No. 26A326

In the Supreme Court of the United States

PEOPLE NOT POLITICIANS, ET AL., APPLICANTS

v.

ROBERT ONDER, ET AL.

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE IN SUPPORT OF RESPONDENTS

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TABLE OF CONTENTS

Statement 2

Argument 3

A. Applicants lack appellate standing 3

B. Applicants are unlikely to succeed on appeal 6

C. The equities do not support a stay 13

Conclusion 16

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The Solicitor General respectfully submits this brief for the United States as amicus curiae in support of respondents and in opposition to the application for a stay of the temporary restraining order (TRO) issued by the United States District Court for the Eastern District of Missouri (Appl. App. 1a-13a).

In September 2025, the Missouri legislature redrew the State's congressional districts. A month after the State conducted a primary election under the new map in August 2026, the Missouri Supreme Court concluded that a referendum petition had suspended the redistricting statute and required the State to return to its old map for the general election this November. A federal district court issued a TRO prohibiting the State from returning to the old map, an outcome that the court concluded would violate Article I, Section 2, and the Equal Protection Clause. Applicants —an organization that circulated the petition, along with its executive director—now seek a stay from this Court. The Court should deny that application because applicants lack appellate standing, because they have not shown a likelihood of success on the merits, and because the equities do not support granting relief.

STATEMENT

In September 2025, the Missouri General Assembly enacted House Bill 1 (HB 1), which redrew Missouri's eight congressional districts, replacing an earlier map enacted in 2022. Appl. App. 1a. A group known as People Not Politicians and its executive director Richard von Glahn (applicants here) then collected signatures and submitted a petition to force a referendum on the new map. *Id.* at 2a. On August 4, 2026, the statutory deadline for acting on the petition, the Missouri Secretary of State rejected the petition on various state-law grounds. *Ibid.* The same day, Missouri conducted primary elections under the new map. *Id.* at 1a.

Around a month later, on September 3, the Missouri Supreme Court rejected the Secretary of State's state-law objections to the petition and ordered him to certify the petition for a referendum this November. Appl. App. 2a. The state court also held that, under the state constitution, the certification of the referendum petition suspends HB 1. *Ibid.* The court accordingly enjoined the Secretary of State from using the new map for the general election this November. *Ibid.*

The next day, two congressional candidates and two registered voters (private respondents) sued Missouri and its Secretary of State (state respondents) in the U.S. District Court for the Eastern District of Missouri. Appl. App. 2a. Private respondents claimed, as relevant here, that Article I, Section 2, and the Equal Protection Clause preclude Missouri from returning to the old map for the general election after having conducted primaries under the new map. *Ibid.* Applicants intervened as defendants. *Id.* at 1a.

The district court issued a TRO prohibiting state respondents from using "any congressional district map other than the HB 1 map for the November 3, 2026 general election." Appl. App. 13a. It found that private respondents have a likelihood of success on their claims under Article I, Section 2, and the Equal Protection Clause because "[s]witching maps now would deprive many Missourians of their equal vote in the primaries." *Id.* at 10a. It also concluded that the equities support a TRO. *Id.* at 4a-5a, 11a-12a.

The Eighth Circuit denied a stay pending appeal "because [it] either lack[s] jurisdiction over the appeal or, based on the briefing [it] ha[s] so far, the stay factors have not been met." Appl. App. 73a. Applicants then sought a stay pending appeal from this Court.

ARGUMENT

Under Rule 23 of the Rules of this Court and the All Writs Act, 28 U.S.C. 1651, an applicant seeking a stay of a court of appeals' judgment pending appeal and review in this Court must show a likelihood of success on the merits, a reasonable probability of obtaining certiorari, and a likelihood of irreparable harm. In close cases, the Court also balances the equities and weighs the relative harms. See *NRCC* v. *Brown*, No. 26A274, slip op. 2 (Sept. 4, 2026). Those factors do not support a stay here.

A. Applicants Lack Appellate Standing

"On every writ of error or appeal, the first and fundamental question is that of jurisdiction, first of this [C]ourt, and then of the court from which the record comes." *Steel Co.* v. *Citizens for Better Environment*, 523 U.S. 83, 94 (1998). Thus, before this Court can reach applicants' challenges to the district court's TRO—including their claim that the district court acted without jurisdiction—the Court must first satisfy itself of its own and the court of appeals' jurisdiction. The stay application fails at that threshold step because applicants lack appellate standing.

