No._____

In the Supreme Court of the United States

MARK FRENCH,

Petitioner,

v.

BLAIR JONES, in his capacity as Chairman of the Montana Judicial Standards Commission, *et al.*,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether a state violates the First Amendment by prohibiting a judicial candidate from seeking, accepting, or using an endorsement from a political party.

PARTIES TO THE PROCEEDING

Petitioner, who was the Plaintiff-Appellant in the court below, is Mark French.

Respondents are Blair Jones, Mike Menahan Victor Valgenti, John Murphy, and Brianne Dugan, all of whom are sued in their official capacity as members of the Montana Judicial Standards Commission.

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JURISDICTION

The Ninth Circuit affirmed the District Court's judgment on December 7, 2017. Pet.App. 2. This Court has jurisdiction under 28 U.S.C. § 1254(1).

STATUTE INVOLVED

Rule 4.1(A)(7) of the Montana Code of Judicial Conduct states as follows:

> Except as permitted by law, or by Rules 4.2, 4.3, and 4.4, a judge or a judicial candidate shall not … seek, accept, or use endorsements from a political organization, or partisan or independent non-judicial office-holder or candidate.

INTRODUCTION

This Court has "never allowed the government to prohibit candidates from communicating relevant information to voters during an election." *Republican Party of Minn. v. White*, 536 U.S. 765, 781 (2002) ("*White I*"). The Ninth Circuit, however, has done exactly that. The Montana speech ban it upheld in this matter prohibits judicial candidates from informing voters that a political party has endorsed them. Many voters value such information, as the Ninth Circuit acknowledged. Pet.App. 23 (citation omitted) ("party affiliation is the primary way by which voters identify candidates").

In upholding the ban, the Ninth Circuit relied upon *Williams-Yulee v. Florida Bar,* 135 S. Ct. 1656 (2015), a case in which this Court upheld a Florida ban on direct solicitations of campaign contributions by judicial candidates. But this Court limited *Williams-Yulee* to "a narrow slice of speech." *Id.* at 1670. Unlike the Montana ban at issue here, the Florida ban "le[ft] judicial candidates free to discuss any issue with any person at any time." *Id.*

"In *all cases*," according to the Ninth Circuit, "an endorsement suggests the possibility of a quid-pro-quo exchange in which a judge may rule favorably for the endorsing entity." Pet.App. 24 (emphasis added). Yet Montana allows judicial candidates to use endorsements from every person and every group *except* political parties. The Ninth Circuit upheld the ban despite this Court's concerns about underinclusiveness that "disfavor[s] a particular speaker or viewpoint." *Williams-Yulee,* 135 S. Ct. at 1668. The ban significantly hinders challengers from achieving the kind of name recognition possessed by incumbent judges, thereby rendering it all the more suspect. If a speech ban as egregiously underinclusive as this one can pass muster, the underinclusiveness doctrine – a doctrine that has been "firmly grounded in basic First Amendment principles," *City of Ladue v. Gilleo,* 512 U.S. 43, 51 (1994) – is a dead letter.

The Ninth Circuit approved Montana's ban because, according to the court, party endorsements sway voters more effectively than endorsements from other groups. This Court does not brook such breathtaking paternalism, particularly when applied to election-related speech.

The Ninth Circuit also held that banning judicial candidates' use of party endorsements is necessary for a "*structurally independent* judiciary." Pet.App. 20 (emphasis in original). The Ninth Circuit provided no authority from this Court supporting this proposition, no evidence from the State proving it, and no persuasive argument justifying it.

Although this Court carefully calibrated *Williams-Yulee* to reach only a "narrow slice" of speech, 135 S. Ct. at 1670, the Ninth Circuit has applied it to much larger swaths:

> Although *Williams-Yulee* may have been about a prohibition on direct candidate solicitations of campaign contributions, the Supreme Court's reasoning was broad enough to encompass underinclusivity arguments aimed at other types of judicial candidate speech prohibitions such as the endorsement and campaign prohibitions.

