

App. No. 26A_____

In the Supreme Court of the United States

NEW MEXICO FORWARD PARTY, BOB PERLS, MICHAEL VIGIL,
DENNIS DINGE, HARRY MONTOYA, AND FRANCES KAVA,
Applicants,

v.

MAGGIE TOULOUSE OLIVER, IN HER OFFICIAL CAPACITY AS SECRETARY
OF STATE OF NEW MEXICO, AND BARBARA DELANEY, IN HER OFFICIAL
CAPACITY AS COUNTY CLERK OF LUNA COUNTY, NEW MEXICO,
Respondents.

On Application for an Injunction Pending Appeal to the
United States Court of Appeals for the Tenth Circuit

**APPENDIX TO EMERGENCY APPLICATION FOR
WRIT OF INJUNCTION PENDING APPEAL**

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To the Honorable Neil M. Gorsuch,
Associate Justice of the Supreme Court of the United States
and Circuit Justice for the Tenth Circuit

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FILED
United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

September 15, 2026

Christopher M. Wolpert
Clerk of Court

NEW MEXICO FORWARD PARTY,
et al.,

Plaintiffs - Appellants,

v.

MAGGIE TOULOUSE OLIVER, in her
official capacity as Secretary of State of
New Mexico, et al.,

Defendants - Appellees.

No. 26-2145
(D.C. No. 1:26-CV-02286-MIS-SCY)
(D. N.M.)

ORDER

Before **MORITZ** and **ROSSMAN**, Circuit Judges.

Appellants move for a stay of the district court's order denying a preliminary injunction, and for an injunction requiring the New Mexico Secretary of State to add two names to the ballot for November's election. The Secretary opposes the motion. Appellants have replied. The reply was untimely because of technical difficulties. We accept and consider the reply.¹

¹ New Mexico Attorney General Raúl Torrez filed an amicus brief supporting Appellants' motion for injunction pending appeal. Federal Rule of Appellate Procedure 29 contemplates two stages at which an amicus brief can be filed: during initial consideration on the merits and during consideration on whether to grant rehearing; it does not contemplate amicus briefs during consideration of a motion for a preliminary injunction pending appeal. We decline to consider the amicus filing in conjunction with

To evaluate the motion, we consider (1) whether Appellants will likely succeed on appeal; (2) whether they will suffer irreparable harm absent relief; (3) whether granting relief would harm opposing parties; and (4) whether the public interest favors relief. *See* 10th Cir. R. 8.1. Appellants have the burden to show circumstances justifying relief. *See Nken v. Holder*, 556 U.S. 418, 433–34 (2009); *Roman Cath. Diocese of Brooklyn v. Cuomo*, 592 U.S. 14, 16 (2020).

We conclude Appellants have not met their burden, so we deny their motion.

Entered for the Court

Per Curiam

this preliminary motion, and we direct the Clerk of Court to strike the amicus filing. Dkt. No. 4.

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

NEW MEXICO FORWARD PARTY; BOB
PERLS; MICHAEL VIGIL; DENNIS
DINGE; HARRY MONTOYA; AND
FRANCES KAVA,

Plaintiffs,

v.

Civ. No. 1:26-cv-02286-MIS-KK

MAGGIE TOULOUSE OLIVER, in her
official Capacity as Secretary of State of New
Mexico; and BARBARA DELANEY, in her
official capacity as County Clerk of Luna
County, New Mexico,

Defendants.

**ORDER DENYING PLAINTIFFS' OPPOSED EMERGENCY MOTION FOR STAY
AND INJUNCTION PENDING APPEAL**

THIS MATTER is before the Court on Plaintiffs' Opposed Emergency Motion for Stay and Injunction Pending Appeal, ECF No. 27, filed September 4, 2026. Federal Rule of Appellate Procedure 8(a) governs motions for stays and injunctions in the United States Courts of Appeal, while Federal Rule of Civil Procedure 62(c) governs motions for stays and injunctions in the United States District Courts.¹ Hilton v. Braunskill, 481 U.S. 770, 776 (1987).

Under both Rules, however, the factors regulating the issuance of a stay [and injunction] are generally the same: (1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies.

¹ Rule 62(c) provides, in relevant part: "Unless the court orders otherwise, the following are not stayed after being entered, even if an appeal is taken: **(1)** an interlocutory . . . judgment in an action for an injunction . . ."

Id. (citations omitted). See also Roman Catholic Diocese of Brooklyn v. Cuomo, 592 U.S. 14, 16-20 (2020); Nken v. Holder, 556 U.S. 418, 434 (2009). “There is substantial overlap between these and the factors governing preliminary injunctions . . . because similar concerns arise whenever a court order may allow or disallow anticipated action before the legality of that action has been conclusively determined.” Nken, 556 U.S. at 434. “The first two factors of the traditional standard are the most critical.” Id.

In its Order Denying Plaintiffs’ Motion for Preliminary Injunction, ECF No. 22, the Court found that Plaintiffs have not made a strong showing that they are likely to succeed on the merits of their claims, id. at 8-27; Plaintiffs cannot establish irreparable harm, id. at 28; and that Plaintiffs’ threatened injury does not outweigh injury to Defendants and an injunction would be against the public interest, id. at 29-31. Plaintiffs have not persuaded the Court that it decided these issues incorrectly, and the Court hereby adopts those findings as applicable to Plaintiffs’ Motion for Stay and Injunction Pending Appeal. Specifically, the Court finds that Plaintiffs have not made a strong showing that they are likely to succeed on the merits of their claims; Plaintiffs will not be irreparably injured absent a stay and injunction pending appeal; issuance of a stay and injunction pending appeal will substantially injure Defendants; and a stay and injunction pending appeal is contrary to the public interest.

Therefore, it is **HEREBY ORDERED** that Plaintiffs’ Opposed Emergency Motion for Stay and Injunction Pending Appeal, ECF No. 27, is **DENIED**.



MARGARET STRICKLAND
 UNITED STATES DISTRICT JUDGE

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

NEW MEXICO FORWARD PARTY; BOB
PERLS; MICHAEL VIGIL; DENNIS
DINGE; HARRY MONTOYA; AND
FRANCES KAVA,

Plaintiffs,

v.

Civ. No. 1:26-cv-02286-MIS-KK

MAGGIE TOULOUSE OLIVER, in her
official Capacity as Secretary of State of New
Mexico; and BARBARA DELANEY, in her
official capacity as County Clerk of Luna
County, New Mexico,

Defendants.

ORDER DENYING MOTION FOR PRELIMINARY INJUNCTION

THIS MATTER is before the Court on Plaintiffs New Mexico Forward Party, Bob Perls, Michael Vigil, Dennis Dinge, Harry Montoya and Frances Kava’s (“Plaintiffs”) Emergency Motion for Preliminary Injunction (“Motion”), ECF No. 8, filed July 27, 2026. On August 14, 2026, Defendant Maggie Toulouse Oliver, as Secretary of State of New Mexico (“Defendant”), filed a Response. ECF No. 13. On August 15, 2026, Plaintiffs filed a Reply. ECF No. 14. On August 28, 2026, the Court held a hearing on the Motion. Clerk’s Min. of Hr’g of Aug. 28, 2026, ECF No. 21. The Motion is ripe for consideration. Upon review of the Parties’ submissions, the record, and the relevant law, the Court will deny Plaintiffs’ Motion.

I. Background

Plaintiffs seek a preliminary injunction on constitutional grounds to enjoin the Secretary of State of New Mexico and the County Clerk of Luna County “from enforcing New Mexico Statutes

§§ 1-8-2(B) and 1-8-2(E) as applied to Plaintiffs in the 2026 election cycle.” *See* Mot. at 1, 3-4, ECF No. 8. The former statute section delineates how many signatures are required to be submitted via petition by minor party candidates for statewide and local office and when they must be submitted. *See* N.M. Stat. Ann. § 1-8-2(B). The latter statute section requires candidates to be a member of that party “not later than the date the political party filed its rules and qualifying petitions” and a resident in the district of the office for which the candidate is running. § 1-8-2(E).

Plaintiffs also challenge New Mexico Statutes §§ 1-7-2(A), 1-8-65(A), 1-8-65(B), and 1-8-65(D). Mot. at 11, ECF No. 8; *see also* Compl. ¶¶ 78-88, ECF No. 1. The first requires political parties to (1) adopt and file rules with the secretary of state and (2) submit petitions with a number of signatures of registered New Mexico voters equaling at least one half percent of the number of total voters for governor in the previous election to qualify as a political party. § 1-7-2(A). The second two statute sections require minor party candidates to use state-authorized petitions to obtain signatures, § 1-8-65(A), and file a nominating petition at the same time as a declaration of candidacy, both on authorized forms, § 1-8-65(B). The final statute section requires the secretary of state to make such forms available in March of even-numbered years, i.e., election years. § 1-8-65(D).

Plaintiff New Mexico Forward Party (NMFP) qualified as a “minor political party” under New Mexico law on May 14, 2026, Mot. at 6, ECF No. 8, having obtained a number of petitions signed by registered voters equal or greater in number to one half percent of the total vote for governor in the preceding election, *id.* at 6-7; § 1-7-2(A). In 2026, that number was 3,561. Mot. at 7, ECF No. 8.

The four remaining Plaintiffs attempted to run in the 2026 New Mexico general election as state and national NMFP candidates for office. *Id.* at 3. Those candidates were required by New

Mexico state law to change their voter registration to NMFP no later than the date on which the party filed its petition. *Id.* at 8. The candidates were also required to obtain and submit signature petitions to qualify for the general election ballot. *Id.* at 5-6, 9-11. This requirement changes depending on the office, § 1-8-2(B), but all petitions this year were due on June 25, 2026, Mot. at 13, ECF No. 8.

Statewide candidates of minor parties whose registered membership is less than one percent of the total number of voters for governor in the previous election must submit petitions containing a number of signatures equal to two percent of the total number of voters for governor in the previous election to qualify for the ballot. *Id.* at 6. The NMFP has 227 registered members, Resp. at 14, ECF No. 13, meaning its candidates for statewide office had to submit petitions containing 14,200 signatures to qualify in 2026, Mot. at 6, ECF No. 8. Minor party candidate signatures may come from any registered voter, Resp. at 2, ECF No. 13, provided the voter resides in the area to be represented by the office, § 1-8-2(B).

Petition forms are supplied by the New Mexico Secretary of State. § 1-8-65. In 2026 the Secretary of State made the forms available on March 2, 2026. Decl. of Ma. Vigil ¶ 16, ECF No. 13-1.¹ Candidates may also use an online platform to gather signatures. Mot. at 10, ECF No. 8.

Plaintiffs Perls and Vigil, running for statewide office, failed to gather the required number of signatures and were not placed on ballots. *Id.* at 10-11. Plaintiffs claim “the Secretary

¹ Plaintiffs claim, without citation, that “the Secretary did not [make petitions available] until on or about March 29, 2026.” Compl. ¶ 43, ECF No. 1. Plaintiffs provided no support for their claim at the preliminary injunction hearing, but Defendant established through witness testimony that the forms were available on March 2, 2026. Tr. of Hr’g of Aug. 28, 2026, 38:1 – 39:24 (“When was the paper petition form made available for minor party candidates for the general election? A. March 2nd. Q. And how do you know it was March 2nd? A. I have seen a ticket . . . and our webmaster confirmed and closed out the ticket that it was posted on that date. Q. Okay. Are you aware that the plaintiffs claim that the petition form was not available until March 29th? A. Yes, I am aware. Q. Are you aware of any fact that supports that claim? A. No.”). Neither party ordered the hearing transcript. The Court cites to the Court reporter’s original rough draft of the hearing transcript. Any final transcript may contain slightly different page and/or line numbers.

deactivated the online petitioning platform for almost the entirety of the NMFP candidates' petitioning period.” *Id.* at 10. Defendant claims the platform was functional but Plaintiffs were unable to use the platform because “they were not yet registered with NMFP,” having tried to change their registration “during a statutory pause in registration processing between May 5 and June 8[, 2026].” Resp. at 10 n.3, ECF No. 13. An email exchange between Plaintiff Perls and state employees shows that Plaintiff Perls was informed on May 27, 2026, that the system would not be available until June 8, 2026. ECF No. 13-1 at 10-11.