To establish an Article III case or controversy, a plaintiff must show that it has standing—*i.e.*, that it suffered a concrete, particularized, and judicially cognizable injury; that the injury was likely caused by the defendant's challenged action; and that the injury would likely be redressed by judicial relief. See *TransUnion LLC* v. *Ramirez*, 594 U.S. 413, 423 (2021). That requirement "must be met by persons seeking appellate review, just as it must be met by persons appearing in courts of first instance." *Arizonans for Official English* v. *Arizona*, 520 U.S. 43, 64 (1997). Thus, "[a]n intervenor" may not "seek review" "unless the intervenor independently 'fulfills the requirements of Article III.'" *Ibid.*

Applicants lack standing to appeal from the district court's TRO because they have not shown that the TRO inflicts any particularized injury upon them. They have never explained how the TRO harms them in "a personal and individual way." *Lujan* v. *Defenders of Wildlife*, 504 U.S. 555, 560 n.1 (1992). Instead, they assert (Appl. 1-2, 13) that the TRO injures "Missouri voters" in general by "interfer[ing]" with the "state election process," by causing "upheaval" shortly before an election, and by "command[ing] that the State continue violating its own law." Those asserted harms are "common to all members of the public," not particularized to applicants. *Defenders of Wildlife*, 504 U.S. at 575. Article III does not allow a litigant to file a suit—or take an appeal—based on such "generalized grievance[s]." *Ibid.*

It makes no difference that applicants "circulated [the] referendum petition seeking to suspend HB 1 until it passed a statewide vote." Appl. 3. In *Hollingsworth* v. *Perry*, 570 U.S. 693 (2013), this Court determined that the official proponents of a California initiative banning same-sex marriage lacked standing to appeal a district court's order invalidating the initiative, even though the proponents had "collect[ed] the signatures required to qualify the measure for the ballot." *Id.* at 706. The Court explained that the proponents had "no 'personal stake' in defending [the initiative] that is distinguishable from the general interest of every citizen of California." *Id.* at

707. So also here, applicants have no personal stake in defending the suspension of HB 1 that is distinguishable from the general interest of every citizen of Missouri.

If anything, this case is easier than *Hollingsworth*. California law gave the initiative proponents in *Hollingsworth* "a unique, special, and distinct role in the initiative process—one involving both authority and responsibilities that differ from other supporters of the measure." 570 U.S. at 706 (quotation marks omitted). For example, the proponents were legally recognized as the initiative's "official proponents," "alone had the right to file the measure with election officials to put it on the ballot," and "possessed control over the arguments in favor of the initiative that would appear in California's ballot pamphlets." *Id.* at 706-707 (quotation marks omitted). Applicants here, by contrast, have not claimed that Missouri law provides ballot-initiative proponents the same level of unique authority as did the California statute —and in fact, it does not. See, *e.g.*, Mo. Rev. Stat. 116.200. Instead, they claim (Appl. 3) only that they "circulated [the] referendum petition." If the initiative proponents in *Hollingsworth* lacked "a 'particularized' interest sufficient to create a case or controversy," 570 U.S. at 707, it follows *a fortiori* that the referendum proponents here lack such an interest as well.

It also makes no difference that applicants defended the referendum petition in the state supreme court and obtained an injunction prohibiting state respondents from using the HB 1 maps. "[T]he constraints of Article III do not apply to state courts, and accordingly the state courts are not bound by the limitations of a case or controversy or other federal rules of justiciability." *ASARCO Inc.* v. *Kadish*, 490 U.S. 605, 617 (1989). But those constraints do apply to federal courts, and "States cannot alter [them] simply by issuing to private parties who otherwise lack standing a ticket to the federal courthouse." *Hollingsworth*, 570 U.S. at 715. Further, while a party may have standing to enforce a federal court's final judgment in its favor, see *Salazar* v. *Buono*, 559 U.S. 700, 712-713 (2010) (opinion of Kennedy, J.), the state supreme court's injunction here was not issued by a federal court, is not final, and is not being enforced in these proceedings. Applicants' interest in enforcing the injunction would, at most, allow them to seek contempt sanctions in the state court that issued the injunction (which they are doing); it does not entitle them to appeal a separate judgment obtained by a separate set of parties in a separate federal proceeding.