Pet.App. 16, quoting *Wolfson v. Concannon*, 811 F.3d 1176, 1183 (9th Cir. 2016). Left undisturbed, the Ninth Circuit's decision will enable states to unconstitutionally censor even more election speech.

STATEMENT OF THE CASE

Montanans elect judges on nonpartisan ballots that exclude partisan identifiers. Mont. Code Ann. §§ 13-12-203(2), 13-14-111. In 2008, the Montana Supreme Court enacted a Code of Judicial Conduct (Code) applicable to judges and judicial candidates. CA9 Dkt. 7, ER 44; *id.* at ER 53 ("If a judicial candidate who is not a judge violates this Canon and is elected, he or she may be referred to the Judicial

Standards Commission for discipline on assuming office.").

Rule 4.1(A)(7) of the Code includes the following provision: "[A] judge or judicial candidate shall not ... seek, accept, or use endorsements from a political organization…." *Id.*, ER 53.[1] Judicial candidates may, however, "seek, accept or use endorsements from any person or group *other than a partisan political organization*…." Rule 4.2(B)(5), quoted at CA9 Dkt. 7, ER 54 (emphasis added).

The Respondents, all of whom are members of the Montana Judicial Standards Commission, investigate complaints alleging violations of the Code. Mont. Code Ann. § 3-1-1106(1)(a). If they determine the allegations in a complaint to be true, they must recommend to the Montana Supreme Court the censure, suspension, removal, or disability retirement of the judicial officer in question. *Id.*, § 3-1-1106(3). The Montana Supreme Court may either accept or reject the recommendation. *Id.*, § 3-1-1107.

Petitioner Mark French was a candidate in 2014 for justice of the peace in Sanders County, Montana. CA9 Dkt. 7, ER 40. Sanders County, which borders Idaho, is sparsely populated and largely Republican.[2]

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[1] All further references to "Rules" are to the rules contained in the Montana Code of Judicial Conduct.

[2] The Sanders County electorate cast 73% of its votes in November 2016 for Donald Trump (4,286 votes) and 21% (1,218 votes) for Hillary Clinton. See Montana Secretary of State's Final 2016 General Election Results, mtelectionresults.gov/ResultsSW.aspx?type=CTYALL&cty=45&eid=14&map=CTY>

French had desired to seek an endorsement from the Sanders County Republican Central Committee in 2014, but did not do so because he feared discipline by the Judicial Standards Commission. *Id.* Instead, he sued in District Court on August 19, 2014, alleging that Rule 4.1(A)(7) violated the First Amendment. *Id.,* ER 69. The District Court denied his motion for a preliminary injunction on October 1, 2014, prompting him to seek interlocutory relief from the Ninth Circuit. *Id.,* ER 70-71.

Although French did not ask for an endorsement, the Sanders County Republican Central Committee endorsed him anyway on October 2, 2014. *Id.*, ER 40. French did not use the endorsement in his campaign, however, for fear of being disciplined. *Id*.

On October 10, 2014, the Ninth Circuit denied French's motion for an injunction pending appeal. *Id.*, ER 72. French then filed an application for emergency relief in this Court on October 14, 2014, and Justice Kennedy ordered the State to respond. No. 14A390. The application was subsequently referred to the full Court, which denied it on October 17, 2014. *Id.* French lost to the incumbent judge in November 2014. CA9 Dkt. 7, ER 40.

The District Court granted summary judgment to the State on December 17, 2015. Pet.App. 40. French timely appealed to the Ninth Circuit, which affirmed on December 7, 2017. Pet.App. 1 - 30.

French is again a candidate for justice of the peace and an election will be held in November 2018.[3] Pet.App. 44. He desires to seek an

[3] Justices of the peace serve four-year terms. Mont. Code Ann. §§ 3-10-205, 7-4-2205.

endorsement from the Sanders County Republican Central Committee. CA9 Dkt. 7, ER 40.[4] If he receives one, he intends to use it in his campaign by including it in campaign literature and discussing it when he engages in door-to-door campaigning. *Id.,* ER 41. He will not do so, however, without injunctive relief because he does not want to risk discipline by the Commission for violating Rule 4.1(A)(7). Regardless of the outcome of the election, he intends to run again for the office in 2022. Pet.App. 44.

