

In the Supreme Court of the United States

MICHAEL WATSON, MISSISSIPPI SECRETARY OF STATE,

Petitioner,

v.

REPUBLICAN NATIONAL COMMITTEE, ET AL.,

Respondents.

**On Writ of Certiorari to the
United States Court of Appeals for the Fifth Circuit**

**JOINT MOTION BY RESPONDENTS FOR
DIVIDED ARGUMENT**

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RULE 29.6 STATEMENT

The moving parties are the Republican National Committee, the Mississippi Republican Party, James Perry, Matthew Lamb, and the Libertarian Party of Mississippi. None has any parent corporations, and there are no publicly held companies that own 10 percent or more of the stock of any party represented by undersigned counsel.

Pursuant to this Court's Rules 21 and 28.4, Respondents in No. 24-1260, the Republican National Committee, Mississippi Republican Party, James Perry, and Matthew Lamb (the GOP Respondents) and the Libertarian Party of Mississippi, respectfully and jointly move for divided argument in this case. The GOP Respondents and the Libertarian Party request to divide their argument time evenly and do not seek to enlarge the total time set aside for argument. Given that the GOP Respondents and the Libertarian are two separate political parties that routinely compete against each other in contested elections, there are unique reasons why one party cannot adequately represent the other and divided argument is particular important. Petitioner does not consent to the motion and advised he intends to file a response. Respondents Justin Wetzel, Toni Jo Diaz, Becky Payne, Barbara Kimball, Christine Brice, and Carolyn Handler advised they intend to join Petitioner's response. Respondent Vet Voice Foundation and the Mississippi Alliance for Retired Americans do not oppose.*

1. This case presents a question of critical national importance: whether the federal statutes setting a single election day for Presidential, House, and Senate elections, 2 U.S.C. §§1, 7, and 3 U.S.C. §1, prohibit Mississippi from accepting ballots that arrive after the designated day for the election. Mississippi's statute (enacted in the wake of the COVID-19) is not unique; today, 14 states accept and count ballots

* In the event the Court grants a motion for divided argument by the Solicitor General, the moving parties would consent to an even distribution of time among the three groups of parties, and an equal division of time between those supporting the judgment and those opposing the judgment.

received after election day. Respondents contend that these statutes are pre-empted by federal law and diminish voter confidence in election results by delaying the tabulation of votes and increasing concerns about election integrity.

2. The GOP Respondents and the Libertarian Party brought separate challenges to Mississippi's statute in the district court. The district court ruled that Mississippi's law did not conflict with the federal election-day statutes, but the Fifth Circuit disagreed. The Fifth Circuit concluded that “[b]ecause Mississippi's statute allows ballot receipt up to five days after the federal election day, it is preempted by federal law.” *Republican Nat'l Comm. v. Wetzel*, 120 F.4th 200, 204 (5th Cir. 2024).

3. Throughout this litigation, consistent with their status as distinct and often opposed political parties, the GOP Respondents and the Libertarian Party have been represented by their own counsel, submitted their own briefs with different points of emphasis, and presented separate oral arguments.

4. If this motion is granted, both parties will be represented at argument by experienced counsel. The GOP Respondents will be represented at argument by Patrick Strawbridge of Consovoy McCarthy PLLC, and the Libertarian Party will be represented by Paul Clement of Clement & Murphy, PLLC.

5. In this case, the different sets of Respondents are uniquely situated because they involve distinct political parties. Although they both support the decision of the Fifth Circuit in this case, they hold substantially different—often directly clashing—views about the role of government with respect to a wide variety of social, economic, trade, and other policy issues. Indeed, it is no exaggeration to say

that the *raison d'être* of the Libertarian Party is that they believe neither of the two parties represent their interests and the two-party system diserves the interests of the Libertarian Party and its members. The Republican Party likewise faces challenges from third-party candidates who often siphon votes from Republican candidates. The Libertarian Party and the GOP Respondents often oppose each other at the polls, and they employ different electoral and election-monitoring strategies that are implicated by Mississippi's law.

6. Throughout this litigation, the parties have made distinct arguments. For example, the Libertarian Party has spent significant time below and in this Court addressing the alleged conflict between the election-day statutes and the Uniform and Overseas Citizens Absentee Voting Act, while the GOP Respondents have devoted more focus to the history of election day. *See, e.g.*, Brief in Opposition of Respondent Libertarian Party of Mississippi, at 7, 19-20. And in the merits-stage briefing, the Libertarian Party devoted a substantial portion of its brief to surveying how the term "election" was used in state election codes during the 19th-century, whereas the GOP Respondents emphasize how statutory context confirms the Fifth Circuit's holding.

7. This Court has granted divided argument in similar cases before, where private parties with different interests were represented by separate counsel. *See, e.g.*, *Priests for Life v. HHS*, 136 S.Ct. 891 (2016) (Mem.); *United States v. Aurelius Inv.*, 140 S.Ct. 34 (2019) (Mem.); *Truck Ins. Exch. v. Kaiser Gypsum Co.*, 144 S.Ct. 996 (2024) (Mem.). While a three-way division of argument is concededly unusual,

there are special factors present here that make a non-divided argument particularly problematic. The GOP Respondents and the Libertarian Party are not two business enterprises with shared economic interests in the outcome of this case. Political parties are at bottom associational enterprises, *see Cal. Democratic Party v. Jones*, 530 U.S. 567, 572-82 (2000); *Timmons v. Twin Cities Area New Party*, 520 U.S. 351, 357-58 (1997), and the Libertarian Party exists because its members have chosen not to associate with the Republican Party, as the Republican Party's members have chosen not to associate with the Libertarian Party. Under these unique circumstances, forcing one political party to be represented at the podium by another with divergent interests would encroach on the associational autonomy at the core of a political party's existence.

8. For the foregoing reason, the Respondents respectfully request that the Court grant this motion for divided argument and allow counsel for the GOP Respondents and the Libertarian Party to divide argument time evenly.

Respectfully Submitted,

February 17, 2026

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