

**In the Supreme Court of the United States**

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JENNIFER AUER JORDAN AND SHAMIRACLE J. RANKIN,

*Applicants,*

*v.*

VICTORIA S. DARRISAW, JAMES L. COURSEY, JR., AND WARREN SELBY,  
IN THEIR OFFICIAL CAPACITIES AS MEMBERS OF THE SPECIAL COMMITTEE  
ON JUDICIAL ELECTION CAMPAIGN INTERVENTION OF THE GEORGIA JUDICIAL  
QUALIFICATIONS COMMISSION,

*Respondents*

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**RESPONSE IN OPPOSITION TO APPLICATION FOR VACATUR  
AND SUGGESTION OF MOOTNESS**

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## **RULE 29.6 STATEMENT**

Respondents are individuals, sued in their official capacities as Members of the State of Georgia's Judicial Qualifications Commission. Counsel for Respondents further certifies that no publicly traded company or corporation has an interest in the outcome of the case or appeal.

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## INTRODUCTION

Applicants concede that their request of this Court—“vacatur” of the Eleventh Circuit’s stay order—“cannot unring the bell.” Appl. 20. They further concede that respondents’ public statements concerning their campaigns for judicial office, issued following the circuit court’s stay order, “cannot be retracted, undone, or remedied” by this Court now—those campaigns are over. *Id.* at 21. Applicants thus ask for a purely advisory ruling; they all but admit that the relief they seek from this Court will have no practical consequences. Applicants do not plausibly show that granting their application would remedy any injury in fact.

Applicants were, until two days ago, candidates seeking election to the Supreme Court of Georgia. They brought this lawsuit in federal district court, less than three weeks before the election, seeking to disrupt the State of Georgia’s administration of state law in that election for state office. Respondents are duly appointed Members of the State’s Judicial Qualifications Commission. They are charged by Georgia law with enforcing Georgia’s Code of Judicial Conduct, and thereby protecting public confidence in the independence and impartiality of Georgia’s judiciary.

Respondents have performed that sovereign function according to state law. During Applicants’ campaigns, the Commission received complaints alleging that Applicants violated multiple provisions of Georgia’s Code of Judicial Conduct. Most notably, Applicants appeared to violate the Code’s prohibition on judges and judicial candidates giving their endorsement to other candidates for public office when Applicants distributed a joint commercial that unmistakably expressed their support for each other’s campaigns. The Commission also received complaints alleging that Applicants, while campaigning on the internet and at public events, had repeatedly and publicly touted their plan to “restore abortion rights.” Those and similar statements by Applicants appeared to violate the Code’s prohibition on making commit-

ments regarding legal issues likely to come before the court that Applicants were running to join.

In response to those complaints, Respondents followed the process set out by the Commission's rules: they preliminarily investigated, found grounds for further inquiry, and sent *confidential* letters to Applicants informing them of the complaints' allegations and requesting a response. App. 10a. The Commission did not direct Applicants to alter or stop their speech, or indeed to do anything besides respond to the allegations. *Ibid.*

Applicants could have responded confidentially to the Commission by explaining why their campaigns were consistent with the Code. Or they could have argued to the Commission that the First Amendment guaranteed them the right to promise to restore abortion rights and to endorse each other's campaigns. Instead, Applicants filed, under seal, a federal lawsuit seeking to silence the Commission and shut down its ongoing enforcement proceeding. In a transparent act of forum shopping, Applicants filed suit not in the Northern District of Georgia—encompassing Atlanta, the state capital and place of the Commission's work—but in one particular division of the Middle District of Georgia. Applicants requested a temporary restraining order and preliminary injunction that would “prohibit[] the [Commission] from continuing the investigation of the [Applicants'] campaign statements.” App. 40a.

Applicants' suit sought to secure an unfair advantage in their campaigns for judicial office. Applicants' electoral opponents, who are sitting Justices of the Georgia Supreme Court, obviously could not give speeches stating their plans for future abortion cases, nor were they allowed to fund campaign ads touting their endorsement of other candidates. While the sitting Justices faced those campaign limitations by virtue of the ethical responsibilities of their office, Applicants sought to have a federal court release them, in secret, from reciprocal restrictions.

It almost worked. As the circuit court explained in staying the district court's order, the district court "wait[ed] ten days to hold a hearing on the [Applicants'] motion." App. 31a. When the district court did hold a hearing, it overruled the Commission's objection to the improper venue. And it granted Applicants' motion to seal the proceedings over the objection of Atlanta's premier newspaper and notwithstanding the obvious newsworthiness of, and public interest in, Applicants' campaign actions and their lawsuit. The district court then "wait[ed] ... another four [days] to issue a summary, unreasoned order ... granting an injunction that runs eight days—four beyond the scheduled election." *Ibid.* The court rejected the Commission's contention that it must abstain from interfering with the ongoing state law enforcement process under *Younger v. Harris*, 401 U.S. 37 (1971). And the court found that Respondents would likely violate the First Amendment if they issued "a public statement about *possible* violations of [the] Canon ... at a crucial time in [Applicants'] respective campaigns." App. 41a (emphasis added). On that ground, the court "enjoined [the Commission] from issuing a non-confidential Public Statement on the ... *alleged* violations." *Id.* at 42a (emphasis added).