REASONS FOR GRANTING CERTIORARI

I. The Ninth Circuit's Decision Conflicts With Rulings By Both This Court and the Eighth Circuit on an Issue of Nationwide Importance

The Ninth Circuit expressly refused to apply "the strict First Amendment framework of *White I,*" which "underwent significant changes with the Supreme Court's decision in *Williams-Yulee.*" Pet.App. 12; see also *id.* (*Williams-Yulee* employed "reasoning that contrasted sharply with *White I*…"); *id.* at 19 (the "*Williams-Yulee* majority viewed things differently" than did the *White I* majority); *id.* at 22 (French's arguments "might have been persuasive in the pre-*Williams-Yulee* era," but "they no longer carry the day"). If *White I* has been overruled -- something that neither the majority nor the dissenting Justices in

[4] Besides banning judicial candidates from seeking and using endorsements from *political parties*, Montana Rule 4.1(A)(7) also bans them from seeking and using endorsements from *partisan elected officials*. French had also challenged this portion of Rule 4.1(A)(7) in the courts below but is no longer doing so.

Williams-Yulee ever stated -- that point should be made explicit, and should be made by *this Court*, not the Ninth Circuit. *Agostini v. Felton*, 521 U.S. 203, 237 (1997) ("[i]f a precedent of this Court has direct application in a case, yet appears to rest on reasons rejected in some other line of decisions, the Court of Appeals should follow the case which directly controls, leaving to this Court the prerogative of overruling its own decisions.").

If, however, *White I* remains good law, then the Ninth Circuit overstepped its bounds by "decid[ing] an important federal question in a way that conflicts with relevant decisions of this Court." S. Ct. Rule 10(c). Either way, certiorari is warranted.

Certiorari is also warranted because the Ninth Circuit's decision directly conflicts with *Republican Party of Minn. v. White*, 416 F.3d 738 (8th Cir. 2005) ("*White II*"), an opinion issued after this Court ruled in *White I* and remanded the case to the Eighth Circuit. The Eighth Circuit then reviewed a Minnesota rule requiring, like Montana's Rule 4.1(A)(7), that judicial candidates not "seek, accept, or use endorsements from political organizations." *White II*, 416 F.3d at 745, quoting 52 Minn. Stat. Ann., Code of Judicial Conduct, Canon 5, subd. A(1)(d). The court struck down the Minnesota rule because it was not narrowly tailored to achieve the state's interest in either an independent or impartial judiciary. *Id.* at 751-63. The Ninth Circuit took the opposite view and held that Montana's identical ban was narrowly tailored to achieve both judicial independence and judicial integrity. Pet.App. 30.

The importance of this issue extends beyond the Eighth and Ninth Circuits. Eleven states besides

Montana prohibit judicial candidates from seeking or using party endorsements.[5] Certiorari is necessary to resolve this issue of nationwide importance.

II. The Ninth Circuit Clearly Erred

A. Candidate Endorsements Constitute Core Protected Speech

Rule 4.1(A)(7) restricts the speech of a judicial candidate and may therefore be upheld only if it is "reasonably necessary to achieve [the State's] compelling interests." *R.A.V. v. City of St. Paul*, 505 U.S. 377, 395-96 (1992); *Brown v. Hartlage*, 456 U.S. 45, 53 (1982) ("The candidate, no less than any other person, has a First Amendment right to engage in the discussion of public issues and vigorously and tirelessly to advocate his own election.…") (citations omitted). Robust candidate speech is as critical to voters as it is to candidates. *Id.* ("it is of particular importance that candidates have the unfettered opportunity to make their views known so that the electorate may intelligently evaluate the candidates' personal qualities and their positions on vital public issues before choosing among them on election day"). The notion that "public discussion is a political duty" is one that "applies with special force to candidates for public office." *Buckley v. Valeo*, 424 U.S. 1, 52-53 (1976); *id.* at 14 ("debate on the qualifications of candidates [is] integral to the operation of the system of government established by our Constitution.").

