capture the facts that all parties were already aware of and had fully brief on the presumption they were properly and fully before the lower court for its consideration. Respondent Donald John Trump had not argued for the application of the *Time of Filing Rule*. In fact, the 1st Circuit *sua sponte* applied it in the New Hampshire appeal. As such, the motion would not have prejudiced Respondent Donald John Trump. In fact, even if Respondent Donald John Trump had argued for the application of the *Time of Filing Rule*, leave to amend should still have been granted since it failing to grant it would have only delayed a substantive ruling on the merits due to a technical procedural rule against a *pro se* litigant, which raises due process concerns. Moreover, because Respondent Donald John Trump had briefed all legal issues and the amendment would only formally added facts already considered by all parties, the lower court would have even been permitted to deny any new motions to dismiss since there were no new legal claims or facts not previously considered by the parties.

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[18] *See Wyshak v. City Nat. Bank*, 607 F.2d 824 (9th Cir. 1979); *Howey v. U.S.*, 481 F.2d 1187 (9th Cir. 1973). Other circuits agree as well. *See Strauss v. Douglas Aircraft Co.*, 404 F.2d 1152 (2d Cir. 1968); *Kerrigan's Est. v. Joseph E. Seagram & Sons*, 199 F.2d 694 (3d Cir. 1952); *Int'l Harvester Credit Corp. v. E. Coast Truck*, 547 F.2d 888 (5th Cir. 1977).

In this case, granting the motion also would not have resulted in undue delay. To the contrary, denying the motion is what has resulted in undue delay. The 9th Circuit has held that waiting 24 months is not, in and of itself, an undue delay,[19] so 3 months, as in this case, is hardly undue. However, the 9th Circuit has held that waiting 36 months and amending to allege a ***new claim*** does constitute undue delay.[20]

Based on all of the foregoing, there was no basis to deny the motion for leave to amend unless The Ninth Circuit's determines it was unnecessary due to the inapplicability of the *Time of Filing Rule.*

II. THE "TIME OF FILING RULE" DOES NOT APPLY

The Ninth Circuit's has held that the cases considered by lower courts "should be limited to the facts and circumstances known at the time the suit was filed."[21]

Petitioner's Verified Complaint, Paragraph 19, properly and sufficiently alleged direct and current competition with Respondent Donald John Trump

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[19] *See Morongo Band of Mission Indians v. Rose*, 893 F.2d 1074 (9th Cir. 1990).

[20] *See Ulloa v. Guam Econ. Dev. Auth.*, 580 F.2d 952 (9th Cir. 1978) (adding a claim of fraud three years later on the eve of trial).

[21] *In re Digimarc Corp. Derivative Litig.*, 549 F.3d 1223, 1236 (9th Cir. 2008).

prior to the September 5, 2023, filing of the Original Complaint. Petitioner provided more definitive statements that related-back to the verified factual allegations in the Original Complaint providing more precise examples of those overt acts of political competition, which included incurring campaign expenses attributable to the targeting of voters in the state of Arizona, Petitioner's Presidential campaign website that incurred hundreds of dollars in website hosting fees, the launching of a show called "The Truth Addict" that required thousands of dollars in equipment and productions costs, and cultivating a substantial and active following on multiple social media platforms that includes thousands of voters in Arizona, which Petitioner made the lower court aware of in his November 1, 2023, affidavit.[22]

Because the Original Complaint sufficiently alleged the fact that he was competing and Petitioner later provided examples of his overt acts of political competition, the Time of Filing Rule does not apply.

Moreover, the U.S. Supreme Court held in *Golden v. Zwickler*[23] that it is permissible for courts to determine the likelihood that a party will follow through with a stated intent, which has been recognized by The Ninth Circuit's in *McCollester v. City of Keene.*[24] In this case, there was no need to make that determination since Petitioner followed

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[22] *See* ECF 53.

[23] 394 U.S. 103 (1969).

[24] *See* 668 F.2d 617, 620 (1st Cir. 1982).

through prior to the Court rendering judgment. Hence, applying the time-of-filing rule would evidence of stated intent due to a deferred timeframe followed by the act actually being done.

III. IRREPARABLE HARM WILL RESULT IF APPELLATE REVIEW IS DELAYED

The Ninth Circuit's decision to deny expedited appellate review or, at the bare minimum, an adjusted expedited briefing schedule, effectively denies Petitioner any appellate review and represents an egregious violation of the First Amendment right to petition an appellate court.

The Arizona Presidential Primary Election is scheduled to take place on March 19, 2024. If Petitioner's Opening Brief is not due until February 28, 2024, and response briefs not due until March 28, 2024, Petitioner's case is guaranteed to be mooted, relief effectively denied, and First Amendment right to petition the appellate court to redress his grievance abridged.

Respondent Arizona Secretary of State has communicated his intent to begin -printing state ballots as soon as possible; possibly with the intent of frustrating appellate review with a self-set deadline of December 11, 2023. As such, time is of the essence.

If the ballots are printed, Respondent Arizona Secretary of State would have grounds to argue harm.

Further delay will risk the harm being irreparable if the state prints the ballots.[25] This is why Petitioner sought to amend his requested relief in the lower court to seek an injunction against Respondent Arizona Secretary of State from printing ballots with Respondent Donald John Trump's name, specific performance to print new ballots if ballots were already printed, and/or not counting votes (ballot or write-in) for Respondent Donald John Trump, which the lower court improperly denied.

CONCLUSION

The judgment below should be vacated and the case remanded for trial.

Respectfully submitted,

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[25] Appellant also informed the lower court of his intent to seek permanent injunctive relief preventing Appellee Arizona Secretary of State from counting any votes (ballot or write-in) for Appellee Donald John Trump.