Plaintiff Dinger, running for Public Education Commission, and Plaintiff Montoya, running for Santa Fe County Magistrate Judge, gathered more than the required number of signatures. Mot. at 10, ECF No. 8. Both were placed on the ballot even though Plaintiff Montoya was not a member of the NMFP before “the party became qualified.” *Id.* at 10-11.

Plaintiff Kava, running for Luna County Magistrate Judge, gathered more than the required number of signatures but was initially left off the ballot because she failed to register with the NMFP by the time “the party became qualified.” *Id.* at 9; § 1-8-2(E). Plaintiff Kava was later placed on the ballot, “consistent with the Secretary’s decision to qualify [Plaintiff] Montoya.” Resp. at 2 n.1, ECF No. 13.

Plaintiffs argue that they are entitled to a preliminary injunction because they are substantially likely to succeed on the merits, Mot. at 11-22, ECF No. 8, they will suffer irreparable injury if the injunction is denied, *id.* at 22, the threatened injury outweighs the injury New Mexico will suffer under the injunction, *id.* at 22-23, and the injunction will not be adverse to the public interest, *id.* at 23-24.

Defendant argues Plaintiffs should have a heightened burden because Plaintiffs seek a disfavored injunction, Resp. 4-5, ECF No. 13, Plaintiff NMFP, Plaintiff Kava, Plaintiff Montoya,

and Plaintiff Dingel lack standing, *id.* at 2 n.1, and Plaintiffs are bringing a facial challenge, *id.* at 6-7. Defendant further argues that Plaintiffs are unlikely to succeed on the merits, *id.* at 5-21, Plaintiffs face no irreparable harm without a finding of deprivation of constitutional rights, *id.* at 21, and an injunction is contrary to public interest, *id.* at 21-23.

Plaintiffs reply that Defendant's standing challenge is without merit, Reply at 1-2, ECF No. 14, Plaintiffs are bringing an as-applied challenge, *id.* at 2-3, Plaintiffs' claim will survive any standard of scrutiny, *id.* at 3, Plaintiffs are indeed likely to succeed on the merits, *id.* at 4-9, Plaintiffs Vigil and Perls will suffer irreparable First Amendment harms if they do not appear on the ballot, *id.* at 9, and the equities and public interest favor relief, *id.* at 9-10.

II. Legal Standard

"To prevail on a motion for a preliminary injunction, the movant must establish that four equitable factors weigh in its favor: (1) it is substantially likely to succeed on the merits; (2) it will suffer irreparable injury if the injunction is denied; (3) its threatened injury outweighs the injury the opposing party will suffer under the injunction; and (4) the injunction would not be adverse to the public interest." *Beltronics USA, Inc. v. Midwest Inventory Distrib., LLC*, 562 F.3d 1067, 1070 (10th Cir. 2009) (citation omitted).

"[T]he following three types of specifically disfavored preliminary injunctions" require a heightened standard "'before such an injunction may be issued': (1) preliminary injunctions that alter the status quo; (2) mandatory preliminary injunctions; and (3) preliminary injunctions that afford the movant all the relief that it could recover at the conclusion of a full trial on the merits." *O Centro Espirita Beneficiente Uniao Do Vegetal v. Ashcroft*, 389 F.3d 973, 975 (10th Cir. 2004), *aff'd and remanded sub nom. Gonzales v. O Centro Espirita Beneficente Uniao do Vegetal*, 546 U.S. 418 (2006).

“[C]ourts in this Circuit must recognize that any preliminary injunction fitting within one of the disfavored categories must be more closely scrutinized to assure that the exigencies of the case support the granting of a remedy that is extraordinary even in the normal course.” *Id.* “Furthermore, because a historically disfavored preliminary injunction operates outside of the normal parameters for interim relief, movants seeking such an injunction are not entitled to rely on this Circuit’s modified-likelihood-of-success-on-the-merits standard.” *Id.* at 975-76. “Instead, a party seeking such an injunction must make a strong showing both with regard to the likelihood of success on the merits and with regard to the balance of harms.” *Id.* at 976.

III. Discussion

Based on the following, since (1) Plaintiffs are not substantially likely to succeed on the merits, (2) Plaintiffs will not suffer irreparable injury if the injunction is denied, (3) Plaintiffs’ threatened injury is not greater than that of the Defendant under an injunction, and (4) because granting a preliminary injunction is not in the public interest, the Court will deny Plaintiff’s request for a preliminary injunction. *Beltronics USA*, 562 F.3d at 1070.

Before analyzing the factors, the Court addresses whether Plaintiffs are bringing an as-applied challenge.

A. The Court considers this an as-applied challenge because Plaintiffs have characterized it as an as-applied challenge.

The Court finds that Plaintiffs are bringing an as-applied challenge. “An appellant may challenge the constitutionality of a statute by asserting a facial challenge, an as-applied challenge, or both.” *United States v. Carel*, 668 F.3d 1211, 1217 (10th Cir. 2011) (citation omitted). “A facial challenge is a head-on attack [of a] legislative judgment, an assertion that the challenged statute violates the Constitution in all, or virtually all, of its applications.” *Id.* (citation omitted). “In

contrast, “[a]n as-applied challenge concedes that the statute may be constitutional in many of its applications, but contends that it is not so under the *particular circumstances* of the case.” *Id.* (citation omitted). “The nature of a challenge depends on how the *plaintiffs* elect to proceed—whether they seek to vindicate their own rights based on *their own circumstances* (as-applied) or whether they seek to invalidate a[] [statute] based on how it affects them *as well as other conceivable parties* (facial).” *Id.* (citation omitted).

Defendant argues that since the injunction would “strip the statutes of each and every application they have” by eliminating the signature and petition requirements for all minor party candidates, Plaintiffs have in effect asserted a facial challenge. Resp. at 6-7, ECF No. 13 (citing *Green Party of Tenn. v. Hargett*, 791 F.3d 684, 692 (6th Cir. 2015)).

Plaintiffs argue that they are not bringing a facial challenge but are bringing an as-applied challenge that rests on

facts unique to them: NMFP’s certification on May 14, 2026; the 41 days its nominees actually had to petition; the statutory registration pause of May 5 through June 8 that—by the Secretary’s own account—locked Perls and Vigil out of the State’s online petitioning platform; and the doubled 2% requirement that applies precisely because NMFP is new.

Reply at 2-3, ECF No. 14. Plaintiffs argue that the aggregate figures they cite, for instance that they must collect 131,361 signatures to field a full slate of statewide candidates, are demonstrative of their burden, not a concession of facial challenge even though the figures apply to all minor parties and minor party candidates positioned similarly. *Id.* at 3. And Plaintiffs insist that they are proceeding under an as-applied challenge even though the second and third counts in their complaint assert burdens against “minor parties and their candidates.” *See id.* at 2-3; Compl. ¶¶ 86-87, 90, ECF No. 1.

In accordance with *Carel*, the Court approaches the challenge consistent with the Plaintiffs’ characterization. 668 F.3d at 1217-18. The Court addresses only whether applying statutes to the particular circumstances of Plaintiffs’ case violates the Constitution and expresses no opinion concerning whether statutes might violate the Constitution as they apply to other minor political parties and minor political party candidates. *Id.* at 1218.

B. The Court will not grant a preliminary injunction.

“To prevail on a motion for a preliminary injunction, the movant must establish that four equitable factors weigh in its favor: (1) it is substantially likely to succeed on the merits; (2) it will suffer irreparable injury if the injunction is denied; (3) its threatened injury outweighs the injury the opposing party will suffer under the injunction; and (4) the injunction would not be adverse to the public interest.” *Beltronics USA*, 562 F.3d at 1070. Preliminary injunctions that afford plaintiffs all the relief they could recover at the conclusion of a full trial on the merits, change the status quo, or mandate action are disfavored and require plaintiffs to make a strong showing regarding the likelihood of success on the merits and the balance of harms. *O Centro*, 389 F.3d at 975-76.

(1) Plaintiffs fail to make a strong showing that it is substantially likely to succeed on the merits.

Granting a preliminary injunction to place Plaintiffs Perls and Vigil on the 2026 ballot would mandate action to change the status quo and grant Plaintiffs all the relief they could obtain at the conclusion of a trial. Plaintiffs must therefore make a strong showing that they are substantially likely to succeed on the merits. *Id.*; *Beltronics USA*, 562 F.3d at 1070.

Courts must resolve challenges to state election laws by “consider[ing] the character and magnitude of the asserted injury to the rights protected by the First and Fourteenth Amendments that the plaintiff seeks to vindicate.” *Anderson v. Celebrezze*, 460 U.S. 780, 789 (1983). The court

must then “identify and evaluate the precise interests put forward by the State as justifications for the burden imposed by its rule.” *Id.* Finally, the court must “determine the legitimacy and strength of each of those interests” and “consider the extent to which those interests make it necessary to burden the plaintiff’s rights.” *Id.*

The rigorousness of the inquiry depends on “the extent to which a challenged regulation burdens First and Fourteenth Amendment rights.” *Burdick v. Takushi*, 504 U.S. 428, 434 (1992). When rights are subject to “severe” restriction, the regulation must be “narrowly drawn to advance a state interest of compelling importance.” *Id.* (citation omitted). If the state law imposes only “reasonable, nondiscriminatory restrictions,” the state’s “important regulatory interests” are generally sufficient to justify the restrictions. *Id.* (citation omitted).

Since this is an as-applied challenge, the Court examines the statutes considering the unique facts of this case. *Carel*, 668 F.3d at 1217-18. The Court first sets out the unique facts of this case before turning to the arguments and analysis. The Court finds Plaintiffs are unlikely to succeed on the merits and therefore are not entitled to a preliminary injunction.

(a) *Specific facts of the as-applied challenge.*

New Mexico Statute § 1-8-2(B) requires statewide candidates of minor political parties whose membership totals less than one percent of the total number of votes cast for governor in the preceding general election to submit to the secretary of state, by the twenty-third day following the primary election in the year of the general election, a nominating petition containing the signatures of voters totaling not less than two percent of the votes cast for governor in the preceding general election. *See* § 1-8-51. Signatures may be obtained from any registered New Mexico voter. § 1-8-2(B). Because NMFP has only 227 registered members, their candidates for statewide office

had to obtain 14,200 signatures and submit them to the secretary of state by June 25, 2026. Mot. at 5-7, ECF No. 8.

The signatures must be on an authorized form, § 1-8-65(A), which the secretary of state makes available in March of the year they must be submitted, § 1-8-65(D). The candidate cannot declare his candidacy for the general election until the petition is handed in. § 1-8-65(B).

Under ideal circumstances, a minor party candidate for office has from the time the secretary of state makes the authorized forms available in March, § 1-8-65(A), (D), until sometime between June 25 and July 1, inclusive, to file her petition. *See* § 1-8-2(B); § 1-8-11.

NMFP did not submit its materials and qualify as a party until after the petition forms were made available. NMFP submitted the required materials for certification on May 8, 2026, Resp. at 8 n.2, ECF No. 13, and became a qualified party on May 14, 2026, Mot. at 13, ECF No. 8. On May 14, 2026, Plaintiffs Vigil and Perls could begin circulating petitions to obtain the required number of signatures. *Id.* Plaintiff Perls, for example, used paid petition circulators to “gather wet signatures on paper petitions at public events.” Decl. of Perls ¶ 16, ECF No. 8-3.