The right to disseminate party endorsements lies at "the core of our electoral process and of the First

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[5] See Pet.App. 41-43. Like Montana and Minnesota, these states copied Rule 4.1(A)(7) of the American Bar Association's Model Code of Judicial Conduct.

Amendment freedoms." *Eu v. San Francisco Democratic Cent. Comm.,* 489 U.S. 214, 222-23 (1989), quoting *Williams v. Rhodes*, 393 U.S. 23, 32 (1968); see also *Renne v. Geary,* 501 U.S. 312 349 (1991) (Marshall, J., dissenting) ("the prospect that voters might by persuaded by party endorsements is not a *corruption* of the democratic political process; *it* is the democratic political process.") (emphasis in original). The Ninth Circuit acknowledges the impact of endorsements upon voters. Pet.App. 27 (describing a party endorsement as "something of value" and a "valuable stamp of approval."). Republican endorsements can, for example, expose judicial candidates falsely claiming to be conservatives or "strict constructionists" and thus enable conservative voters, like those constituting the majority of the Sanders County electorate, to sort the wheat from the chaff. In small rural areas where local parties do not purchase broadcast advertising, forbidding judicial candidates like French from informing voters of a Republican endorsement means that "all judicial candidates can claim to be 'strict constructionists' with equal (and unhelpful) plausibility." *White I,* 536 U.S. at 773.

Party endorsements are important in judicial races for another reason. Just like some voters in Sanders County would be more inclined to support French after hearing him trumpet a GOP endorsement, others would react by rejecting him. *White I*, 536 U.S. at 795 (Kennedy, J., concurring) ("If [Montana] believes that certain sorts of candidate speech disclose flaws in the candidate's credentials, democracy and free speech are their own correctives."). Rule 4.1(A)(7) suppresses valuable information voters could use to cull judicial

candidates deemed too partisan. *Carey v. Wolnitzek,* 614 F.3d 189, 202 (6th Cir. 2010) ("A party's undisclosed potential influence on candidates is far worse than its disclosed influence, as the one allows a full airing of the issue before the voters while the other helps to shield it from public view.").

Before Montana may censor this important election speech, it must demonstrate that its restriction is narrowly tailored to achieve a compelling interest. As explained in the next sections, the Ninth Circuit erred in holding that Montana satisfied this demanding standard.

B. The Ban on Judicial Candidates Using Party Endorsements is Underinclusive

A statute's underinclusivity "creates a First Amendment concern when the State regulates one aspect of a problem while declining to regulate a different aspect of the problem that affects its stated interest *in a comparable way*." *Williams-Yulee,* 135 S. Ct. at 1670 (emphasis in original); *City of Ladue,* 512 U.S. at 51 ("[w]hile surprising at first glance, the notion that a regulation of speech may be impermissibly underinclusive is firmly grounded in basic First Amendment principles."). Although the "First Amendment imposes no freestanding underinclusiveness limitation," this Court has invalidated numerous statutes based solely upon underinclusiveness. See, *e.g., Reed v. Town of Gilbert*, 135 S. Ct. 2218, 2231-32 (2015) (ordinance that was purportedly enacted to enhance aesthetics and safety by restricting signs providing directions to churches was "hopelessly underinclusive" because it exempted signs conveying ideological messages); *Brown v. Entertainment Merchants Assn.*, 131 S. Ct.

2729, 2740 (2011) (statute prohibiting sale of violent video games to minors in order to protect them from harm was invalidated because it did not apply to violent books, cartoons, and movies). Underinclusiveness can "raise doubts about whether the government is in fact pursuing an interest it invokes, rather than disfavoring a particular speaker or viewpoint." *Williams-Yulee*, 135 S. Ct. at 1668.