Finally, it makes no difference that one of the applicants, von Glahn, is a voter. For one, applicants have not alleged, much less established, that the district court's TRO affects von Glahn by moving him from one district to another. See, *e.g.*, D. Ct. Doc. 12-2 ¶ 1 (Sept. 5, 2026) (declaration filed by von Glahn stating only that he is "a qualified voter registered to vote in the State of Missouri"); cf. Compl. ¶ 38 (private respondents include two voters who would be forced into different districts under the 2022 map). For another, while voters may challenge maps that violate their own constitutional rights, see *Baker* v. *Carr*, 369 U.S. 186, 206-207 (1962), they lack standing to litigate an "undifferentiated, generalized grievance" about how district lines are drawn, *Lance* v. *Coffman*, 549 U.S. 437, (2007) (per curiam). Here, von Glahn does not claim that the district court's TRO violates his own constitutional rights, instead asserting only (App. 2) the general interest of "Missouri voters" in the use of maps that comply with state law.

In sum, applicants lack appellate standing. It follows that the court of appeals lacked Article III jurisdiction over their appeal and that this Court lacks Article III jurisdiction to grant them any interim relief. That alone justifies denying a stay.

B. Applicants Are Unlikely To Succeed On Appeal

Applicants raise (Appl. 14-25) three main objections to the district court's TRO.

None is likely to succeed on appeal.

Three-judge court. Applicants first contend (Appl. 14-16) that the district court violated 28 U.S.C. 2284, which states that a "district court of three judges shall be convened * * * when an action is filed challenging the constitutionality of the apportionment of congressional districts." This Court need not consider whether that statute covers this case, or whether this case fits within the statutory exception that authorizes a single judge to issue a TRO. Applicants' contention fails for a much simpler reason: They did not formally request a three-judge court below.

After Section 2248(a) requires a three-judge court in specified cases, Section 2284(b) sets forth the procedure for convening such a court. Section 2284(b) provides that, "[u]pon the filing of a request for three judges, the judge to whom the request is presented" generally must "notify the chief judge of the circuit, who shall designate two other judges." 28 U.S.C. 2284(b)(1). As that text makes plain, the "duty" to convene three judges is "trigger[ed]" only upon the filing of a formal request. *Shapiro* v. *McManus*, 577 U.S. 39, 44 (2015). Reinforcing the point, an earlier version of Section 2284 triggered the obligation to convene a three-judge court "'on the filing of the application' to enjoin an unconstitutional state law." *Id.* at 43-44 (brackets omitted). By amending the statute to "trigge[r] the district judge's duty 'upon the filing of a *request* for three judges,'" Congress made clear that a request is a prerequisite to convening additional judges. *Id.* at 44 (brackets omitted).

Applicants have never filed any such request here. At most, they moved to dismiss the complaint because *private respondents* had not "request[ed] a three-judge court," D. Ct. Doc. 12-4, at 15 (Sept. 5, 2026)—a meritless contention, given that nothing in Section 2284 compels a party to ask for a three-judge court if it does not want one. Having failed to file their own affirmative request for three judges, applicants cannot now complain that the case was heard by only one.

Abstention. Applicants next contend (Appl. 16) that the district court should have abstained from resolving this case, lest it interfere with "ongoing state court proceedings." But federal courts "are obliged to decide cases within the scope of federal jurisdiction," even if "a pending state-court proceeding involves the same subject matter." *Sprint Communications, Inc.* v. *Jacobs*, 571 U.S. 69, 72 (2013) (Ginsburg, J.). "There is no doctrine that pendency of state judicial proceedings excludes federal courts." *Id.* at 73 (brackets and ellipsis omitted).

Applicants invoke *Younger* v. *Harris*, 401 U.S. 37 (1971), a decision that carved out a narrow "exception'" to the "general rule" that "[p]arallel state-court proceedings do not detract from" "a federal court's 'obligation' to hear and decide a case" within its jurisdiction. *Sprint*, 571 U.S. at 71. But that exception is limited to three categories of cases: (1) cases involving "federal intrusion into ongoing state criminal prosecutions," (2) cases involving intrusion into "'civil enforcement proceedings,'" such as attorney-discipline proceedings, that are "akin to a criminal prosecution," and (3) cases involving intrusion into certain "'civil proceedings,'" such as contempt proceedings, that are "'uniquely in furtherance of the state courts' ability to perform judicial functions.'" *Id.* at 78-79.