In addition to obtaining signatures the old-fashioned way, candidates for office may obtain signatures via the state’s online system. Mot. at 10, ECF No. 8. Due to NMFP’s timing, however, candidate access to the online system was restricted. Between May 5 and June 8 there is a statutory pause in registration processing. *See* §§ 1-4-8(A), (B) (closing registration 28 days prior to elections); § 1-4-8(D) (restarting registration the Monday following an election). Since NMFP qualified during the pause, Plaintiffs Vigil and Perls could not update their registration to reflect NMFP until June 8, 2026. And since they could not update their registration until June 8, 2026, they could not use the online system to obtain signatures until June 8, 2026. Resp. at 10 n.3, ECF No. 13. Plaintiffs Vigil and Perls state that the online system was not available until June 12, 2026.

Decl. of Mi. Vigil ¶ 9, ECF No. 8-2; Decl. of Perls ¶ 15, ECF No. 8-3. Regardless, Plaintiffs Vigil and Perls were unable to utilize the online platform until June.

Overall, Plaintiffs spent \$44,500 on “digital outreach,” generating “nearly 1.66 million text messages sent to more than 500,000 registered voters.” Mot. at 10, ECF No. 8. Plaintiffs state that although “[m]ore than 56,000 of these voters attempted to access the NMFP candidates’ petitions online . . . the platform ultimately yielded fewer than 2,700 signatures . . . [because] the Secretary deactivated the online petitioning platform for almost the entirety of the NMFP candidates’ petitioning period.” *Id.* As recounted above, this statement is, at best, a misunderstanding of Plaintiffs’ access to the system. Plaintiffs Vigil and Perls also state that they received anecdotal reports of issues with voter access after June 12, 2026. *See* Mot. at 10, ECF No. 8; Decl. of Perls ¶ 16, ECF No. 8-3.

Neither Plaintiff Vigil nor Plaintiff Perls submitted the required 14,200 signatures. Mot. at 10-11, ECF No. 8. Plaintiff Vigil obtained and submitted 4,400 signatures in his attempt to appear on the ballot as NMFP’s nominee for state auditor. Decl. of Vigil ¶¶ 5, 12, ECF No. 8-2. Plaintiff Perls obtained and submitted 2,700 signatures in his attempt to appear on the ballot as NMFP’s nominee for U.S. Senate. Decl. of Perls ¶¶ 6, 17, ECF No. 8-3.

Plaintiff Ding, running for Public Education Commission, Plaintiff Montoya, running for Santa Fe County Magistrate Judge, and Plaintiff Kava, running for Luna County Magistrate Judge, gathered more than the required number of signatures. Mot. at 9-10, ECF No. 8. Plaintiffs Montoya and Kava were not members of the NMFP before “the party became qualified,” as required by § 1-8-2(E), *id.* at 9-11, but both were ultimately placed on the ballot, Resp. at 2 n.1, ECF No. 13.

(b) *Merits.*

The Court now turns to Plaintiffs’ arguments on the merits. Plaintiffs make several arguments about burdens imposed on them by the framework and several arguments about the state’s interest in the framework, but not all of Plaintiffs’ arguments address both their burden and the state’s interests in a particular aspect of the framework. *See generally* Mot., ECF No. 8; Reply, ECF No. 14.

The Court’s responsibility is to resolve challenges to state election laws by “consider[ing] the character and magnitude of the asserted injury,” then “identify and evaluate the precise interests put forward by the State” as well as “determine the legitimacy and strength of each of those interests,” and finally “consider the extent to which those interests make it necessary to burden the plaintiff’s rights.” *Anderson*, 460 U.S. at 789. Therefore, the Court will consider each aspect of the framework brought up by Plaintiffs in either context, burden or state interest. The rigorousness of the Court’s inquiry depends on the burden imposed by the framework, whether reasonable and nondiscriminatory or severe. *Burdick*, 504 U.S. at 434.

First, the Court addresses Plaintiffs’ challenges to § 1-8-2(E) and § 1-7-2(A) and finds they are not substantially likely to succeed on the merits because their legal rights under the statutes are no longer at issue. Then, the Court divides Plaintiffs’ challenges to § 1-8-2(B) and §§ 1-8-65(A), (B), and (D) based on Plaintiffs’ framing and addresses the burden on Plaintiffs and New Mexico’s interest for each. The Court finds the burdens imposed on Plaintiffs are reasonable and nondiscriminatory, *Burdick*, 504 U.S. at 434, and, applying the appropriate rigor to the analysis, *id.*, New Mexico’s important regulatory interests are sufficient to justify those burdens, *id.*

(i) *Plaintiffs' attempt to enjoin § 1-8-2(E).*

Plaintiffs move to enjoin § 1-8-2(E). The statute covers candidate registration requirements for candidates running as nominees of newly certified political parties. § 1-8-2(E). Plaintiffs Montoya and Kava were initially left off the ballot by the state for not complying with § 1-8-2(E), but both candidates are now registered NMFP members and the state has placed both on the ballot. Resp. at 2 n.1, ECF No. 13. Plaintiffs argue § 1-8-2(E) is “enforceable against Kava and every future NMFP candidate.” Reply at 2, ECF No. 14.

“A case is moot ‘when the issues presented are no longer ‘live’ or the parties lack a legally cognizable interest in the outcome.’” *Mukhtar v. Lambrecht*, 172 F.4th 836, 842 (10th Cir. 2026) (citations omitted). “No matter how vehemently the parties continue to dispute the lawfulness of the conduct that precipitated the lawsuit, the case is moot if the dispute is no longer embedded in any actual controversy about the plaintiffs’ particular legal rights.” *Id.* (citation omitted). “The crucial question is whether granting a present determination of the issues offered will have some effect in the real world.” *Id.* (citation omitted). “In assessing mootness, ‘[w]e take a claim-by-claim approach’ and ‘decide whether a case is moot as to ‘each form of relief sought.’” *Id.* (citations omitted). “[A]n issue is rendered moot when an event occurs during the pendency of the litigation which deprives a plaintiff of an element of standing, such as redressability.” *We the Patriots, Inc. v. Grisham*, 119 F.4th 1253, 1257 (10th Cir. 2024) (citation omitted).

When Plaintiffs filed their complaint and their Motion, Plaintiff Kava was not on the ballot. Plaintiff Kava, however, has been placed on the ballot. Resp. at 2 n.1, ECF No. 13. The issue of whether Plaintiff Kava should be placed on the ballot is therefore no longer live, likely rendering the issue moot. *Mukhtar*, 172 F.4th at 842. Alternatively, that event also likely deprives Plaintiff Kava of standing, again rendering this issue moot. *Grisham*, 119 F.4th at 1257. Since Plaintiffs’

attempt to enjoin § 1-8-2(E) is likely moot, Plaintiffs are not substantially likely to succeed on the merits.

Furthermore, as Plaintiffs bring an as applied challenge, § 1-8-2(E) applies to candidates of parties “certified in the year of the general election,” and NMFP is now a certified party, Plaintiffs cannot vindicate the rights of “every future NMFP candidate” since they will not be in the same position as the candidates this year. Reply at 11, ECF No. 14; *Carel*, 668 F.3d at 1218.

(ii) *Plaintiffs’ attempt to enjoin § 1-7-2(A).*

Plaintiffs move to enjoin § 1-7-2(A). New Mexico Statute § 1-7-2(A) governs the formation of new political parties. NMFP submitted its qualifying material as required by § 1-7-2(A) and was certified as a party by New Mexico on May 14, 2026. Mot. at 6, ECF No. 8. NMFP does not have to qualify again unless “two successive general elections are held without at least one of the party’s candidates on the ballot” or, if the party has candidates for governor or President, those candidates do not receive one half percent of the total votes cast. § 1-7-2(C).

“[T]o satisfy the requirements of Article III standing, the plaintiff bears the burden of showing (1) an injury, (2) causation, and (3) redressability.” *Grisham*, 119 F.4th at 1257 (citation omitted). “[F]or a party to properly invoke federal jurisdiction, we must be able to redress their alleged injuries.” *Id.* (citation omitted). “Redressability considers whether the requested relief will redress the alleged injury.” *Id.* (citation omitted). “Moreover, it must be likely, not merely speculative, that a favorable decision by this court will redress the alleged injury.” *Id.* (citation omitted). “Furthermore, an issue is rendered moot when an event occurs during the pendency of the litigation which deprives a plaintiff of an element of standing, such as redressability.” *Id.* (citation omitted).

NMFP qualified two months before Plaintiffs filed their complaint. *See* Mot. at 2, ECF No. 8. Whether NMFP will cease to be qualified and have to requalify is speculative. A Court decision on § 1-7-2(A) will have no legal effect on Plaintiff NMFP's current status and any future injury is speculative. Therefore, Plaintiff NMFP likely lacks standing to challenge § 1-7-2(A), *Grisham*, 119 F.4th at 1257 (citation omitted), and they are not substantially likely to succeed on the merits.

(iii) *Petition availability.*

Plaintiffs argue that their First Amendment rights are burdened by § 1-8-65(D) because the statute does not permit candidates to gather signatures before March of the year candidates must qualify. Mot. at 18-22, ECF No. 8 (citing *Meyer v. Grant*, 486 U.S. 414, 421-28 (1988)). Plaintiffs challenge only the timing of availability as a burden on their First Amendment rights. *See id.*

Defendant argues the statute imposes a reasonable content-neutral time, place, and manner restriction based on state interest in regulating elections. Resp. at 17-21, ECF No. 13 (citations omitted).

This is an as-applied challenge and, since NMFP candidates could not use the forms until NMFP qualified as a minor party on May 14, 2026, Mot. at 6, ECF No. 8, the availability of forms earlier than March has no impact on Plaintiffs' rights. The Court therefore finds no First Amendment burden as applied to Plaintiffs.²

Alternatively, the Court finds the availability of forms in March is a reasonable timing restriction based on New Mexico's interest in regulating elections. The state has an important

² Plaintiffs claim that *Grant* dictates the result here, Mot. at 18-19, ECF No. 8; Tr. of Hr'g of Aug. 28, 2026, at 13:1 – 14:14, 83:20 – 84:9, but *Grant* was about the payment of signature gatherers, not the period in which petitions were available. 486 U.S. at 415-16 (“In Colorado the proponents of a new law, or an amendment to the State Constitution, may have their proposal placed on the ballot at a general election if they can obtain enough signatures of qualified voters on an ‘initiative petition’ within a 6-month period. One section of the state law regulating the initiative process makes it a felony to pay petition circulators. The question in this case is whether that provision is unconstitutional.”). The six-month petitioning period in *Grant* was not challenged or addressed. *See generally id.*

interest in confining petitioning to a specific window prior to elections, considering the state must attend to other election-related responsibilities at other times, and the state has interest in ensuring candidate support is demonstrated sufficiently close to the election to guard against voter support waning over time. *See Timmons v. Twin Cities Area New Party*, 520 U.S. 351, 358 (1997).

(iv) *Time to acquire signatures and number of signatures.*

Plaintiffs argue that the requirement to gather 127,800 signatures to field a full slate of ten statewide candidates is a severe burden. *See* Mot. at 5-7, ECF No. 8; § 1-8-2(B). Plaintiffs also argue that, since one measure of burden is “whether a state’s requirements are more restrictive than those of other states,” and New Mexico’s petition requirement is “by far” greater than the requirement imposed by any other state, the requirement is a severe burden. Mot. at 12, ECF No. 8 (citing *Williams v. Rhodes*, 393 U.S. 23, 47, 47 n.10 (1968) (Harlan, J., concurring); Winger Decl. ¶ 21, ECF No. 8-1). Plaintiffs additionally argue they are burdened by having “just 41 days to circulate petitions” between the date NMFP qualified and the date on which petitions were due. *Id.* at 13; § 1-8-2(B).