Respondents immediately appealed and sought to stay the injunction, owing to the election being mere days away. The court of appeals granted that stay. The court found appellate jurisdiction because the district court's "injunction barring enforcement of the Code against the candidates can be effectively challenged only by an immediate appeal during the election." App. 31a. The court also found that the balance of equities "weighs heavily" in favor of a stay: leaving in place the injunction would "irreparably harm the state" and the voting public, which would not be permitted to "evaluate for themselves the credible allegations of [Applicants'] misconduct." App. 33a. And while the court of appeals expressly did not "definitively resolve the merits of the [Applicants'] First Amendment claims," it found a "substantial case' that the

[ethics] clauses at issue will survive constitutional challenge” based on “[t]he weight of analogous precedent.” *Ibid.*

After the Eleventh Circuit’s stay order, four material developments occurred that entirely obviated any interest of Applicants in the TRO that they now ask this Court to restore. First, when the court of appeals held that the Commission’s enforcement actions are substantially likely to comport with the First Amendment, Respondents publicly stated their “reasonabl[e] belie[f] that [Applicants]’ campaign conduct ... violates Georgia’s Code of Judicial Conduct.” App., *infra*, 227a-229a. Those statements were sent to the Applicants, filed with the court of appeals (per the court’s direction), and posted on the Commission’s website. The next day, they were widely reported as part of news coverage related to the election. Second, the district court has now released its full opinion respecting the injunction stayed by the Eleventh Circuit. App. 1a-26a. The district court clarified that its injunction had been expressly limited to restraining the Commission from “issuing a non-confidential Public Statement”; the court “DENIED” Applicants’ request to prohibit the Commission from continuing its investigation or otherwise enforcing Georgia’s ethical rules. *Id.* at 25a. Third, Applicants affirmatively moved the court of appeals and district court to unseal the case records, and the courts granted those requests. Fourth and most important, Georgians went to the polls on Tuesday, May 19. Applicants were not elected.

Under this Court’s precedent, Applicants bear an extraordinarily heavy burden to convince this Court to vacate the court of appeals’ stay and reinstate the district court’s injunction. The Application does not come close to meeting that high standard. First, this Court would grant the relief requested only if Applicants could demonstrate that, without it, the stay will seriously and irreparably injure them. *Western Airlines, Inc. v. Int’l Bhd. of Teamsters*, 480 U.S. 1301, 1305 (1987) (O’Connor, J., in chambers) (quoting *Coleman v. Paccar, Inc.*, 424 U.S. 1301, 1304 (1976) (Rehnquist, J., in chambers)). But Applicants concede the opposite; they face no on-

going cognizable harm at all. The TRO did one thing only: bar the Commission from “issuing a ... public statement” “at a crucial time in [Applicants’] campaigns.” App. 41a-42a. Those statements have now issued, as allowed by the court of appeals. Major publications have republished them. And Applicants’ campaigns are over. Applicants say this Court should “remove” the “authorization” for Respondents’ statements; “restore[] the district court’s order”; and “vindicate[] the[ir] constitutional rights.” Appl. 20. But this Court does not issue advisory opinions, and Applicants do not identify any *concrete injury* that would or could be redressed by their requested order. The State’s own speech opining on what it reasonably believes about Applicants’ campaigns’ compliance is not a cognizable injury to them. See *Hous. Cmty. Coll. Sys. v. Wilson*, 595 U.S. 468, 478-479 (2022).

Second, Applicants also have not shown that the court of appeals demonstrably erred. They ask this Court to consider not their First Amendment claims but two procedural questions. The court of appeals was not clearly wrong on either. Regarding appellate jurisdiction, Applicants themselves acknowledge this Court’s holding that a TRO is appealable in the exceptional circumstance where only an immediate appeal can challenge the order effectively. Appl. 12-13. The court of appeals explained why this is just such a case: immediate appeal was the only way to enable Georgians to cast ballots informed by the Commission’s views of state law as applied to Applicants’ campaigns. App. 33a. Second, regarding the legal standard for a stay pending appeal, the court of appeals’ observation that the “weight of analogous precedent” supports Georgia’s ability to enforce its judicial ethics code sufficed to justify the stay under this Court’s precedent. *Ibid.*

Last, Applicants have not shown any reasonable prospect that this Court would “very likely” review this case. The court of appeals’ stay order arose from extraordinary circumstances: extreme time pressure created by Applicants and the district court, combined with the reality that, as Applicants themselves acknowl-

edged, the pre-election period was the only time that mattered for judicial review. See App. 31a (quoting Applicants’ statement that “in the judicial-campaign context there is no adequate post-election remedy”). The mootness of Applicants’ request to restrain the public statements, combined with the court of appeals’ discretionary handling of the ultra-fast-moving circumstances, would make this case a terrible vehicle to review questions about appellate jurisdiction and stay procedure. If this Court is interested in either of those issues, it would surely review them in a more-typical fact pattern where they regularly arise, and where the parties have some concrete stake in the questions’ outcome.

The Application should be denied.

## STATEMENT

### A. The Commission’s notices

Applicants Jennifer Auer Jordan and ShaMiracle J. Rankin were non-partisan candidates for two separate seats on the Supreme Court of Georgia in the May 19, 2026 general election. App. 28a. Early voting began on April 27. App., *infra*, 6a. During their campaigns, the Georgia Judicial Qualifications Commission received complaints that Applicants had violated the State’s Code of Judicial Conduct in multiple respects: by jointly producing a campaign commercial expressing mutual support for each other’s elections, jointly appearing at events where they conveyed their promise to “RESTORE ABORTION RIGHTS,” and actively promoting endorsements from abortion-advocacy organizations on their campaign social media, which could lead to an appearance of impropriety. *E.g.*, App., *infra*, 121a, 123a, 125a, 136a, 138a.