The problem allegedly confronting Montana is that "*in all cases*, an endorsement suggests the possibility of a quid-pro-quo exchange in which a judge may rule favorably for the endorsing entity." Pet.App. 23 (emphasis added). But by prohibiting judicial candidates from seeking and using only *political party* endorsements, Montana is ignoring the same problem allegedly being caused by them using endorsements from other groups:

> Minnesota worries that a judicial candidate's consorting with a political party will damage that individual's impartiality or appearance of impartiality as a judge, apparently because she is seen as aligning herself with that party's policies or procedural goals. But that would be no less so when a judge as a judicial candidate aligns herself with the constitutional, legislative, public policy and procedural beliefs of organizations such as the National Rifle Association (NRA), the National Organization for Women (NOW), the Christian Coalition, the NAACP, the AFL–CIO, or any number of other political interest groups.

White II, 416 F.3d at 759; see also *Williams-Yulee,* 135 S. Ct. at 1675 (Breyer, J., concurring) (noting a 2013 poll showing 87% of voters believe interest group advertisements have either "some" or "a great deal of influence" on an elected judge's subsequent decisions).

The Ninth Circuit insisted that political parties sway voters in nonpartisan judicial elections more effectively than interest groups do. Pet.App. 23 (parties "are capable of exerting more influence in an election than most (if not any) interest groups."). Montana does not offer, and the Ninth Circuit does not cite, any evidence supporting this proposition – one that is, at best, questionable.[6]

But even if voters find party endorsements in nonpartisan judicial races to be more persuasive than endorsements from other groups, censoring candidate speech for that reason represents the kind of "highly paternalistic approach" this Court has repeatedly rejected. *Eu*, 489 U.S. at 223, quoting

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[6] See, *e.g.*, *Eu*, 489 U.S. at 228 n.18 ("[t]here is no evidence that an endorsement issued by an official party organization carries more weight than one issued by a newspaper or a labor union"); *Colorado Republican Federal Campaign Comm. v. Federal Election Comm'n*, 518 U.S. 604, 646 (1996) (Thomas, J., concurring) ("[t]he structure of political parties is such that the theoretical danger of those groups actually engaging in *quid pro quos* with candidates is significantly less than the threat of individuals or other groups doing so."); *Carey,* 614 F.3d at 202 ("Although the two major political parties take positions on a wide array of issues, many interest groups advance a narrower set of positions and often do so more vocally, particularly with respect to judges."); *White II*, 416 F.3d at 759 ("[t]here are numerous other organizations whose purpose is to work at advancing any number of similar goals, often in a more determined way than a political party.").

Virginia State Bd. of Pharmacy v. Virginia Citizens Consumer Council, Inc., 425 U.S. 748, 770 (1976); *Citizens United v. Federal Election Comm'n,* 558 U.S. 310, 356 (2010) (when government seeks to "command where a person may get his or her information or what distrusted source he or she may not hear, it uses censorship to control thought"); *Tashjian v. Republican Party of Conn.*, 479 U.S. 208, 221 (1986) ("A State's claim that it is enhancing the ability of its citizenry to make wise decisions by restricting the flow of information to them must be viewed with some skepticism.").

Paternalism also underlies the Ninth Circuit's approval of censorship as a means to "preserve the distance between the judiciary and the political branches" and "place the judiciary on a different footing and do so in a way that is visible to the public." Pet.App. 21. This Court does not necessarily share the Ninth Circuit's idyllic view of the judiciary. *White I*, 536 U.S. at 784 ("the complete separation of the judiciary from the enterprise of 'representative government'…is not a true picture of the American system."). More fundamentally, the Court rejects censorship as a means to inculcate that view. *Landmark Communications, Inc. v. Virginia,* 435 U.S. 829, 842 (1978) ("speech cannot be punished when the purpose is simply to protect the court as a mystical entity or the judges as individuals or as anointed priests set apart from the community.").