Defendant argues NMFP chose to form after petitions became available, thus giving candidates a shorter window to collect signatures. Resp. at 8-10, ECF No. 13; *see also id.* at 13 (citing *Libertarian Party of N.M. v. Vigil-Giron*, CIV-06-0615 MV/ACT, 2006 WL 8443845, at *10 (D.N.M. Sept. 18, 2006) *aff’d sub nom. Libertarian Party of N.M. v. Herrera*, 506 F.3d 1303 (10th Cir. 2007)). Defendant argues that the signature requirement burden is not significant because courts have found greater numbers of signatures in less time not to be a significant burden even when candidates could not obtain online signatures. *Id.* at 8-10 (citations omitted).

Plaintiffs reply that New Mexico’s regulatory architecture “guarantees” that minor party candidates of newly formed minor parties always have a “compressed window” to obtain signatures. Reply at 5, ECF No. 14.

First, Plaintiffs’ claim that the framework requires a truncated window is unsupported. The Court finds that, under the facts of this case, NMFP’s forty-one day window to gather signatures was self-imposed and therefore the “compressed window” was not a burden imposed on Plaintiffs by the regulatory architecture. *Vigil-Giron*, 2006 WL 8443845, at *10 (“[T]here is no requirement that a party (if it anticipates being unable to complete the new party and candidate petitions) run candidates the year that it is recognized . . . and there is nothing that prohibits a political party from seeking to be qualified as a political party well before the election in which they wish to run candidates.”). Nothing prevented NMFP from forming prior to the availability of the petition forms. *Id.* Had NMFP formed in January 2026 its candidates could have started obtaining signatures immediately when forms became available and could have accessed the online petitioning system when it became available.

Further, Plaintiffs’ argument that New Mexico’s burden is more severe than other states is both minimally supported and, on its own, not enough to establish that the burden is severe. Plaintiffs claim that New Mexico has a greater signature requirement than any other state. Mot. at 12, ECF No. 8; Tr. of Hr’g of Aug. 28, 2026, at 78:3-9 (“The problem, the constitutional infirmity with New Mexico’s two-tier structure, is that it leads to massive, exponentially greater signature requirements than any other—than—not any other state, because Texas is 81,000.”). Plaintiffs offer in support the lesser signature requirements of Texas, Utah, and Colorado, Mot. at 12-13, ECF No. 8; Tr. of Hr’g of Aug. 28, 2026, at 78:6-14, other case law regarding freezing the political status quo and cost, Mot. at 13-16; *see infra* III.B.1.b.vii-viii, and their argument about petition

availability in March, *see supra* III.B.1.b.iii. Plaintiffs claim that they submitted the evidence lacking in *Libertarian Party of NM v. Herrera*, 506 F.3d 1303 (10th Cir. 2007). Reply at 7, ECF No. 14 (“Plaintiffs here have supplied precisely the record *Herrera* found missing: the nation-leading aggregate requirement, the comparative data from every other state, the historical qualification record, and the cost evidence.”) (citing Mot. at 12-16, ECF No. 8).

First, Plaintiffs’ evidence is not enough to establish that New Mexico’s requirement is more burdensome than any other state, especially considering the disparity in the type of state requirements (petitions, electoral support in prior elections, etc.) and the disparity in state populations. Second, this is not the type of evidence listed in *Herrera*. 506 F.3d at 1310 (“The Libertarian Party alleged that the one-half percent party petition requirement, when combined with the one and one-half percent candidate-petition, was unconstitutionally burdensome. It failed, however, to offer any evidence to support this claim. The candidates themselves did not attempt to obtain the signatures and therefore proffered no testimony as to the burdens the requirement placed on them. Affidavits from other similarly situated minor party candidates, such as the Green Party, were not obtained to establish the character and magnitude of the injury imposed by the candidate petition.”). And finally, even if New Mexico did have the most stringent ballot-access framework compared to other states, that does not make it unconstitutional. If that were the case, one state’s system would always be unconstitutional. Other states’ systems are a means of comparison, nothing more. *See Rhodes*, 393 U.S. at 47 (J. Harlan, concurrence).

Furthermore, the Court does not find the candidate signature requirement a severe burden. NMFP claims it must obtain 131,361 signatures, bumping the number up from 127,800 by including the 3,561 signatures required by NMFP to qualify as a party. Mot. at 7, 12, 16, ECF No. 8; Reply at 3, ECF No. 14. But this misrepresents the burden on Plaintiffs. The requirement to

obtain signatures falls on the candidate for office. § 1-8-2(B). The candidate must obtain 14,200 signatures in the allotted time. The party may help the candidate, but the onus is not on the party to gather signatures for their candidates, therefore it is inaccurate to portray the signature requirement as one imposed on the party to field a full statewide slate. Furthermore, no candidate may run for more than one office, so no candidate must obtain more than 14,200 signatures. And finally, the party, and candidates, may appeal to voters to sign more than one petition at one time. Therefore, although the total number of signatures required by ten NMFP candidates is 127,800, those ten candidates could conceivably obtain their signatures from the exact same 14,200 registered voters.

The Court finds this to be a reasonable burden, not a severe one, over the period allotted for petitioning. *See e.g., Jenness v. Fortson*, 403 U.S. 431, 438-39 (1971) (holding reasonable a requirement to obtain the signatures of five percent of the total registered voters in Georgia over sixth months); *Am. Party of Tex. v. White*, 415 U.S. 767, 783-85 (1974) (holding reasonable a requirement for minor political party candidates to obtain signatures of one percent of the total vote for Texas governor over fifty-five days); *Storer v. Brown*, 415 U.S. 724, 740 (1974) (finding gathering signatures at a rate of 13,542 per day in California not an “impossible burden” or “an impractical undertaking,” even if it would be a “substantial requirement”).

As for the state interest, the Courts finds New Mexico has an important interest in requiring candidates demonstrate support, *Jenness*, 403 U.S. at 442, and the requirement that minor party candidates obtain signatures serves this interest.

(v) *Plaintiffs' challenge to the two-step minor party framework considering major party requirements.*

Plaintiffs argue New Mexico has no state interest in the requirement for minor party candidates to demonstrate support by obtaining signatures since the minor party has already demonstrated support by obtaining signatures. Mot. at 17, ECF No. 8. Plaintiffs contrast their requirements with the ability of major party candidates to appear on ballots after an uncontested primary and argue minor parties receive unequal treatment. Reply at 8-9, ECF No. 14.

Defendant argues that New Mexico's two-step framework mirrors the New Mexico major party candidate requirements, Resp. at 11, ECF No. 14, and has already been upheld by this Court, *id.* at 3 (citing *Vigil-Giron*, 2006 WL 8443845, at *11), and a similar system was upheld by the Third Circuit, *id.* at 3, 10 (citing *Rogers v. Corbett*, 468 F.3d 188 (3d Cir. 2006)). Defendant argues that the framework “‘does not inflate the burden on the plaintiffs,’ and makes no difference given ‘analogous obligations to demonstrate continuing voter support in the retention requirements found in other states.’” *Id.* at 11 (citing *Rogers*, 468 F.3d at 197).

As to the public interest, Defendant argues that New Mexico has an interest in organized elections to prevent overcrowding, voter confusion, and frivolous candidates. *Id.* at 14 (citations omitted). Defendant argues the two-step framework requiring both minor parties and minor party candidates to obtain signatures serves this interest, *id.* at 14-15 (citations omitted), as does the similar system in place for major parties, *id.* at 15.

Plaintiffs dispute Defendant's claim that the framework has been upheld by the Tenth Circuit, Reply at 5-6, ECF No. 13 (citing *Herrera*, 506 F.3d 1303), or that Defendant's position is supported by the Third Circuit, *id.* at 6 (citing *Rogers*, 468 F.3d 188; *Constitution Party of Penn.*

v. Cortes, 824 F.3d 386 (3d Cir. 2016)), because major party candidates can reach the primary ballot by receiving 20% of the vote at the party convention instead of submitting a petition, *id.*

First, Plaintiffs’ argument that major party candidates get preferential treatment is incorrect. The two schemes are devised to demonstrate support based on the stature of the party within the state. Resp. at 16, ECF No. 13. Major parties are major parties because the party has established state-wide support based on its performance in the previous election. § 1-7-7(A) (“[M]ajor political party’ means any qualified political party, any of whose candidates received as many as five percent of the total number of votes cast at the last preceding general election for the office of governor or president of the United States, as the case may be, and whose membership totals not less than one-third of one percent of the statewide registered voter file on the day of the governor’s primary election proclamation.”). But New Mexico still requires major party candidates to demonstrate support. To appear on the statewide general ballot, major party candidates must win a primary election. § 1-8-1(A). To appear on a primary ballot, candidates must either gain twenty percent of the vote in a major party convention, § 1-8-21.1(C), or obtain from registered members of that major party signatures equal to two percent of the total vote cast for the party’s candidate for governor, Resp. at 11, ECF No. 13; § 1-8-33(B). Hence, even if the primary is uncontested, the candidate has demonstrated support prior to appearing on the general election ballot.

Plaintiffs believe the equivalent requirement for a minor party candidate would be nomination by a minor party without a signature requirement. Mot. at 17, ECF No. 8 (“The nominees of a qualified minor party like NMFP have demonstrated support by winning the nomination of a qualified party no less than the nominees who win a major party’s nomination in a primary election.”). Per Plaintiffs’ logic, a candidate nominated by the NMFP, which has 227

members and can handpick nominees, § 1-8-1(B); § 1-8-2 (permitting minor party candidate nomination by convention); § 1-8-3 (requiring the state chair and governing board of minor parties to certify the names of candidates to the secretary of state if the party nominates by “a method other than a political convention”), has demonstrated the same support as a candidate who received either twenty percent of the vote at a major party convention or obtained signatures from a number of major party members equivalent to two percent of the votes cast for that party’s nominee for governor. That is not the case.

Just as major parties have a vote and membership requirement to remain major parties, § 1-7-7(A), minor parties have a vote and signature requirement, §§ 1-7-2(A), (C). And just as major party candidates have either a twenty percent convention support or a signature requirement to get to the primary and then general ballots, § 1-8-21.1; § 1-8-33(B), minor party candidates have a signature requirement to get to the general ballot, § 1-8-2(B).

Under New Mexico’s framework both major and minor parties, and their candidates, have a similar reasonable burden to demonstrate support. Where major party candidates must show support to appear on their party’s primary ballot, minor party candidates get to skip the primary but must show support to appear on the general election ballot. The Court finds different schemes for major and minor parties are reasonable because both schemes have the same purpose: to ensure candidates demonstrate a modicum of support before appearing on the ballot. *Jenness*, 403 U.S. at 442.

Further, the Court finds New Mexico has an important regulatory interest in the framework challenged by Plaintiffs, an interest Plaintiffs acknowledge. Reply at 6, ECF No. 14 (“Plaintiffs do not dispute that a State may require candidates to show a modicum of support.”). The system was also found sound by this Court in a previous challenge. *Vigil-Giron*, 2006 WL 8443845, at *11.

And, as Defendant points out, a similar system was upheld by the Third Circuit. *Rogers*, 468 F.3d at 197 (“[T]he minimal burdens on minor political parties was justified by Pennsylvania’s interest in preventing ballot clutter and ensuring viable candidates.”).

Furthermore, the Court is not persuaded by Plaintiffs’ citation of *Maryland Green Party v. Maryland Board of Elections*, 832 A.2d 214 (2003). In Maryland, major party candidates could reach the ballot based on votes cast for the party’s candidates in the previous election and a single vote in the major party primary. *Id.* at 232-33. Whereas minor party candidates had a signature requirement on top of the minor party’s signature requirement. *Id.* at 236. And, since the candidate’s signature requirement was less than the minor party’s requirement, the court felt it did not add anything to the demonstration of support. *Id.* The court found, therefore, that minor parties were treated unequally in violation of the Maryland constitution. *Id.* New Mexico’s system, in contrast, requires candidates of both major and minor parties to show support. And minor party candidates in New Mexico must demonstrate support equal to or greater than the minor party. The comparison is inapt and the court does not find *Maryland Green Party* persuasive.