Under Commission Rule 29, when complaints are received during a judicial election, the Special Committee determines whether further investigation is warranted. If it is, “the Commission sends a confidential notice to the candidate explaining the alleged Code violations and requests a confidential written response.” App.

29a (citing Ga. Jud. Qual. Comm’n R. 29(B)). The Commission then “reviews the response, and if it finds that speedy intervention is necessary, it may release a non-confidential public statement setting out the allegations and refer the matter for a full investigation.” *Ibid.* (citing Ga. Jud. Qual. Comm’n R. 29(B)(4)). The Special Committee has no authority to file formal charges or otherwise dispose of a complaint; that power rests with the full Investigative Panel. Ga. Jud. Qual. Comm’n R. 29(D). Public discipline—up to and including suspension, removal, and a ban on judicial service—may be imposed only by the Georgia Supreme Court. Ga. Jud. Qual. Comm’n R. 6(B).

The Commission followed that process here. On April 27, the Special Committee sent Applicants confidential notice letters identifying the complaints, citing the specific Code provisions potentially implicated, and requesting “confidential written responses to the allegations” by April 30, “for the Commission to consider as it determined what to do next.” App. 29a; see App., *infra*, 112a-115a, 127a-130a. The notices did not direct Applicants to alter or stop their speech and did not impose any sanction. App., *infra*, 112a-115a, 127a-130a.

Rather than substantively respond, Applicants filed a sealed federal lawsuit in the Middle District of Georgia on April 30—the same day their responses were due to the Special Committee—seeking to enjoin the Commission from continuing its investigation or issuing any public statement. See App., *infra*, 20a-32a, 143a-144a. The Applicants also sought to seal the proceedings so that the voting public would not learn about the Commission’s investigation or Applicants’ lawsuit.

#### **B. The district court’s TRO**

Respondents opposed venue in the Middle District, explaining that the Commission was seated in Atlanta and that most of the work of the Commission challenged in the lawsuit had occurred in Atlanta.

Applicants also opposed the requested preliminary relief on multiple grounds. Among other things, Respondents explained that *Younger* abstention barred Applicants' suit: the federal district court had no proper legal basis to interfere with the ongoing proceedings of a duly constituted state body (the Commission) working to discharge their legal duties and administer state law in connection with an election for state office. Respondents further showed that Applicants lacked standing and that Applicants' claims were not ripe. And Respondents demonstrated that, even assuming the district court were facing a live case or controversy, the First Amendment did not forbid Georgia from requiring candidates for judicial office to adhere to Georgia's Code of Judicial Conduct.

The district court waited ten days to hold a hearing. App. 31a. At that hearing, the court overruled Respondents' venue objection, and agreed to Applicants' request to seal the proceedings over the objection of the Atlanta Journal Constitution. The court then waited another four days before entering an unreasoned order on May 15, 2026, four days before the election. App. 40a-42a. The order enjoined Respondents "from issuing a non-confidential Public Statement on the April 27, 2026 notice letter or the alleged violations" for eight days—four days past Election Day. App. 41-42a. The court's entire merits analysis consisted of a single sentence: "Plaintiffs have established Defendants challenged conduct likely violates the Plaintiffs' First and Fourteenth Amendment rights." App. 41a. The court stated that a more fulsome opinion would follow, and suggested that respondents time to appeal would not run until the future "Final Order." App. 42a.

### **C. The Eleventh Circuit's stay**

Respondents immediately appealed and filed an emergency motion to stay. Respondents explained that, without an immediate stay, Applicants would succeed in securing for themselves an unfair advantage in the election that was then just days away. On May 17, a divided panel of the Eleventh Circuit granted the stay. App. 27a-

34a. The court found appellate jurisdiction because the district court’s “injunction barring enforcement of the Code against the candidates can be effectively challenged only by an immediate appeal during the election.” App. 31a. The court then found that the balance of equities “weighs heavily” in favor of a stay: leaving the injunction in place would “irreparably harm the state” and deprive voters of the opportunity to “evaluate for themselves the credible allegations of [Applicants]’ misconduct.” App. 33a. On the merits, the panel found a “substantial case” that the challenged ethics clauses “will survive constitutional challenge” based on “[t]he weight of analogous precedent.” App. 32a. The court of appeals noted that the Eleventh Circuit has “blessed a similar false statement clause as constitutionally sound,” and that “sister circuits have” upheld similar endorsement and commitment clauses. App. 32a. The panel expressly declined to “definitively resolve the merits.” App. 33a.

Judge Kidd dissented. App. 35a-39a.

#### **D. Post-stay developments**

Since the stay order, multiple significant developments have occurred that materially bear on whether Applicants have any remaining interest in an injunction. *First*, Respondents issued two Rule 29(F) public statements—one for each Applicant—stating the Commission’s reasonable belief that their campaign conduct violated specified provisions of the Code. App., *infra*, 228a-229a. Those statements were posted on the Commission’s website and widely reported the following day. App., *infra*, 227a; Appl. 4; n.2, *infra*. *Second*, the district court issued its final twenty-six-page reasoned order, clarifying that its injunction was limited to restraining respondents (since-issued) public statements; the court denied Applicants’ broader request to prohibit the investigation. App. 1a-26a. *Third*, Applicants moved to unseal the entire

record and the Eleventh Circuit granted those requests. App., *infra*, 231a, 233a. *Fourth Georgians* voted on May 19. Applicants were not elected.<sup>1</sup>

### ARGUMENT

While there is no doubt that a Circuit Justice has the power to dissolve a stay entered by a court of appeals, “the cases make clear that this power should be exercised with the greatest of caution and should be reserved for exceptional circumstances,” *Holtzman v. Schlesinger*, 414 U.S. 1304, 1308 (1973) (Marshall, J., in chambers), while paying “great deference” to the court of appeals’ decision, *Garcia-Mir v. Smith*, 469 U.S. 1311, 1313 (1985) (Rehnquist, J., in chambers).