The Ninth Circuit's approval of censorship to mold public opinion concerning the judiciary harkens back to the "noble" lies Plato claimed were needed to achieve justice. See also Michelle T. Friedland, *Disqualification or Suppression: Due Process and the*

Response to Judicial Campaign Speech, 104 COLUM. L. REV. 563, 612 (2004) (judicial campaign codes are "much more about maintaining appearances by hiding reality than about changing reality."). The First Amendment's drafter had more faith in citizens than either the ancients or the Montana Supreme Court.[7]

The underinclusivity of Rule 4.1(A)(7) is disturbing not only because of its paternalism but also because of the advantages it confers upon incumbent judges who already have name recognition. *Cf. City of Ladue*, 512 U.S. at 51 (underinclusivity "may represent a governmental attempt to give one side of a debatable public question an advantage in expressing its view to the public."); *Reed*, 135 S. Ct. at 2238 (Alito, J., concurring) ("[l]imiting speech based upon its 'topic' or 'subject' favors those who do not want to disturb the status quo"). The Ninth Circuit erred in deferring to the Montana Supreme Court's "considered judgment" in censoring judicial candidate speech. Pet.App. 28. Instead, restrictions upon election speech enacted by incumbents are inherently suspect. *Davis v. Federal Election Comm'n*, 554 U.S. 724, 742 (2008) (invalidating asymmetrical contribution limits that penalized a congressional incumbent's wealthy challenger because "it is a dangerous business for Congress to use the election laws to influence the voters' choices"); see also *White II*, 416 F.3d at 758 n.9 (noting the "remarkably pro-

[7] James Madison declared that "[a] popular Government without popular information, or the means of acquiring it, is but a Prologue to a Farce or a Tragedy, or perhaps both." *Williams-Yulee*, 135 S. Ct. at 1683 (Kennedy, J., dissenting).

incumbent character" of the Minnesota Supreme Court's ban on judicial candidates using party endorsements).

As acknowledged by the Ninth Circuit, a party endorsement "may attract voters' attention, jumpstart a campaign, give assurance that the candidate has been vetted, or provide legitimacy to an unknown candidate and indicate that he or she is capable of mounting a successful campaign." Pet.App. 26. It is difficult to envision a more effective way for incumbent judges to defang challengers than to deprive them of this tool. These circumstances make the underinclusiveness of Rule 4.1(A)(7) particularly troubling.

C. The Ban on Judicial Candidates Using Party Endorsements is Unnecessary For A Structurally Independent Judiciary

Along with judicial integrity, the State has a purported interest "in a *structurally independent* judiciary." Pet.App. 20 (emphasis in original). Assuming, *arguendo*, that this is a compelling state interest, the State must demonstrate that censorship is "reasonably necessary to achieve" that interest. *R.A.V.*, 505 U.S. at 395-96.

In explaining how candidate speech somehow impacts the judiciary's structure, the Ninth Circuit held that "[d]ependence on an endorsing political party brings into question whether a judge will be able to independently interpret and review a given piece of legislation and thus goes to the core of the separation of powers." Pet.App. 24. There are multiple problems with this reasoning.

First, it ignores the Supremacy Clause of the United States Constitution. Montana may certainly structure its judiciary by defining the judicial branch's relationship to the other branches. It may deny political parties the ability to place the names of judicial candidates they endorse onto the general election ballot and may instead require that judicial candidates run on nonpartisan ballots. What Montana may not do is violate the federal constitutional rights of its citizens. This Court has consistently struck down state structural choices that violate the constitutional rights of state citizens. See, *e.g.*, *Gregory v. Ashcroft*, 501 U.S. 452, 457, 460 (1991) (though "a State defines itself as a sovereign" through "the structure of its government," it is subject to the "limitations imposed by the Supremacy Clause"); *Eu*, 489 U.S. at 223-24 (a "State's broad power to regulate the time, place, and manner of elections does not extinguish the State's responsibility to observe the limits established by the First Amendment rights of the State's citizens"); *Gray v. Sanders*, 372 U.S. 368, 379-380 (1963) (Georgia's reliance upon county unit system in statewide elections resulted in vote dilution suffered by residents in more populous counties, thereby violating their right to equal protection).