New Mexico’s important regulatory interest in candidates for office demonstrating support justifies the reasonable, nondiscriminatory burden placed on minor party candidates to gather signatures via petition before being placed on the general election ballot, and that burden is reasonably similar to the burden on major parties.

(vi) *Double Signature Requirement.*

Plaintiff argues New Mexico has no interest in requiring candidates of minor parties whose membership is less than one percent of the total vote for governor in the previous election (“small minor party”) to gather more signatures than candidates for parties whose membership is more than one percent of the total vote for governor in the previous election (“large minor party”). Mot.

at 17, ECF No. 8. NMFP is a small minor party and its candidates must gather 14,200 signatures for the 2026 election. Mot. at 6, ECF No. 8. If NMFP had 7,100 members, its candidates would have to gather only 7,100 signatures. *Id.* Plaintiff argues the requirement is “punitive and arbitrary” and is “especially pernicious as applied to a newly qualified minor party like NMFP, because [NMFP] almost certainly will not have time to grow its membership to the requisite threshold before its nominees must submit their petitions.” *Id.* at 17.

Defendant does not address the increased requirement for signatures based on the number of minor party members, *see generally* Resp., ECF No. 13; Reply at 7, ECF No. 14, other than the state interest in regulating elections, Resp. at 14, ECF No. 13.

First, as this is an as-applied challenge, the Court finds Plaintiffs’ argument about time to grow membership inapplicable because the framework is not responsible for Plaintiff NMFP’s truncated window to recruit members. *See Vigil-Giron*, 2006 WL 8443845, at *10. Had NMFP formed earlier, perhaps shortly after the previous election, it may have had time to reach the membership number required to reduce its candidates’ signature requirement.

Second, the Court finds New Mexico’s interest in ensuring candidates demonstrate a modicum of support is sufficient to justify the differing schemes for small and large minor parties. A large minor party has more demonstrated support than a small minor party based on its larger membership. That being the case, it is only sensible that a candidate from the former has less of a hurdle to demonstrate support for her candidacy than a candidate from the latter. *See Jenness*, 403 U.S. at 442.

Third, the Court has no reason to doubt the New Mexico Legislature’s choice in what divides small from large minor parties, nor its choice as to how many signatures must be secured by candidates from each type of party.

The Court does not find the increased requirement an unequal application of the law because the different treatment is justified by New Mexico's important regulatory interest in candidates from both small and large minor parties demonstrating support before being placed on the ballot.

(vii) *Cost.*

Plaintiffs argue that ballot access cost is a severe burden. Mot. at 15-16, ECF No. 8 (citations omitted). Defendant does not address cost. *See generally* Resp., ECF No. 13. The Court does not find cost to be a severe burden on Plaintiffs.

Plaintiffs cite *Graveline v. Benson*, 430 F. Supp. 3d 297 (S.D. Mich. 2019), but the Court finds that case, in which a district court found Michigan's regulatory scheme imposed a severe burden on independent candidates, *id.* at 311, minimally persuasive. In *Graveline* the independent candidate did not have financial backing from a party, as here, and the financial burden was only part of the severe burden imposed, which included an early filing deadline and a 30,000-signature requirement. *Id.* at 308-09. Nor is the Court persuaded by *Green Party of Georgia v. Kemp*, 171 F. Supp. 3d 1340 (N.D. Ga. 2016), which Plaintiffs assert found "evidence showing a petition drive costing anywhere from \$70,000 to \$350,000 *sufficient* to support a finding of a severe burden." Mot. at 15, ECF No. 8 (emphasis added). In that case, however, it was the high number of signatures required to qualify for the Presidential ballot, 50,000, that imposed the severe burden, *Green Party of Ga.*, 171 F. Supp. 3d. at 1363, not the cost, and the court found that many factors, including the nation's interest in Presidential ballot access, favored striking down the requirement, *id.* at 1368.

Here, Plaintiffs spent \$63,000 on attempting to acquire signature petitions. Mot. at 10, ECF No. 8. Based on testimony in *Green Party of Georgia* that a paid petition circulator charges about

\$2 per signature, 171 F.Supp.3d 1340 at 1350, the \$63,000 spent by NMFP and its candidates could have gone a fair way towards qualifying one or both statewide candidates, Mot. at 10, ECF No. 8. In the event, however, it appears NMFP spent most of its funds on text messages when the party did not have access to the online petition platform. *See id.* Unfortunate timing does not equate to a severe burden imposed by the state. The Court finds the cost of acquiring signatures is an unavoidable burden, but not an unreasonable or a severe one.

(viii) *Freezing the Status Quo.*

Plaintiffs argue that New Mexico's statutory scheme imposes a severe burden because it freezes the "political status quo" based on the infrequency of minor party candidates appearing on the ballot in New Mexico. Mot. at 13-15, ECF No. 8 (citing *Jenness*, 403 U.S. at 438).

Defendant argues the fact that three of NMFP's candidates are on the ballot defeats Plaintiffs' argument. Reply at 13, ECF No. 13.

The Court finds that, in an as-applied challenge, Plaintiffs' status quo argument is not coherent because NMFP candidates are running in New Mexico elections for the first time this year. Whether NMFP candidates appear frequently or infrequently is not ascertainable.

In the alternative, however, the Court does not find the frequency of minor candidate appearances as related by Plaintiffs to be proof of freezing the status quo. First, Plaintiffs' citation to *Jenness* is inapposite. In *Jenness* the Supreme Court contrasted Georgia's electoral scheme with Ohio's, which had been found to freeze the status quo. 403 U.S. at 437-38 (citing *Rhodes*, 393 U.S. at 34-37). New Mexico has none of the hallmarks of Ohio's scheme noted by the court: not permitting independent candidates, not permitting write-in candidates, an unreasonably early filing deadline for candidates not endorsed by established parties, and a requirement for an elaborate primary election system for new or minor parties. *Id.* at 438.

Second, the number of minor party or independent candidates who appear on ballots, which can be an indication that the regulatory framework permits a “reasonably diligent” candidate to satisfy the requirements, *see Storer*, 415 U.S. at 742, does not indicate New Mexico has frozen the status quo. As Defendant points out, Plaintiffs’ local candidates qualified despite the self-imposed compressed timeline, despite the newness of their party, and despite lacking the widespread name recognition enjoyed by recently qualified candidates from parties like the Green Party or Libertarian Party. Resp. at 13, ECF No. 13.

Plaintiffs have shown that reasonably diligent candidates can access the ballot and therefore the regulatory scheme does not freeze the status quo. *See Storer*, 415 U.S. at 742.

(ix) *Conclusion.*

The Court finds New Mexico’s important regulatory interests outweigh the minimal reasonable burden imposed on Plaintiffs, and therefore Plaintiffs are not substantially likely to win on the merits.

(2) *In the absence of a likelihood of success on the merits, Plaintiffs’ motion for preliminary injunction cannot succeed.*

“To prevail on a motion for a preliminary injunction, the movant must establish that four equitable factors weigh in its favor: (1) it is substantially likely to succeed on the merits; (2) it will suffer irreparable injury if the injunction is denied; (3) its threatened injury outweighs the injury the opposing party will suffer under the injunction; and (4) the injunction would not be adverse to the public interest.” *Beltronics USA*, 562 F.3d at 1070. A party seeking a preliminary injunction must prove that all four of the equitable factors weigh in its favor. *Sierra Club, Inc. v. Bostick*, 539 F. App’x 885, 888 (10th Cir. 2013) (citing *Beltronics USA*, 562 F.3d at 1070). “[B]ecause a preliminary injunction is an extraordinary remedy, the right to relief must be clear and unequivocal.” *Id.* at 889 (citing *Beltronics*, 562 F.3d at 1070).

Plaintiffs have failed to demonstrate they are likely to succeed on the merits; therefore they cannot prevail on their motion. *Id.* The Court will deny the motion accordingly but addresses the remaining factors below.

(a) *Plaintiffs cannot establish irreparable harm.*

Granting a preliminary injunction requires Plaintiffs to show that they are likely to suffer irreparable harm. *Beltronics USA*, 562 F.3d at 1070; *see O Centro*, 389 F.3d at 975-76.

Plaintiffs argue their “irreparable harm is severe and imminent” because, “[a]bsent relief, Plaintiffs Perl, Vigil and Kava will be excluded from New Mexico’s 2026 general election ballot, which will cause irreparable harm to Plaintiffs’ voting, speech, and associational rights.” Mot. at 22, ECF No. 8.

Defendant argues that “[P]laintiffs do not have an unqualified right to appear on a ballot . . . [and] New Mexico may place appropriate requirements on would-be candidates to show they have sufficient support.” Resp. at 21, ECF No. 13. Defendant also argues “[t]he presence of irreparable injury to [P]laintiffs’ rights ‘turns on whether the plaintiff has shown a clear likelihood of success on the merits,’ and they have not.” *Id.* (citing *SAM Party of N. Y. v. Kosinski*, 987 F.3d 267, 278 (2d Cir. 2021)).

Plaintiffs reply that, since they are substantially likely to succeed on the merits, Plaintiff Perls and Vigil’s exclusion is an irreparable injury. Reply at 9, ECF No. 14.

Plaintiff has failed to show irreparable harm because its identified irreparable harm is the future harm to Plaintiffs Vigil, Perls, and Kava. Plaintiff Kava is already on the ballot. Plaintiffs Vigil and Perls are unlikely to succeed on the merits.

(b) *Plaintiffs’ threatened injury does not outweigh injury to Defendant and an injunction would be against public interest.*

Granting a preliminary injunction requires Plaintiffs to make a strong showing that their alleged injury outweighs the injury the opposing party will suffer under the injunction and granting the injunction would not be against public interest. *Beltronics USA*, 562 F.3d at 1070; *O Centro*, 389 F.3d at 975-76. In the case of preliminary injunctions against the government, factors three and four merge. *Ortega v. Grisham*, 148 F.4th 1134, 1142 (10th Cir. 2025) (citing *Nken v. Holder*, 556 U.S. 418, 435 (2009)).

Plaintiffs argue that “New Mexico’s interest in limiting ballot access to candidates with demonstrated support is not served by excluding candidates who have in fact demonstrated support by winning the nomination of a qualified political party,” Plaintiffs Vigil and Perls “will be deprived of their ‘most precious [First Amendment] freedoms,’” “[t]he requested injunction will serve the public interest by protecting the right of all New Mexicans to cast their votes effectively” since the Republican Party is fielding a write-in candidate for U.S. Senate and is not fielding a candidate for state auditor, it is in the public interest to “prevent the violation of a party’s constitutional rights,” and New Mexico “does not have an interest in enforcing a law that is likely constitutionally infirm.” Mot. at 22-24, ECF No. 8 (citations omitted).

Defendant responds that balancing harms and public interest is already addressed by weighing the burden on Plaintiffs against New Mexico’s interests, Resp. at 22, ECF No. 13, that it is of “fundamental importance” to limit ballots to a “reasonable size” listing “serious candidates with some prospects of public support,” *id.* (citing *Lubin v. Panish*, 415 U.S. 709, 715 (1974)), that “[p]reventing a state ‘from conducting this year’s elections pursuant to a statute enacted by the Legislature,’ unless unconstitutional, would ‘seriously and irreparably harm the State,’” *id.*

(citing *Abbott v. Perez*, 585 U.S. 579, 602 (2018)), that all candidates being major party candidates is insufficient to establish harm, *id.* (citation omitted), that “granting a preliminary injunction would cause extreme disruption to the Legislature’s carefully constructed regulation of ballot access, without any corresponding demonstration of entitlement by these plaintiffs,” *id.* at 22-23, and that the remedy would discriminate against other minor parties, *id.* at 23 (citation omitted).

Plaintiffs reply that Defendant’s argument “depends entirely on her merits position,” Defendant’s administrative burdens are overstated, and the Court would not be in the position of “deciding who is on the ballot,” as argued by Defendant, Resp. at 4, ECF No. 13, because, since Plaintiffs Perls and Vigil “each demonstrated support exceeding what New Mexico demands of major-party statewide candidates,” “[p]lacing them on the ballot vindicates the Legislature’s constitutional enactments while declining to enforce its unconstitutional ones,” Reply at 9-10, ECF No. 14.