More specifically, a Circuit Justice may vacate a stay entered by a court of appeals only if “it appears that the rights of the parties to a case pending in the court of appeals, which case could and very likely would be reviewed here upon final disposition in the court of appeals, may be seriously and irreparably injured by the stay.” *Western Airlines*, 480 U.S. at 1305 (O’Connor, J., in chambers) (quoting *Coleman*, 424 U.S. at 1304 (Rehnquist, J., in chambers)). Moreover, the Circuit Justice “may not vacate a stay entered by a court of appeals unless that court clearly and ‘demonstrably’ erred in its application of ‘accepted standards.’” *Planned Parenthood of Greater Tex. Surgical Health Servs. v. Abbott*, 571 U.S. 1061, 134 S. Ct. 506, 506 (2013) (Scalia, J., joined by Thomas, and Alito, JJ., concurring in denial of application to vacate stay) (quoting *Western Airlines*, 480 U.S. at 1305 (O’Connor, J., in chambers)). Applicants cannot carry their “heavy burden of showing that [granting the stay] was a clear violation of accepted legal standards” by demonstrating merely that “[r]easonable minds can perhaps disagree about whether the Court of Appeals should have granted a stay.” *Id.* at 507. In short, “where the Court is asked to undo a stay issued

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<sup>1</sup> <https://results.sos.ga.gov/results/public/Georgia/elections/GeneralPrimary51926>.

below, the bar is high.” *Valentine v. Collier*, 590 U.S. 935, 936 (2020) (Sotomayor, J., joined by Ginsburg, J., respecting the denial of application to vacate stay).

**I. Applicants will not be harmed at all, much less seriously and irreparably harmed, without vacatur of the court of appeals’ stay.**

Applicants’ request for vacatur fails right out of the gate because they cannot show that they will suffer *any* cognizable injury, let alone the required “serious[] and irreparabl[e] injur[y],” in the absence of vacatur. *Coleman*, 424 U.S. at 1304. Vacating the stay would have no real-world impact on any concrete injury in fact.

The district court’s TRO enjoined Respondents from doing just one thing: “issuing a non-confidential Public Statement” regarding the complaints’ allegations about Applicants. App 42a. But the Commission has since issued precisely those public statements, after being freed to do so by the Eleventh Circuit. See App., *infra*, 228a-229a. The statements were posted to the Commission’s website and circulated widely in the press.<sup>2</sup> Applicants themselves also moved on an “emergency” basis in both courts below—prior to the election—to *unseal* the dockets, which include copies of respondents’ public statements. See App., *infra*, 231a, 233a, 228a-229a. Any purported harm to Applicants as a result of the stay has thus already occurred and cannot be undone now—certainly not by vacating the stay. Applicants all but concede this: the bell, they say, “cannot be unr[u]ng.” Appl. 20. That is correct, and it is precisely why this Court should deny Applicants’ request for a vacatur remedy that would be an empty gesture.

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<sup>2</sup> See, e.g., Cedra Mayfield, *BREAKING: 2 Ga. Candidates for Judge Allegedly Violate Judicial Rules During Campaign*, Law.com (May 18, 2026), <https://www.law.com/dailyreportonline/2026/05/18/breaking-2-ga-candidates-for-judge-allegedly-violate-judicial-rules-during-campaign/> (reproducing the Commission’s public statements in full).

Applicants’ case for vacatur is even weaker because the election, and Applicants’ campaigns, have ended. The district court justified the TRO on “[t]he possibility [that] [Respondents] issuing a public statement about possible violations of Canon 4 at a crucial time in [Applicants’] respective campaigns would cause irreparable injury.” App. 41a (emphasis added). That conclusion was wrong as a matter of law: the government’s own speech “is exempt from First Amendment scrutiny.” *McGriff v. City of Miami Beach*, 84 F.4th 1330, 1333 (11th Cir. 2023) (quoting *Johanns v. Livestock Mktg. Ass’n*, 544 U.S. 550, 553 (2005)); see also *Hous. Cmty. Coll. Sys.*, 595 U.S. at 478 (“In this country, we expect elected representatives to shoulder a degree of criticism about their public service from their constituents and their peers—and to continue exercising their free speech rights when the criticism comes.”). Applicants therefore did not experience any *cognizable* form of injury when Respondents publicly stated their reasonable belief about whether Applicants’ campaign conduct had comported with Georgia’s Code of Judicial Conduct. But even accepting the district court’s conclusion of potential irreparable harm during the “crucial” pre-election campaign period, that period ended on May 19, 2026. And the TRO itself is scheduled to expire on May 23, 2026—in about 60 hours. App. 41a. Vacatur of the court of appeals’ stay would have no practical effect now. Certainly, it would not redress any “serious[] and irreparabl[e] injur[y].” *Coleman*, 424 U.S. at 1304.