This case does not fit within any of those categories. The district court's TRO did not interfere with an ongoing criminal prosecution, an ongoing civil-enforcement proceeding that is akin to a criminal prosecution, or an ongoing contempt proceeding or other proceeding in furtherance of a state court's ability to perform its functions. Applicants note (Appl. 17) that the state supreme court initiated contempt proceedings against the Missouri Secretary of State *after* the district court issued its TRO, but it is well established that *Younger* does not require a federal court to abstain in anticipation of a state proceeding that has not yet begun. See *Steffel* v. *Thompson*, 415 U.S. 452, 460-473 (1974).

In addition, *Younger* embodies "the national policy forbidding federal courts to stay or enjoin pending state court proceedings except under special circumstances." 401 U.S. at 41; see, *e.g.*, *Sprint*, 571 U.S. at 72 ("When there is a parallel, pending state criminal proceeding, federal courts must refrain from enjoining the state prosecution."). The district court's TRO does not stay or enjoin any state proceedings. To the contrary, the court has denied the Secretary of State's motion to stay the state supreme court's contempt proceedings. See D. Ct. Doc. 50, at 1 (Sept. 9, 2026). The district court's TRO does, of course, provide the Secretary of State with a defense to the contempt charge, but that is a far cry from "stay[ing] or enjoin[ing]" a pending state proceeding. *Younger*, 401 U.S. at 41.

Moreover, *Younger* concerns cases where "the federal plaintiff is a state-court party," *MDA* v. *Coakley*, 671 F.3d 33, 40 (1st Cir. 2012)—*e.g.*, cases where a state criminal defendant files a federal suit to enjoin the ongoing state prosecution, see *Younger*, 401 U.S. at 38-39. *Younger* "typically does not apply where the federal-court plaintiff is not itself a party to the state-court proceedings." *MDA*, 671 F.3d at 41; see *Doran* v. *Salem Inn, Inc.*, 422 U.S. 922, 928-929 (1975). Private respondents—the plaintiffs who filed this federal suit—are not parties to the state supreme court proceedings. As a result, the core premise of *Younger*—that the federal court need not resolve the plaintiff's claims because the plaintiff will have the "opportunity to raise" them in state court, 401 U.S. at 49—does not hold here.

The same result follows from the basic principle that "[a] judgment or decree among parties to a lawsuit resolves issues as among them, but it does not conclude the rights of strangers to the proceedings." *Martin* v. *Wilks*, 490 U.S. 755, 762 (1989).

For instance, if a group of black firefighters sues a fire department and obtains a decree requiring race-conscious hiring, a group of white firefighters may respond by filing its own suit to enjoin the implementation of that plan on the ground that it violates federal anti-discrimination law. See *id.* at 761-768. So too here, the state supreme court's decision resolves state respondents' and applicants' dispute about whether Missouri law requires using the 2022 map or the 2025 map in the upcoming general election. But it does not preclude private respondents from filing their own suit contending that Missouri's use of the 2022 map would violate their own rights under Article I, Section 2, and the Equal Protection Clause. To require abstention in these circumstances would contravene our "deep-rooted historic tradition that everyone should have his own day in court." *Id.* at 762.

Constitutional claims. Finally, applicants contend (Appl. 18-22) that the district court erred in finding a violation of Article I, Section 2, and the Equal Protection Clause. That claim, too, is unlikely to succeed on appeal.

A provision of Article I, Section 2, sometimes known as the House Composition Clause, provides that "[t]he House of Representatives shall be composed of Members chosen every second Year by the People of the several States." U.S. Const. Art. I, § 2, Cl. 1. This Court has construed that provision to mean that, "no matter where he live[s], each voter should have a voice equal to that of every other in electing members of Congress." *Wesberry* v. *Sanders*, 376 U.S. 1, 10 (1964). That right extends to the "primary" where, as here, the primary "is an integral part of the procedure for the popular choice of Congressman." *United States* v. *Classic*, 313 U.S. 299, 314 (1914).