The Court finds the potential harm to the public interest outweighs harm to the Plaintiffs. Ultimately, Plaintiffs’ complained-of harm rests on alleged constitutional violations. But the Court has not found any constitutional violations. *See supra* III.B.1.iii-viii. Plaintiffs will not suffer harm because of the denial of their Motion because they are not entitled to appear on the ballot. *Id.* If, however, they were placed on the ballot, New Mexico’s public interest would be harmed.

Placing Plaintiffs Vigil and Perls on the ballot despite not having obtained the statutorily-required number of signatures would prevent New Mexico from executing elections pursuant to the framework designed by the Legislature to ensure ballots are limited to candidates with demonstrated support. This constitutes irreparable harm to the state. *Perez*, 585 U.S. at 602.

Furthermore, the potential effect on the 2026 election and future elections compounds the harm to public interest. Such a decision could be cited by other 2026 minor party candidates who

did not receive the benefit granted to Plaintiffs' Vigil and Perls. And New Mexico would be hard pressed to prevent future minor party candidates from appearing on the ballot despite not obtaining the statutorily required number of signatures.

All preliminary injunction factors weigh against granting a preliminary injunction.

IV. Conclusion

In summary, Plaintiffs have not established that any of the four equitable factors support a preliminary injunction. For the foregoing reasons, **IT IS HEREBY ORDERED** that Plaintiffs' Motion for a Preliminary Injunction is **DENIED**.

A handwritten signature in black ink, reading "Margaret Strickland", is positioned above a horizontal line.

MARGARET STRICKLAND
UNITED STATES DISTRICT JUDGE

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

NEW MEXICO FORWARD PARTY; BOB
PERLS; MICHAEL VIGIL; DENNIS
DINGE; HARRY MONTOYA; AND
FRANCES KAVA,

Plaintiffs,

v.

Civ. No. 1:26-cv-02286-MIS-KK

MAGGIE TOULOUSE OLIVER, in her
official Capacity as Secretary of State of New
Mexico; and BARBARA DELANEY, in her
official capacity as County Clerk of Luna
County, New Mexico,

Defendants.

ORDER TO SHOW CAUSE

THIS MATTER is before the Court sua sponte.

“Subject matter jurisdiction defines the court’s authority to hear a given type of case.” *City of Albuquerque v. Soto Enters., Inc.*, 864 F.3d 1089, 1092 (10th Cir. 2017) (citations omitted). “[I]t represents ‘the extent to which a court can rule on the conduct of persons or the status of things.’” *Id.* at 1092-93 (citation omitted). “[D]istrict courts have an independent obligation to address their own subject-matter jurisdiction and can dismiss actions sua sponte for a lack of subject-matter jurisdiction.” *Id.* at 1093 (citation omitted).

On September 2, 2026, the Court issued an Order denying Plaintiffs’ Motion for Preliminary Injunction. ECF No. 22. In its Order, the Court found Plaintiffs were not substantially like to succeed on the merits in their challenge to New Mexico Statute § 1-8-2(E) because Plaintiff Kava had been placed on the ballot, likely rendering their challenge moot and, in the alternative,

Plaintiff Kava likely lacked standing. *Id.* at 13-14. The Court also found Plaintiffs were unlikely to succeed on the merits in their challenge to New Mexico Statute § 1-7-2(A) due to lack of standing. *Id.* at 14-15. As Plaintiffs Montoya, Kava, and Dingé are all on the 2026 ballot as candidates for their respective offices and Plaintiff NMFP is a qualified political party under § 1-7-2(A), Plaintiffs are hereby **ORDERED** to Show Cause by September 16, 2026, as to why Plaintiffs Montoya, Kava, and Dingé should not be dismissed from the case and as to why Plaintiffs' challenge to § 1-7-2(A) should not be dismissed. Defendants may respond by September 30, 2026.

A handwritten signature in black ink that reads "Margaret Strickland". The signature is written in a cursive, slightly slanted style. Below the signature is a solid horizontal line.

MARGARET STRICKLAND
UNITED STATES DISTRICT JUDGE

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

**NEW MEXICO FORWARD PARTY; BOB PERLS;
MICHAEL VIGIL; DENNIS DINGE;
HARRY MONTOYA; and FRANCES KAVA,**

Plaintiffs,

Civil Action No. 1:26-cv-02286-MIS-SCY

v.

**MAGGIE TOULOUSE OLIVER, in her official capacity
as Secretary of State of New Mexico; and
BARBARA DELANEY, in her official capacity as
County Clerk of Luna County, New Mexico,**

Defendants.

NOTICE OF APPEAL

Notice is hereby given this 2nd day of September 2026, pursuant to Fed. R. App. P. 3 and 4 and 28 U.S.C. § 1292(a)(1), that Plaintiffs New Mexico Forward Party, Bob Perls, Michael Vigil, Dennis Dinge, Harry Montoya, and Frances Kava hereby appeal to the United States Court of Appeals for the Tenth Circuit from the Order Denying Motion for Preliminary Injunction of this Court (ECF Doc. 22), entered September 2, 2026, which denied Plaintiffs' Emergency Motion for Preliminary Injunction (ECF Doc. 8).

Respectfully submitted this 2nd day of September 2026.

/s/ Oliver B. Hall
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CERTIFICATE OF SERVICE

I hereby certify that on September 2, 2026, I caused a true and correct copy of the foregoing to be filed through the Court's CM/ECF system, which caused all parties and counsel entitled to receive notice to be served electronically as more fully described on the Notice of Electronic Filing.

/s/ Oliver B. Hall
Oliver B. Hall

**IN THE UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT**

NEW MEXICO FORWARD PARTY, BOB
PERLS, MICHAEL VIGIL, DENNIS DINGE,
HARRY MONTOYA and FRANCES KAVA,

Appellants,

V.

No.: 26-2145

MAGGIE TOULOUSE OLIVER, in her official capacity as Secretary of State of New Mexico, and BARBARA DELANEY, in her official capacity as County Clerk of Luna County, New Mexico,

Appellees.

**APPELLANTS' OPPOSED EMERGENCY MOTION FOR STAY
AND INJUNCTION PENDING APPEAL**

Plaintiff-Appellants New Mexico Forward Party (“NMFP”), Bob Perls, Michael Vigil, Dennis Dingo, Harry Montoya and Frances Kava (collectively, “Plaintiffs”), through undersigned counsel, move under Federal Rule of Appellate Procedure 8(a) for an injunction pending appeal directing Defendant-Appellee Secretary of State to place Plaintiff-Appellant Perls (U.S. Senate) and Plaintiff-Appellant Vigil (State Auditor) on New Mexico’s November 3, 2026 general election ballot as NMFP’s nominees, and for a stay of the Order Denying Motion for Preliminary Injunction, ECF No. 22 (Sept. 2, 2026) (the “Order”), pending Plaintiffs’ interlocutory appeal to this Court.

Plaintiffs have a strong likelihood of prevailing on their appeal because the Order's analysis rests on a demonstrably false premise. Plaintiffs challenge the constitutionality of New Mexico's

ballot access scheme primarily because it requires that they submit 10 separate petitions with 131,361 total signatures to qualify NMFP and its candidates for statewide office for the general election ballot. Yet the Order measures the burden imposed on Plaintiffs' First and Fourteenth Amendment rights based on the 14,200-signature requirement that New Mexico imposes on just one NMFP candidate for statewide office. Plaintiffs do not seek to run a single candidate for statewide office. Plaintiffs seek to establish a political party and run candidates for all offices—federal, state and local—and consequently the burden imposed must be measured based on what New Mexico actually requires of them. That is not a single petition with 14,200 signatures, as the Order incorrectly concludes, but 10 separate petitions with 131,361 total signatures (for statewide offices only; a separate and additional petition is required for each candidate for the hundreds more district and local offices). As set forth below, the Order commits additional errors, but this fundamental error that misstates and minimizes the burden imposed on Plaintiffs' First and Fourteenth Amendment rights warrants an immediate stay.

Because ballots must be finalized within days, Plaintiffs respectfully request a ruling as soon as practicable. Pursuant to Fed. R. App. P. 8(a)(1), Plaintiffs state that on September 4, 2026 they filed an Emergency Motion for Stay and Injunction Pending Appeal in the District Court, ECF No. 27, but that Court has not yet ruled on the Motion. Plaintiffs therefore file the instant Motion pursuant to Fed. R. App. P. 8(a)(2). Plaintiffs state that they have made the showing required by 10th Cir. R. 8.1, as set forth below.

Pursuant to 10th Cir. R. 27.1, Plaintiffs sought Defendant-Appellees' concurrence in the relief requested. Defendant-Appellees' respective counsel advised that Defendant DeLaney does not oppose the motion but Defendant Toulouse-Oliver does. The Motion is therefore opposed.

The Question Presented on Appeal

New Mexico's statutory scheme regulating ballot access is unique. Like many states, New Mexico requires a new political party to submit a petition to become ballot-qualified, but then, unlike any other state, New Mexico also requires that each candidate nominated by the party submit a separate petition to qualify for the general election ballot. As a result, New Mexico's statutory scheme is uniquely burdensome: as applied in 2026, it required NMFP to submit 10 separate petitions with 131,361 total signatures to qualify a full slate of candidates for statewide office. No other state requires so many signatures to qualify a slate of statewide candidates, and no other state is even close. Additionally, each candidate for the hundreds more district and local offices is also required to submit a separate petition, subject to its own signature requirement.

Plaintiffs claim this statutory scheme violates their First and Fourteenth Amendment rights. Applying the *Anderson/Burdick* analysis, the District Court declined to measure the burden imposed on Plaintiffs' rights based on the actual total number of signatures it requires, but instead measured the burden based on the 14,200 signatures required of a single candidate. Concluding that such a requirement was reasonable, the District Court applied a deferential standard of review and upheld New Mexico's statutory scheme. Did the District Court err by minimizing the burden New Mexico's statutory scheme imposes, by disregarding facts and evidence establishing it as severe, and thus applying an improperly deferential standard of review?

I. Procedural Posture and the Facts the Order Accepted.

Plaintiffs initiated this action by filing their Complaint on July 14, 2026, asserting claims under 42 U.S.C. § 1983 for the violation of their First and Fourteenth Amendment rights. The District Court had jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1343(a)(3).

Plaintiffs moved for a preliminary injunction on July 27, 2026, ECF No. 8; the District Court heard the motion on August 28, 2026, ECF No. 21, and denied it on September 2, 2026, ECF No. 22. Plaintiffs filed a Notice of Appeal to the United States Court of Appeals for the Tenth Circuit the same day, ECF No. 24, and moved for a stay pending appeal on September 4, 2026, ECF No. 27. This Court has jurisdiction over this interlocutory appeal pursuant to 28 U.S.C. § 1292(a)(1).

NMFP filed its qualifying petition on May 8, 2026 and was certified as a minor political party on May 14, 2026. Order at 10. Because NMFP had 227 registered members, § 1-8-2(B) required each of its statewide nominees to submit a petition bearing 14,200 signatures by June 25, 2026. *Id.* at 3, 9–10. Perls and Vigil therefore had 41 days to petition. *Id.* at 16.

For 25 to 29 of those 41 days, Perls and Vigil could not use the State’s online petitioning platform. The Election Code freezes voter registration processing from May 5 through June 8, §§ 1-4-8(A), (B), (D), and because NMFP was certified during that freeze, Perls and Vigil “could not update their registration to reflect NMFP until June 8, 2026,” and “could not use the online system to obtain signatures until June 8, 2026.” Order at 10. Their declarations place actual availability at June 12. *Id.* at 10–11. The Court found that, “[d]ue to NMFP’s timing, . . . candidate access to the online system was restricted.” *Id.* at 10.