Applicants likewise all but concede that any relevant, cognizable injury was limited to the pre-election period. Applicants originally sought TROs in the district court solely based on asserted harm *to their campaigns*. And claims of campaign-related harm are the only purported irreparable harm identified in the Application. Applicants argue that their “*campaigns* suffer further damage” as the Commission’s public statements “gain wider distribution,” and that this purported “injury continues to deepen *as the election approaches*.” Appl. 4, 12, 20 (emphases added). But the election ended two days ago, along with Applicants’ campaigns. Vacating the court of

appeals' stay would not redress any such "deepening" harm. Nor would it stop further distribution of the Commission's statements, which are now publicly available through several third-party sites, including the court of appeals' own docket, App., *infra*, 228a-229a, which the Applicants themselves moved to unseal, App., *infra*, 231a.

In a final attempt to identify some practical effect that vacatur could have, Applicants vaguely say that vacatur would "remove[] the continuing authorization" for the Commission's statements or "restore the district court's TRO." Appl. 20. Applicants are wrong for three reasons. First, the authorization for the Commission's public statements is Georgia's Constitution and the Commission's duly enacted rules—not the court of appeals' stay order. See, *e.g.*, Ga. Jud. Qual. Comm'n R. 29. Second, there is no need for "continuing" authorization for an act that has already been completed. And third, there is nothing left of the TRO to "restore." The single act that the TRO prohibited has already occurred and cannot be undone. And the TRO expires by its own terms in 60 hours. App. 41a. Reinstating the now-meaningless TRO for its final hours would not unwind the statements, would not remove them from public circulation, and would not give these Applicants a redo at the election or any other real-world benefit. Applicants have not asked this Court for any remedy besides vacatur, and they may not ask in a reply brief for some other remedy.

For these same reasons, Applicants' motion for a TRO and this appeal—which relates solely to the district court's TRO order, see App., *infra*, 1a—are moot. Since the appeal was filed, two critical intervening events have, alone and in combination, mooted Applicants' TRO request and the appeal of its issuance. First, the only act prohibited by the TRO (issuance of the public statements) has occurred. And second, the purported harm that the TRO was issued to remedy has abated because the election, and Applicants' campaigns, have now ended. Any further proceedings on Applicants' TRO request would thus seek, at most, "opinions upon moot

questions or abstract propositions” or declarations of “principles or rules of law which cannot affect the matter in issue in the case before [this Court].” *Church of Scientology of Cal. v. United States*, 506 U.S. 9, 12 (1992) (quoting *Mills v. Green*, 159 U.S. 651, 653 (1895)); see also *Int’l Coal. for Religious Freedom v. State of Maryland*, 3 F. App’x 46, 48 (4th Cir. 2001) (affirming dismissal for mootness of case seeking to enjoin a state body from issuing a report, where the report was “publicly released” during pendency of case). To the extent there exists any possibility of post-issuance, post-election relief to Applicants—setting aside that Applicants have already admitted none exists, Appl. 21, and that any such relief would pose grave Eleventh Amendment concerns—that relief is not at issue in *this* appeal. It must be addressed in the ordinary course by the lower courts. Emergency vacatur of the stay for the next 60 hours, before the TRO terminates on its own terms anyway, will not abate any concrete injury whatsoever to Applicants.

Applicants suggest that a mootness exception applies because the issues here are capable of repetition yet evading review. Appl. 4-5. But “[a] dispute qualifies for that exception only ‘if (1) the challenged action is in its duration too short to be fully litigated prior to its cessation or expiration, and (2) there is a reasonable expectation that the *same complaining party* will be subjected to the same action again.’” *United States v. Sanchez-Gomez*, 584 U.S. 381, 391 (2018) (quoting *Turner v. Rogers*, 564 U.S. 431, 439-40 (2011)). Neither element is met here. Applicants do not and cannot argue that the issues they ask this Court to review—whether the court of appeals properly exercised jurisdiction and whether the court applied the correct stay standard, see Appl. 5—are likely to evade review. Such issues arise frequently and could be considered in any number of other cases where there remains a live controversy. Second, Applicants implicitly concede the second factor is not met. Their sole argument is that *other* “similarly situated judicial candidates” might “face the same Rule 29 process in future cycles.” Appl. 4-5. Nowhere do they argue there is a “reasonable”

basis to expect that they themselves will again run for election to the Supreme Court of Georgia, again be accused of the same misconduct, and again be subjected to the same action by the Commission. See *Sanchez-Gomez*, 584 U.S. at 391-393. If they do, or if Applicants face additional Commission action in their disciplinary cases, then they will have an opportunity to assert their challenge at that time.

This appeal is moot, making vacatur of the stay especially unwarranted.

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This Court does not vacate stay orders absent “exceptional circumstances,” *Holtzman*, 414 U.S. at 1308, demonstrating imminent “serious[] and irreparabl[e]” harm to the Applicants unless vacatur is granted, *Coleman*, 424 U.S. at 1304. Applicants have established no such risk of harm here.

## **II. The Eleventh Circuit’s stay order was not demonstrably wrong.**

Even if Applicants could show irreparable harm without vacatur, Applicants could not satisfy *Coleman*’s requirement that the court of appeals’ decision was “demonstrably wrong in its application of accepted standards.” 424 U.S. at 1304. “Reasonable minds can perhaps disagree about whether the Court of Appeals should have granted a stay,” but that is not sufficient for vacatur now. *Planned Parenthood of Greater Tex.*, 134 S. Ct. at 507 (Scalia, J., concurring). Applicants must show clear and demonstrable error. They cannot.