Second, Rule 4.1(A)(7) does not achieve structural independence for the judiciary because it does not prevent parties from endorsing judicial candidates, or judges from judging with an eye towards appeasing a political party and its adherents. Elected judges "*always* face the pressure of an electorate who might disagree with their rulings and therefore vote them off the bench." *White I*, 536 U.S. at 782 (emphasis in original). Thus, as this Court held,

"if…it violates due process for a judge to sit in a case in which ruling one way rather than another increases his prospects for reelection, then—quite simply—the practice of electing judges is itself a violation of due process." *Id.* Similarly, if it violates a state's separation of powers for a judge to sit in a case in which ruling one way rather than another increases his prospects for reelection by increasing his chances of securing a party endorsement, then the practice of electing judges itself violates the doctrine of separation of powers.

Third, the State does not offer, and the Ninth Circuit not cite, any evidence demonstrating that political parties pressure judges more than interest groups do.[8] Rule 4.1(A)(7) does nothing to address the alleged damage to judicial independence arising from judicial candidates seeking and using interest group endorsements, and is therefore "so woefully underinclusive as to render belief in that purpose a challenge to the credulous." *White I*, 536 U.S. at 780.

Fourth, the State does not offer, and the Ninth Circuit not cite, any evidence demonstrating that party endorsements "are usually not given out for free" and are used instead for quid-pro-quo exchanges. Pet.App. 26. A party does not endorse candidates with the hope of cajoling them to govern contrary to their beliefs. Rather, a party vets candidates before endorsing them to ensure they already share the party's views and will act consistently with their beliefs after Election Day. *Id.* (party endorsements "give assurance that the candidate has been vetted" by the party). In the real

[8] Indeed, other authorities contradict this assertion. See note 6, *supra*.

world, party endorsements are not components in quid-pro-quo exchanges but are freely bestowed by parties for the same reason priests freely bestow blessings: to equip the saints rather than convert the sinners.

Rule 4.1(A)(7) is grossly underinclusive and fails to achieve any additional "structural independence" for Montana's judiciary. Its suppression of core election speech is therefore unconstitutional.

III. This Case is an Excellent Vehicle to Protect Core Election Speech

This case was first presented to this Court in October 2014 on an emergency application in order for French to share with voters in the closing days of the 2014 campaign the endorsement he had received from the Sanders County Republican Central Committee. No. 14A390. Justice Kennedy ordered the State to respond. In so doing, Montana emphasized that granting relief in late October would disrupt an ongoing election process. See generally, State's Resp., No. 14A390, (filed Oct. 16, 2014). The full Court denied the application.

There is no longer a risk of an election disruption resulting from a ruling by this Court, and this case is no longer in an interlocutory posture that would complicate review. See *Mount Soledad Mem'l Ass'n v. Trunk*, 132 S. Ct. 2535, 2536 (2012). Instead, there is a final ruling by the Ninth Circuit thoroughly addressing the merits of French's First Amendment challenge to Rule 4.1(A)(7).

Moreover, French is suffering an ongoing violation of his First Amendment rights. He is seeking election to the office of Sanders County

Justice of the Peace in November 2018 and intends to do so again in 2022. Pet.App. 44. The Montana Supreme Court took the extraordinary step of filing an amicus brief in the District Court opposing French, see Amicus Brf. Filed by Six Justices of the Montana Supreme Court, *French v. Jones*, No. 4:14-cv-00057-SEH, Doc. 16 (D. Mont. Sept. 9, 2014), a clear indication that it intends to penalize violations of Rule 4.1(A)(7). French will continue to suffer a violation of his First Amendment rights, and voters will continue to be deprived of valuable information, until this Court grants relief.

CONCLUSION

For all of the foregoing reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted,

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March 2, 2018