Perls and Vigil were diligent. Plaintiffs spent roughly \$63,000, including \$44,500 on a digital campaign that sent 1.66 million text messages to more than 500,000 registered voters; more than 56,000 of those voters tried to sign online, but the closed platform yielded fewer than 2,700 signatures. Order at 11. Perls also deployed paid circulators to gather wet signatures at public events. *Id.* at 10. Vigil submitted 4,400 signatures and Perls 2,700, *id.* at 11—each more than the

2,505 and 2,351 signatures New Mexico required of Democratic and Republican statewide candidates seeking the primary ballot. Mot. at 6, ECF No. 8 (citing Compl. ¶ 44).

The three NMFP nominees who reached the ballot ran for local office: Dingé (Public Education Commission, 1,014 signatures), Montoya (Santa Fe County Magistrate, 928 signatures), and Kava (Luna County Magistrate, 59 signatures). Mot. at 9–10, ECF No. 8; Order at 11.

II. Plaintiffs Satisfy Each Factor Necessary to Obtain an Injunction Pending Appeal.

A stay or injunction pending appeal turns on four factors: (1) whether the applicant has made a strong showing of likely success on the merits; (2) whether the applicant will be irreparably injured absent relief; (3) whether relief will substantially injure the other parties; and (4) where the public interest lies. *See Nken v. Holder*, 556 U.S. 418, 434 (2009). When the government is the opposing party, the last two factors merge. *See id.* at 435; *Ortega v. Grisham*, 148 F.4th 1134, 1142 (10th Cir. 2025). The Tenth Circuit has granted injunctive relief pending appeal in a First Amendment election case on this showing. *See Homans v. City of Albuquerque*, 264 F.3d 1240, 1243 (10th Cir. 2001).

III. Plaintiffs Have a Strong Likelihood of Success on Appeal Because the Order Misapplied the *Anderson/Burdick* Analysis.

A. The Order Misstates and Minimizes the Burden Imposed on Plaintiffs.

When courts apply the *Anderson/Burdick* analysis, “much of the action takes place at the first stage”—identifying the character and magnitude of the burden on plaintiffs’ rights—because that is what determines the level of scrutiny the court must apply. *Stone v. Bd. of Election Comm’rs for City of Chicago*, 750 F.3d 678, 681 (7th Cir. 2014). It is therefore critical that courts properly characterize the burden lest they apply an improper standard of review. The Order fails to do so. It misstates and minimizes the burden imposed on Plaintiffs and disregards facts and evidence

establishing that burden as severe. As a result, the Order applies an improperly deferential standard to uphold ballot access requirements that are unconstitutional under well-settled precedent.

The Order states that Plaintiffs “misrepresent[.]” the burden New Mexico imposes on them by measuring it based on the 10 separate petitions with a total of 131,361 signatures they must submit to qualify a slate of statewide candidates. Order at 18. Because “the onus is not on the party to gather signatures for their candidates,” the Order reasons, “it is inaccurate to portray the signature requirement as one imposed on the party to field a full statewide slate.” *Id.* at 19. Instead, the Order measured the burden based on the number of signatures required of a single candidate for statewide office—14,200—and found it to be “a reasonable burden, not a severe one....” *Id.*

As a threshold matter, the Order’s reasoning contradicts the plain language of both Plaintiffs’ Complaint and New Mexico statutory law. Plaintiff NMFP “seeks to qualify candidates for the ballot in local, state and federal elections in New Mexico, to grow and develop as a political party ... and to promote and build support for its platform among New Mexico voters.” Compl. ¶¶ 6, ECF No. 1 (emphasis added). Each individual Plaintiff also seeks “to campaign for, speak and associate with and vote for NMFP’s candidates, and ... is harmed by their exclusion from New Mexico’s general election ballot.” Compl. ¶¶ 7-11, ECF No. 1. Furthermore, it is black letter law that to accomplish these objectives in 2026, Plaintiffs were required to submit not one petition with 14,200 signatures, but 10 separate petitions with 131,361 signatures (for statewide offices only). *See* New Mexico Statutes § 1-7-2(A) (establishing minor party petition requirement);¹ § 1-8-2(B)(1) (establishing minor party candidate petition requirements); *see also* New Mexico Office of the Secretary of State, *2026 Nominating Petition for Minor Parties and Decline to State (Independent) Candidates Calculations (“Petition Calculations”)*, at 2 (calculating each

¹ Hereinafter, all statutory citations are to the New Mexico Statutes unless otherwise indicated.

candidate’s signature requirement) (attached as Exhibit A).² Consequently, by measuring the burden on Plaintiffs as if they seek to run just one candidate for statewide office, rather than to run candidates for all offices as they allege, it is the Order—not Plaintiffs—that “misrepresents the burden on Plaintiffs.” Order at 18.

The Order’s reasoning is also irreconcilable with Supreme Court precedent. Plaintiffs have a “constitutional right ... to create and develop [a] new political part[y].” *Norman v. Reed*, 502 U.S. 279, 288 (1992). That right “means little if a party can be kept off the election ballot and thus denied an equal opportunity to win votes.” *Williams v. Rhodes*, 393 U.S. 23, 31 (1968); *see also Kasper v. Pontikes*, 414 US 51, 58 (1973) (recognizing that “a basic function of a political party is to select the candidates for public office to be offered to the voters at general elections.”). Similarly, “the right to vote is heavily burdened if that vote may be cast only for one of two parties at a time when other parties are clamoring for a place on the ballot.” *Id.* Furthermore, “the rights of voters and the rights of candidates do not lend themselves to neat separation [because] laws that affect candidates always have at least some theoretical, correlative effect on voters.” *Bullock v. Carter*, 405 U.S. 134, 143 (1972). As this well-settled precedent establishes, the 10 separate petitions with 131,361 signatures that New Mexico required Plaintiffs to submit to run a full slate of statewide candidates burden Plaintiffs’ rights not only as *candidates*, as the Order incorrectly concludes, Order at 18-19, but also as *voters* and *citizens who seek to grow and develop a new political party*. Plaintiffs have submitted uncontested evidence that New Mexico’s statutory scheme severely burdened these rights. Perls Decl. ¶¶ 4, 7-8, 11, ECF No. 8-3; Vigil Decl. ¶ 3, ECF No. 8-2; Montoya Decl. ¶ 3, ECF No. 8-4; Kava Decl. ¶ 3, ECF No. 8-5; Dingel Decl. ¶ 3,

² The Petition Calculations are in the District Court record. They were formerly available online at <https://www.sos.nm.gov/wp-content/uploads/2026/04/2026-Nominating-Petition-Calculationsfor-Minor-Parties-and-Independent.pdf> (last accessed July 23, 2026), and are attached herewith for the Court’s convenience.

ECF No. 8-6. The Order’s failure to address the burden on these rights, or the actual burden imposed on NMFP and its candidates rather than just a single candidate, was clear error.

The Order acknowledges that Plaintiffs submitted evidence regarding other states’ ballot access requirements but fails to identify the evidence or provide a basis for its summary conclusion that the evidence is insufficient to support Plaintiffs’ claims. Order at 17-18. Plaintiffs did not merely submit evidence of “the lesser signature requirements of Texas, Utah, and Colorado,” as the Order states. Order at 17. Rather, Plaintiffs’ Motion states:

The 10 petitions containing 131,361 signatures that New Mexico requires of a minor party to place its nominees for statewide office on the general election ballot is, by far, greater than the requirement imposed by any other state. Winger Decl. ¶ 21. The next closest state is Texas, which in 2026 imposed a requirement of 81,030 signatures. Winger Decl. ¶ 21; *see* TEX ELEC. CODE § 181.005(a) Thus, while Texas’s population of approximately 31.7 million dwarfs that of New Mexico’s population of approximately 2.1 million, *see* Stats America, Population Estimate for 2025, available at https://www.statsamerica.org/sip/rank_list.aspx?rank_label=pop1 (accessed July 25, 2026) (citing U.S. Census Bureau data), New Mexico’s signature requirement is more than 38 percent greater than Texas’s. By contrast, in New Mexico’s neighboring state of Colorado (population 6 million, *see id.*), a single petition with 10,000 signatures qualifies a minor party to place its nominees for all offices on the general election ballot. Winger Decl. ¶ 19. And in Utah (population 3.5 million, *see* Stats America, *supra*), a single petition with 2,000 signatures is sufficient. Winger Decl. ¶ 18.

Pl. Mot. for Prel. Inj. at 10-11, ECF No. 8.

Contrary to the Order’s characterization, therefore, Plaintiffs’ evidence does not just establish that other states impose “lesser” requirements than New Mexico, but that New Mexico’s requirements are far more severe than any other state and that they are wildly disproportionate to New Mexico’s asserted interest in requiring that Plaintiffs demonstrate a “modicum of support.” New Mexico’s requirements are more than 13 times greater than Colorado’s, and more than 65 times greater than Utah’s, even though both states have significantly larger populations than New Mexico. The yawning disparity between New Mexico’s highest-in-the-nation requirements and those of its neighboring states supports the conclusion that New Mexico’s requirements are far

more restrictive than necessary to further any legitimate state interest. Furthermore, Defendants do not dispute the foregoing evidence, and even if they did, it is supported by citation and by the sworn testimony of Richard Winger, a nationally-recognized expert in ballot access law who has testified as a fact witness and expert witness in countless cases. Winger Decl., Ex. A, at 3-10, ECF No. 8-1.

The Order's rationale for declining to credit Plaintiffs' uncontested evidence is not persuasive. "[E]ven if New Mexico did have the most stringent ballot-access framework compared to other states, that does not make it unconstitutional," the Order concludes. Order at 18. Again, however, this generality misstates Plaintiffs' position by eliding the specific facts. Plaintiffs do not argue that New Mexico's requirements are unconstitutional merely because they are the most stringent in the nation, but because they are 13 times greater than Colorado's, 65 times greater than Utah's, and greater even than Texas's, all of which supports the conclusion that New Mexico's are unnecessarily restrictive by many orders of magnitude.

The Supreme Court has recognized that ballot access requirements are also severely burdensome if they "operate to freeze the political status quo." *Jenness v. Fortson*, 403 U.S. 431, 438 (1971). Relatedly, the Supreme Court has recognized that "past experience" should guide the analysis: a statutory scheme is severely burdensome if minor party and independent candidates "only rarely ... succeed in getting on the ballot," whereas the reverse is true if they "have qualified with some regularity." *Storer v. Brown*, 415 U.S. 724, 742 (1974). Plaintiffs submitted evidence sufficient to demonstrate a severe burden under these tests, but once again the Order merely acknowledges that Plaintiffs submitted such evidence but fails to address it. Here, the Order states that Plaintiffs argue for a severe burden "based on the infrequency of minor party candidates appearing on the ballot in New Mexico." Order at 26. In fact, Plaintiffs argue that:

[E]vidence in the public record—*i.e.*, New Mexico’s official elections results—confirms that the challenged provisions operate to freeze the political status quo. Although minor parties may become “qualified” pursuant to § 1-7-2(A), they rarely place their nominees on New Mexico’s general election ballot. Independent candidates also rarely qualify. In almost every race for U.S. House and U.S. Senate from 2002 – 2024, just two candidates qualified for the ballot. Winger Decl. ¶ 23. That is also true of New Mexico’s elections for statewide state offices in the same period—just two candidates qualified for the ballot. Winger Decl. ¶ 24. Indeed, in every election for state and federal office (except President)² since 2000, New Mexico has never had more than three candidates on the ballot. Compl. ¶ 55 (citing official election results); Winger Decl. ¶ 23. Even fewer candidates appear on the ballot for state legislature. In a *majority* of state legislative races in almost every election cycle for the last two decades, a single candidate appeared on the ballot running unopposed, Compl. ¶¶ 58-72, and not one of those races had more than three candidates on the ballot. Compl. ¶ 73; *see generally* New Mexico Secretary of State, Election Results, *available at* <https://www.sos.nm.gov/voting-and-elections/election-results/> (accessed July 26, 2026).