### **A. The Eleventh Circuit did not demonstrably err in exercising appellate jurisdiction.**

“[T]he label attached to an order is not dispositive.” *Abbott v. Perez*, 585 U.S. 579, 594 (2018). “[W]here an order has the ‘practical effect’ of granting or denying an injunction, it should be treated as such for purposes of appellate jurisdiction.” *Ibid.* (quoting *Carson v. Am. Brands, Inc.*, 450 U.S. 79, 83 (1981)); *Dep’t of Educ. v. California*, 604 U.S. 650, 651 (2025) (same). Appellate courts have jurisdiction to review “an interlocutory order of the district court” if that order “[1] might have a serious,

perhaps irreparable, consequence,” and “[2] can be effectually challenged only by immediate appeal.” *Carson*, 450 U.S. at 84 (cleaned up). That is the standard the Eleventh Circuit applied. App. 30a-32a (“when a grant or denial of a temporary restraining order might have a serious, perhaps irreparable consequence, and can be effectively challenged only by immediate appeal, we may exercise appellate jurisdiction”) (cleaned up). And the TRO here clearly meets that standard.

Multiple Justices of this Court have recognized that “[a]ny time a State is enjoined by a court from effectuating” its laws, “it suffers a form of irreparable injury.” *Maryland v. King*, 567 U.S. 1301, 1303 (2012) (Roberts, C.J., in chambers) (citation omitted); App. 31a (Eleventh Circuit citing *Trump v. Casa, Inc.*, 606 U.S. 831, 859-861 (2025) and *Abbott*, 585 U.S. at 602-603, for the same proposition). The TRO here enjoined the State of Georgia from “effectuating” its constitutional authority to enforce the Code of Judicial Conduct for the only period that really mattered—the days leading up to the election. Without the Eleventh Circuit’s stay, the Commission would have forever lost the opportunity to inform Georgia voters of Applicants’ likely campaign misconduct before the May 19 election.

For the same reason, the TRO could have been effectively challenged only through an immediate appeal. The whole point of the Rule 29 Special Committee is to empower the Commission to act “expeditiously” to apprise voters of potential candidate misconduct in the fast-moving circumstances surrounding elections. Ga. Jud. Qual. Comm’n R. 29(F). Here, the district court issued an eight-day TRO four days before the election. If the Commission had been forced to wait until the district court issued an order titled “preliminary injunction,” then any appeal of the TRO would have been moot before it was filed.

Notably absent from the Application is any response to the Eleventh Circuit’s application of *Sampson v. Murray*, 415 U.S. 61, 87 (1974), to find a “substantial” possibility that the proceedings in district court gave rise to “impermissible ‘shielding’”

of the TRO. App. 31a. Despite the lawsuit being filed more than “14 days” before the election, see Fed. R. Civ. P. 65(b)(2) (14-day limit on TROs), and Applicants moving for a TRO *and* preliminary injunction, the court waited until the election was just four days away to issue a perfunctory order granting only a TRO, App.40a-42a. That TRO extended through the entire remaining pre-election period and stated that the Commission’s time to appeal would run once the district court—at some unspecified future date—issued a “Final Order.” App. 42a. The district court’s final order, issued the day before the election, reinforces the Eleventh Circuit’s perception of shielding. The district court again declined to enter an appealable preliminary injunction without giving reason for denying Applicants’ request for that remedy. App. 26a.

It obviously is not the law that one district court judge can enter a TRO four days before the polls close in a hotly contested election, which order threatens to impact the outcome of the election, and insulate that order from all appellate review by simply labeling it “temporary.” If the TRO entered here is unreviewable, then any litigant before any election can forum-shop for a favorable district court judge and obtain an unreviewable TRO with two weeks or fewer to go before an election. This is the “virtually unlimited authority over the parties in an injunctive proceeding” that *Sampson* forbids. 415 U.S. at 87. The Eleventh Circuit had appellate jurisdiction.

**B. The Eleventh Circuit’s choice of stay standard was not dispositive, and *Younger* supplied an alternative basis for that order.**

**1. The panel’s description of the stay standard was tailored to the extraordinary circumstances before it.**

The Eleventh Circuit did not purport to announce or apply a standard for deciding stay motions of all kinds. The court was forced by Applicants and the district court to decide whether to stay a TRO that would inflict irreversible harm in just a handful of days. The panel itself recognized that “the election [was] Tuesday, [so] the injunction barring enforcement of the Code against the candidates [could] be effectively challenged only by an immediate appeal during the election.” App. 31a. And as

Applicants themselves conceded, “in the judicial-campaign context there is no adequate post-election remedy.” *Ibid.* This is nothing like the conventional stay posture in *Nken v. Holder*, 556 U.S. 418 (2009), which involved a stay of an alien’s removal that would have lasted months and where the court had the benefit of full briefing and deliberation. See *id.* at 421-425. Here, time was extraordinarily short. The panel received ultra-expedited briefing prepared in a matter of hours. And it was compelled to render a decision within hours, because doing nothing was the same as handing victory to Applicants on the ultimate objective of their lawsuit.

It was in that exceptional posture that the court of appeals necessarily had to make its best judgment on the merits and in light of the equities. The equities overwhelmingly favored a stay, because the alternative was permanently depriving Georgia voters of relevant information the Commission was legally authorized to provide. And it was specifically under those circumstances that the court of appeals found it appropriate to judge whether Respondents had made out a “substantial case” on the merits. App. 29a-30a, 32a-33a.