The Equal Protection Clause, meanwhile, provides that no State may "deny to any person within its jurisdiction the equal protection of the laws." U.S. Const. Amend. XIV, § 1. Under this Court's precedents, the Equal Protection Clause protects each voter's "right to participate in elections on an equal basis with other citizens in the jurisdiction." *Dunn* v. *Blumstein*, 405 U.S. 330, 336 (1972). That is so regardless of where a voter lives; "[t]he fact that an individual lives here or there is not a legitimate reason for overweighting or diluting the efficacy of his vote." *Reynolds* v. *Sims*, 377 U.S. 533, 567 (1964). "Once the geographical unit for which a representative is to be chosen is designated, all who participate in the election are to have an equal vote," "wherever their home may be in that geographical unit." *Gray* v. *Sanders*, 372 U.S. 368, 379 (1963).

The district court correctly determined that holding a general election under the 2022 map after holding the primary under the 2025 map—so that candidates selected using one set of districts in the primary election are then elected in a different set of (partially overlapping) districts in the general election—would likely violate those principles. See Appl. App. 10a-11a. "Switching maps now" would create "two classes of voters." *Id.* at 10a. Some voters would remain in the same district for both the primary and the general election, and those voters would have a full opportunity to participate in both stages of the process for choosing the members of Congress who will represent them. But other voters would be in one district for the primary and another district for the general election. Those voters will have the opportunity to participate in only one stage of the process of choosing the members of Congress who will represent them—the general election. Whether a voter belongs to one class or the other will depend solely on where he lives.

"Perhaps the most telling indication of the severe constitutional problem with [using different maps for the primary and general elections] is the lack of historical precedent for [such a step]." *Free Enterprise Fund* v. *PCAOB*, 561 U.S. 477, 505 (2010). Applicants have identified no previous instance in which a State used one set of districts for the primary election but then transferred hundreds of thousands of voters—and all the *candidates* who emerged from the primary election—into different districts for the general election. That is no surprise. The primary and general elections are both "integral part[s]" of one procedure, *Classic*, 313 U.S. at 314, and it makes no sense to use different congressional districts for different phases of a single election. It is also "simply inconsistent with the concept of election of Representatives by districts that a candidate should be chosen in part by persons outside the district." *Montano* v. *Lefkowitz*, 575 F.2d 378, 385 (2d Cir. 1978) (Friendly, J.).

At a minimum, such distinctions among voters trigger "close constitutional scrutiny" and are constitutional only if they are tailored to a compelling state interest. *Dunn*, 405 U.S. at 336. Applicants cannot satisfy that standard. They make no serious effort to offer *any* justification for switching maps between a primary and a general election and for thereby giving some voters a greater say than others in who will represent them. At most, they contend (Appl. 1) that the switch is required by the Missouri constitution. But a State's interest in complying with "state constitutional provisions" does not by itself justify geographic classifications that would otherwise violate Article I, Section 2, or the Equal Protection Clause. *Reynolds*, 377 U.S. at 584. "When there is an unavoidable conflict between the Federal Constitution and a State Constitution, the Supremacy Clause of course controls." *Ibid.*

Applicants cite (Appl. 19) *Rodriguez* v. *Popular Democratic Party*, 457 U.S. 1 (1982), where this Court held that Puerto Rico did not violate the equal-protection component of the Fifth Amendment's Due Process Clause by relying on elections to select legislators every four years, but on appointments to fill any vacancies that arose in the interim. The Court emphasized, however, that the statute in that case did not "afford unequal treatment to different classes of voters." *Id.* at 10. "All qualified voters ha[d] an equal opportunity to select a district representative in the general election; and the interim appointment provision applie[d] uniformly to all legislative vacancies." *Ibid.* Though the statute did treat interim vacancies differently from end-of-term vacancies, that distinction was justified by the interest in "ensuring that vacancies are filled promptly, without the necessity and inconvenience of a special election." *Id.* at 12. Those rationales do not apply here. Switching maps at this stage would indeed "afford unequal treatment to different classes of voters" and cannot be justified by any legitimate interest. *Ibid.*

Applicants also insist (Appl. 20-21) that all voters in Missouri are being treated equally because all had the opportunity to vote in *some* district's primary earlier this year. But the Constitution guarantees an equal right to vote for one's *own* representatives. Switching maps at this stage would violate that guarantee: Some voters will have had the opportunity to vote in primaries for the members of Congress who will represent them, while others will not. It is no consolation that the latter class of voters will have had the opportunity to vote in a primary in some other district for some other candidate who will not represent them.