This Court, when confronted with fast-moving requests for emergency relief, has sometimes explained that its decisions to enter or deny equitable relief are based on its best preliminary assessment of the law, but that its orders are not intended to be the final word on the merits. See, e.g., *Dep’t of State v. Aids Vaccine Advoc. Coal.*, 606 U.S. ---, 146 S. Ct. 19, 19 (2025) (“This order should not be read as a final determination on the merits. The relief granted by the Court today reflects our preliminary view, consistent with the standards for interim relief.”). The Eleventh Circuit applied the same essential approach in the demanding procedural posture here. The court of appeals’ opinion reflects judicial humility under exceptional circumstances, not an impermissible stay standard in need of correction.

**2. The panel’s actual analysis went beyond finding a “substantial case”—it concluded that the Commission would likely succeed.**

Applicants fixate on the panel’s use of the phrase “substantial case,” *e.g.*, Appl. 15-16, but the panel’s reasoning demonstrates more than that. The panel explained: “We have blessed a similar false statement clause as constitutionally sound. And while we haven’t addressed similar challenges to similar endorsement and commitment clauses, our sister circuits have and they have found them not to violate the First and Fourteenth Amendments.” App. 33a (collecting cases).

Applicants’ First Amendment challenge, in other words, never had any substantial merit. Georgia, like every other State, has a compelling interest in requiring sitting judges and judicial candidates to maintain public confidence in the impartiality of the judiciary. And like nearly every state, it prohibits judges and judicial candidates from making endorsements or commitments about their plans for deciding future cases. The State has reasonably concluded that maintaining public confidence in judicial impartiality requires prohibiting sitting judges and judicial candidates from making promises to vote a certain way on cases or issues likely to come before the Court. Applicants don’t seriously dispute that compelling interest; they merely disagree with the Commission about whether their speech constituted such promises. See App. 33a n.3 (“The candidates assert that the Commission’s application of the endorsement, commitment, and false statement clauses to their ads and statements ‘exceed the text.’ But their assertion is just a plea that the Code does not cover what they did. It is not an argument for why the clauses violate the First and Fourteenth Amendments.”). And Applicants have made no plausible showing that the First Amendment compels States to allow judges (or judicial candidates) to use the credibility of judicial office to endorse other candidates for political office. Nearly all States have similar laws. And Applicants don’t identify any precedent finding that such laws give rise to a First Amendment violation.

The court of appeals' opinion thus does not show a court hedging about whether the Commission might have a merely arguable position. It shows a majority recognizing that the challenged state ethics clauses have been upheld when federal courts of appeals have considered them, and there is no reason to think the Eleventh Circuit would depart from that uniform body of authority. The panel's actual merits analysis thus supports the conclusion that the Commission is *likely* to succeed on the merits.

**3. Even if “substantial case” were all the panel found, any disagreement about the proper standard confirms that vacatur is unwarranted.**

Applicants' principal complaint is that the panel applied a “substantial case” threshold rather than the “strong showing” standard they say *Nken* requires. Appl. 3, 8, 15-18. But to the extent Applicants identify a circuit split on the post-*Nken* survival of a sliding-scale or substantial-case stay standard, that split cuts *against* the relief requested here: the split demonstrates that “[r]easonable minds can perhaps disagree” about the correct standard, *Planned Parenthood*, 134 S. Ct. at 507, which is precisely the kind of disagreement that forecloses vacatur of a stay at this interim juncture. Judge Kidd's dissent below underscores the point: it confirms that reasonable jurists can differ on both the standard and its application. App. 37a-39a. But reasonable disagreement is not demonstrable error.

**4. The stay is independently supported by *Younger* abstention.**

Even apart from the First Amendment merits, the court of appeals' stay order was independently justified because *Younger*, 401 U.S. 37, required federal-court abstention. This Court has held that *Younger* applies to state ethics disciplinary proceedings of precisely this kind. *Middlesex Cnty. Ethics Comm. v. Garden State Bar Ass'n*, 457 U.S. 423, 432-433 (1982). The factors that *Middlesex* identified as relevant to abstention are satisfied here: at the time Applicants asked the federal court to inject itself, the Commission's Rule 29 proceedings had begun; they implicate the State's paramount interest in the integrity of its judiciary; and they afforded Appli-

cants an adequate opportunity to raise constitutional challenges before any sanction—an opportunity Applicants refused to utilize when they refused to engage with the Commission’s request for a confidential response. See *id.* at 435 (holding that a party’s refusal to “even ... attempt to raise [their] federal constitutional challenge[s] in the state proceedings” does not render those proceedings inadequate). Unlike in *Sprint Communications, Inc. v. Jacobs*, 571 U.S. 69, 79-80 (2013), which Applicants relied on below, these proceedings were initiated by the State in its sovereign capacity, involve state authority conducting an investigation, and carry potential sanctions for wrongful acts. The TRO prohibited the Commission from exercising the most important enforcement tool that Rule 29 authorizes during an election. That is exactly the sort of federal interference in a State’s enforcement process that *Younger* forbids.

**III. This Court is exceedingly unlikely to grant certiorari in this case and reverse.**

This case would present a terrible vehicle for resolving the legal questions raised by Applicants. The TRO here prohibited a single act (releasing public statements) that has already occurred, in an attempt to prevent impact on an election that has already passed. See pp. 11-15, *supra*. This Court would not review a case where, as here, the parties no longer have any concrete interest in the subject of the appeal, and where Applicants’ underlying claims on the merits are so weak.

1. Applicants first argue that this Court is likely to grant review of the Eleventh Circuit’s application of a “sliding-scale stay standard” based on more recent opinions of this Court. Appl. 23-24 (citing *Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7 (2008); *Nken*, 556 U.S. 418). But as already explained, the Eleventh Circuit’s ruling would have been the same regardless of the standard employed. See pp. 19-20, *supra*. This Court has previously declined to address the purported tension between a “substantial case” standard and *Nken* and *Winter*. See, e.g., *Salado-Alva*

v. *Lynch*, 580 U.S. 962 (2016). It is decidedly unlikely to take up that question in a case presenting the extraordinary posture that arose here.