Contrary to applicants' contention (Appl. 21), the district court's theory would not bar a party from replacing a nominee who dies, is disqualified, or withdraws. A law allowing a party to replace a nominee does not distinguish among voters based on where they live, and it is in any event justified by the state's interest in ensuring that unexpected events like candidate deaths do not deprive voters of a meaningful choice in the general election. Not so for switching maps midstream.

C. The Equities Do Not Support A Stay

1. To obtain a stay, applicants must show not only a likelihood of success on appeal, but also irreparable harm. See *Nken* v. *Holder*, 556 U.S. 418, 433 (2009).

But applicants have not shown that *they* have suffered an Article III injury, much less irreparable harm. Applicants instead contend (Appl. 9) that *Missouri* will suffer irreparable harm by being required "to conduct its congressional election using a map that, under the authoritative decision of Missouri's highest court, 'is not the law.'" But alleged irreparable harm to Missouri, one of applicants' adversaries in this case, is not a basis for granting a stay to applicants. The harms that applicants recite may be relevant to assessing the public interest, but that is distinct from irreparable harm. See *Nken*, 556 U.S. at 434.

Because applicants have not established a likelihood of success or irreparable harm—the "most critical" stay factors, *Nken*, 556 U.S. at 434—this Court need not proceed to balancing the equities. But if this were a "close" case, *NRCC*, 26A274, slip op. 2, requiring such balancing, the equities overwhelmingly favor respondents. Applicants' preferred outcome would violate the constitutional rights of voters, force candidates who have been campaigning in one set of districts to switch at the last minute to a different set of districts, and jeopardize state officials' ability to conduct a timely and lawful federal election. Those harms easily dwarf the non-injury asserted by applicants.

2. Applicants err in contending (Appl. 10-14) that *Purcell* v. *Gonzalez*, 549 U.S. 1 (2006) (per curiam), requires granting a stay here. *Purcell* recognizes that a plaintiff in an election case must make a "heighten[ed]" showing in order to "overcome *the State's* extraordinarily strong interest in avoiding late, judicially imposed changes to its election laws and procedures." *Merrill* v. *Milligan*, 142 S. Ct. 879, 881 (2022) (Kavanaugh, J., concurring) (emphasis added). Applicants, however, do not represent the State and so cannot invoke its interest in avoiding late changes to its election laws. Applicants' efforts to assert that interest in the State's stead simply underscore

that they lack appellate standing. See *Hollingsworth*, 570 U.S. at 709 (explaining that initiative proponents "have no standing to assert the State's interests").

Purcell, moreover, is concerned with "[l]ate judicial tinkering with election laws," which "can lead to disruption and to unanticipated and unfair consequences for candidates, political parties, and voters." *Merrill*, 142 S. Ct. at 881 (Kavanaugh, J., concurring). But here, the district court neither "tinker[ed]" with Missouri law nor caused "unanticipated" consequences. *Ibid.* Instead, it maintained the status quo ante by requiring Missouri to conduct its general election under the map that the State had used for the primary, and under which the voters, candidates, and political parties had long been operating. As the district court recognized, "[i]ssuing a TRO here would preserve, rather than disturb, the election rules that candidates, election officials, and voters have relied on." Appl. App. 12a. "If anything, the public interest concerns that the *Purcell* principle invokes—avoiding voter confusion * * * and preserving the fair and orderly operation of elections—support issuing a TRO." *Ibid.*

Those points are reinforced by *Malliotakis* v. *Williams*, 146 S. Ct. 809 (2026), where this Court stayed a state-court order that required district lines to be redrawn based on race shortly before a primary election. The dissent concluded that *Purcell* precluded federal judicial intervention, see *id.* at 816-818 (Sotomayor, J., dissenting), but the Court rejected that contention, see *id.* at 809 (order granting stay). Justice Alito noted that, "far from causing disruption or upsetting legitimate expectations," the Court's stay "eliminate[d] much of the uncertainty and confusion" caused by the state-court order. *Id.* at 811 (Alito, J., concurring). So also here.

CONCLUSION

This Court should deny the application for a stay.

Respectfully submitted.

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SEPTEMBER 2026