2. Applicants next represent that, regarding jurisdiction, the Eleventh Circuit “extended *California*.” Appl. 24. But as already explained, the Eleventh Circuit applied the exact standard this Court set out in *Carson*, 450 U.S. 79, *California*, 604 U.S. 650, and *Sampson*, 415 U.S. 61. See pp. 15-17, *supra*; Appl. 31a. Applicants’ real complaint appears to be that they disagree with the Eleventh Circuit’s “reading” of its own caselaw in a “footnote.” Appl. 24. But this Court is not in the business of policing the circuits’ application of their own caselaw. See Rule 10.

3. Applicants further contend (at 26) that the Eleventh Circuit’s stay order creates a “clean circuit conflict” with the Sixth Circuit’s decision in *Fischer v. Thomas*, Nos. 25-5385/5400, 2026 WL 1296146 (6th Cir. May 12, 2026). It does not.

*Fischer* involved fundamentally different facts—and expressly recognized the constitutional line at issue in this case. There, third parties affixed “Choose Life” signs to candidates’ campaign materials—signs the candidates may not even have authorized. See *id.* at \*8 & n.5. The Sixth Circuit held that this did not constitute a “pledge to rule a certain way.” *Id.* at \*8. But the court was careful to mark the boundary of its holding: “sometimes, communicating those views can get close to the line of candidates signaling to voters how they will vote in an upcoming case. But as long as candidates don’t cross that line, their speech is protected.” *Ibid.*

That is precisely the line Respondents were investigating here—and the records are very different. Applicants did not passively receive endorsements or merely display signs placed by others. They jointly appeared at events conveying that they would “RESTORE ABORTION RIGHTS.” App., *infra*, 113a, 128a. They actively promoted endorsements from advocacy-organizations described as “committed to electing pro-choice women,” and they shared endorsements that identified Applicants themselves as “champion[s] for reproductive freedom.” App., *infra*, 114a, 129a. They

characterized the Georgia Supreme Court as “the last line of defense” for constitutional rights in the fight for reproductive choice. App., *infra*, 148a. And unlike the candidates in *Fischer*—who publicly stated that judges must “put aside their personal opinions” and “decide each individual case based on the law as written,” 2026 WL 1296146, at \*8—Applicants identified no comparable qualification. Whether this distinct record crosses *Fischer*’s acknowledged line is a different question entirely—one the duly appointed Commission should have been permitted to answer through its own process.

The Eleventh Circuit’s ruling, moreover, did not hold that *Fischer* was wrong or that “Pro Choice” speech could be restricted. It held that the campaign conduct *here*—which goes beyond anything at issue in *Fischer*—gave the Commission at least a substantial basis to investigate whether Applicants had committed to decide certain cases in certain ways. See App. 32a-33a. Applicants’ fallback claim of viewpoint discrimination (Appl. 25-26) thus collapses under examination. The Commission’s position does not turn on which side of the abortion debate a candidate takes; it turns on whether the candidate’s statements, in context, communicate a commitment to decide likely future cases a particular way. A candidate who promised to “protect the right to life in every case” would present the same problem. Indeed, what distinguishes this case from *Fischer* is not the viewpoint expressed but the specificity and directness of the message. “Choose Life” or “Choose Choice” communicates a moral conviction; “Restore abortion rights” as the “last line of defense” on the Georgia Supreme Court can be reasonably understood to communicate an intended judicial outcome. At minimum, it was reasonable for the Commission to investigate whether Applicants’ statements crossed the line. The First Amendment does not require identical treatment of those two categories of speech. *Fischer* itself said so.

4. Finally, Applicants argue that “the equities and the timing converge to make immediate intervention necessary.” Appl. 26. It is unclear what this argument

has to do with whether the Court would grant certiorari review. But even if it were relevant, Applicants get the point backward. On the equities, Applicants have suffered no cognizable First Amendment injury from the Commission's exercise of its constitutional duties. The Commission's public statements merely expressed its preliminary opinions about whether candidates for Georgia's judiciary complied with Georgia's code of judicial ethics in campaigning for that office—a matter that falls squarely within the Commission's purview. Such government speech causes no cognizable injury to Applicants. Indeed, it is “exempt” entirely “from First Amendment scrutiny.” *McGriff*, 84 F.4th at 1333. Moreover, as this Court has observed, “there is practically universal agreement” that the First Amendment protects the “free discussion of governmental affairs,” particularly when it comes to the fitness of candidates running for public office. *Housing Community College System*, 595 U.S. at 478-479. As to the timing, now that the Commission's statements have issued and the election has ended, intervention by this Court would have no practical effect. See pp. 11-15, *supra*. The equities and the timing weigh decisively against granting Applicants' request for extraordinary relief.

\*

In sum, the stay order that Applicants challenged arose in a very unusual posture. The underlying First Amendment claims that Applicants asserted present no serious constitutional questions; the First Amendment does not require Georgia to permit judicial candidates' endorsements and commitments on forthcoming legal questions. And now that Applicants' campaigns are over, they have no concrete stake in the TRO they unjustifiably obtained. Those circumstances would make this Court decidedly unlikely to grant review in this case. And they confirm that the Application fails to meet every part of the controlling legal test.

#### CONCLUSION

The Application should be denied.

Respectfully submitted,

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