²Presidential elections are an exception because New Mexico imposes no petition requirement on minor party nominees for President and Vice President. See § 1-15-3. Even so, New Mexico has never had an overcrowded ballot in presidential elections for the last 24 years. Compl. ¶¶ 56-57.

Pl. Mot. for Prel. Inj. at 12, ECF No. 8.

This evidence is also uncontested and cannot be genuinely disputed because it is based on public records. Furthermore, it does not merely establish the “infrequency” with which minor party and independent candidates appear on New Mexico’s general election ballot: it proves that they almost never do. If such evidence is insufficient to demonstrate a frozen status quo under *Jenness* or to satisfy the “past experience” test under *Storer*, it is difficult to imagine what could.

The Order’s rationale for discounting Plaintiffs’ evidence here is even less convincing. First, the Order asserts that Plaintiffs’ “status quo argument is not coherent” because NMFP’s candidates have not run for office prior to 2026, and therefore “[w]hether NMFP candidates appear frequently or infrequently is not ascertainable.” Order at 26. This, too, is clear error: the frozen status quo test under *Jenness* and the past experience test under *Storer* do not ask whether a particular minor party or independent candidate has successfully qualified for the ballot with any

regularity, but rather whether *any* such party or candidate has. *See Jenness*, 403 U.S. at 438-39; *Storer*, 415 U.S. at 742. To suggest that application of such a test is “not coherent” in the case of a newly-formed political party is simply wrong.

The Order next asserts that Plaintiffs’ citation to *Jenness* is “inapposite” because New Mexico’s statutory scheme is distinguishable from the Ohio statutory scheme discussed in *Jenness*, which had been found to freeze the status quo. Order at 27. But Plaintiffs cite to *Jenness* only for the test it announces, which is still good law. That New Mexico’s statutory scheme differs from the Ohio scheme discussed in *Jenness* has no bearing on whether the New Mexico scheme operates to freeze the political status quo. Plaintiffs’ evidence establishes that it does.

In spite of that evidence, which the Order does not address, the Order concludes that “reasonably diligent candidates can access the ballot and therefore the regulatory scheme does not freeze the status quo.” Order at 27 (citing *Storer*, 415 U.S. at 742). The only evidence cited in support of this conclusion is that “Plaintiffs’ *local* candidates qualified” in 2026, Order at 27 (emphasis added), but that fact says nothing about Plaintiffs’ claim that the 10 petitions and 131,361 signatures New Mexico requires of Plaintiffs to qualify their candidates for *statewide* office is severely burdensome. To qualify for the general election ballot, Kava needed only 59 signatures; Montoya 928; and Ding 1,014. By contrast, as candidates for statewide office, Perls and Vigil each needed 14,200—14 to 240 times more than the local candidates—within the same petitioning period and without the online platform for most of it. Whether three local candidates could gather a few hundred signatures in a county or district says nothing about whether candidates for statewide office could gather 14,200 apiece, much less whether a newly qualified minor party can be required, consistent with the Constitution, to submit 10 separate petitions with 131,361 signatures to run a full slate of statewide candidates. Plaintiffs’ evidence shows that it cannot.

Contrary to the Order’s assertion, nothing in the record—including evidence pertaining to Plaintiffs’ local candidates—contradicts that conclusion.³

B. The Severe Burden Imposed By New Mexico’s Excessive Signature Requirements Is Compounded By the 41-day Petitioning Period and the Voter Registration Freeze.

When a plaintiff challenges ballot access provisions in combination, as Plaintiffs do here, the court must weigh their combined effect rather than measure each statute in isolation. *See Utah Republican Party v. Cox*, 892 F.3d 1066, 1088 (10th Cir. 2018); *Graveline*, 992 F.3d at 536 (citation omitted). The Order did the opposite. Not only did it evaluate the 14,200-signature requirement imposed on a single statewide candidate in isolation from every other signature requirement Plaintiffs were required to meet, but also, it treated the other provisions that Plaintiffs challenge—including the 41-day petitioning period, the voter registration freeze, and the doubled 2% signature requirement for “small” minor parties—as though they did not exist. But just as the Order was obligated to assess the burden imposed by New Mexico’s signature requirements based on the actual number of signatures Plaintiffs were required to submit, so too was it obligated to assess that burden in combination with the truncated petitioning period and the voter registration freeze New Mexico imposed, which made its online petitioning platform unavailable for most of Plaintiffs’ petitioning period.

The Order held that NMFP’s “forty-one day window to gather signatures was self-imposed” because “[n]othing prevented NMFP from forming prior to the availability of the petition forms.” Order at 17 (citing *Libertarian Party of N.M. v. Vigil-Giron*, 2006 WL 8443845, at *10

³ The Order repeatedly cites to *Libertarian Party of N.M. v. Herrera*, 506 F.3d 1303, 1310 (10th Cir. 2007), but that case is distinguishable. *Herrera* faulted the Libertarian Party for offering no testimony from candidates who actually attempted to gather signatures. Order at 18 (quoting *Herrera*, 506 F.3d at 1310). Perls and Vigil attempted, spent \$63,000, reached half a million voters, and fell short. Order at 10–11. That is precisely the evidence *Herrera* found missing, and the Order’s conclusion that Plaintiffs’ showing “is not the type of evidence listed in *Herrera*,” *id.* at 18, cannot be squared with *Herrera*’s own description of the evidence lacking there.

(D.N.M. Sept. 18, 2006)). But the District Court has previously rejected this same reasoning. *See Constitution Party of New Mexico v. Duran*, No. 1:12-cv-325 (Dec. 9, 2013) (order granting summary judgment to minor party plaintiff). In holding that New Mexico’s previous April deadline for minor parties to become ballot-qualified violated the minor party Plaintiff’s First and Fourteenth Amendment rights, the Court expressly rejected “Defendant’s argument that if Plaintiff starts collecting signatures earlier in the year, the April deadline must not be burdensome to minor parties like Plaintiff.” *Id.* Here too the Legislature was responsible for establishing the party-petition deadline, which it set at the twenty-third day after the primary—the same day the nominees’ petitions are due. §§ 1-7-2(A), 1-7-4(A), 1-8-2(B); Mot. at 5, ECF No. 8. NMFP filed 48 days early. Order at 10. A party that beats the statutory deadline by seven weeks has not “imposed” anything on itself; it has used the time the State allotted. Holding that a party must ignore the Legislature’s deadline and form the year before, on pain of forfeiting its nominees’ ballot access, converts the statutory schedule into a trap and is not a burden analysis at all.

The freeze on voter registration compounds the error. The Order attributed the closure of the online platform to “NMFP’s timing,” Order at 10, yet the freeze is imposed by statute, §§ 1-4-8(A), (B), (D), and § 1-8-2(E) separately required NMFP’s nominees to be registered members no later than the day the party filed its petition. Order at 2. The State thus (i) required candidates to change registration by May 8, (ii) refused to process registration changes from May 5 to June 8, and (iii) conditioned online petitioning on completed registration. Whatever label is attached—“deactivation” or “statutory pause”—the cause is state law and the effect on the as-applied burden is identical: the platform on which Plaintiffs’ \$44,500 outreach campaign depended was unavailable for the majority of the petitioning period. Where a State’s own measures impede signature gathering during the petitioning period, courts treat the resulting shortfall as the State’s

burden to justify and reduce the requirement accordingly. *See Garbett v. Herbert*, 458 F. Supp. 3d 1328, 1352 (D. Utah 2020) (reducing Utah’s signature requirement where the State’s emergency orders restricted signature gathering); *see also Libertarian Party of Il. v. Pritzker*, 455 F. Supp. 3d 738, 745 (N.D. Ill. 2020) (granting similar relief). Here, the uncontested evidence establishes that New Mexico’s truncated petitioning period significantly increased the burden imposed on Plaintiffs. Perls Decl. ¶¶ 13-16, ECF No. 8-3; Vigil Decl. ¶¶ 7-12, ECF No. 8-2; Montoya Decl. ¶¶ 6-7; Kava Decl. ¶ 7, ECF No. 8-5; Dingel Decl. ¶¶ 7-13, ECF No. 8-6.⁴

Finally, the limited period New Mexico allows for minor party nominees to circulate their petitions imposes unequal burdens on them because New Mexico allows major party candidates a significantly longer petitioning period despite their substantially lower signature requirements. Pl. Mot. for Prel. Inj. at 18-19, ECF No. 8. The Order denies that New Mexico grants major party candidates “preferential treatment” but fails to address this unequal burden. Order at 21.

C. The Order Errs By Uncritically Accepting Generic State Interests as Justification for the Severe Burdens New Mexico’s Statutory Scheme Imposes.

The second step of the *Anderson/Burdick* analysis requires the court to “identify and evaluate the precise interests put forward by the State as justifications for the burden imposed by its rule.” *Anderson*, 460 U.S. at 789. The Order repeatedly fails to do so. For instance, the Order finds that New Mexico’s signature requirements serve the “important interest in requiring candidates demonstrate support,” Order at 19, but provides no analysis of how or why New Mexico is justified in requiring more signatures, by far, than any other state in the nation. Winger Decl. ¶¶ 9-14, 21, 23-25, ECF No. 8-1.

⁴ *Vigil-Giron* does not carry the weight the Order placed on it. Order at 17. That decision addressed a party that had not attempted to gather candidate signatures and rested on the absence of any evidence of burden, *see Herrera*, 506 F.3d at 1310; it did not hold that a party which meets the statutory deadline forfeits its right to challenge the petitioning period the statute creates.

Similarly, the Order fails to identify any state interest that could justify New Mexico allowing major party candidates a longer petitioning period than it allows minor party candidates, when major party candidates need only a fraction of the signatures that minor party candidates must obtain. Pl. Mot. for Prel. Inj. at 18-19.

The Order also excuses the Secretary's failure to proffer any justification for New Mexico's arbitrary and punitive requirement that minor parties with relatively few members must obtain twice the number of signatures required of larger minor parties "other than the state interest in regulating elections." Order at 24; *see* Pl. Mot. for Prel. Inj. at 3-4, 15, ECF No. 8. Rather than hold the Secretary to its burden under the *Anderson/Burdick* framework, the Order supplied its own justification, reasoning that a larger minor party "has more demonstrated support," so its candidates should face a lower hurdle. Order at 24. A generalized interest in "regulating elections" is not a "precise interest," and a court may not sustain a severe burden based on "generalized and hypothetical interests identified in other cases." *Libertarian Party of Ohio v. Blackwell*, 462 F.3d 579, 593 (6th Cir. 2006); *see Anderson*, 460 U.S. at 793. Furthermore, where the State can serve any interest in a "modicum of support" through the 1% requirement it applies to other minor parties, the 2% requirement is not narrowly tailored as applied to NMFP. *See Norman*, 502 U.S. at 289.

IV. Exclusion From the Ballot Is Irreparable Harm Independent of the Merits Ruling.

"The loss of First Amendment freedoms, for even minimal periods of time, constitutes irreparable injury," and when a constitutional deprivation is alleged, "no further showing of irreparable injury is necessary." *Fish v. Kobach*, 840 F.3d 710, 752 (10th Cir. 2016) (citation omitted). The Tenth Circuit applied that rule to reverse the denial of a preliminary injunction in

Planned Parenthood Ass’n of Utah v. Herbert, 828 F.3d 1245, 1263-64 (10th Cir. 2016), holding that the likelihood of a First Amendment violation, standing alone, established irreparable injury.

V. The Balance of Harms and the Public Interest Favor Placing Two Qualified-Party Nominees Who Have Demonstrated a Substantial Modicum of Support on the Ballot.

The requested relief—placing two names on a ballot—imposes a negligible administrative burden; the Secretary already added Kava after Plaintiffs moved for preliminary relief. Order at 4. The State “does not have an interest in enforcing a law that is likely constitutionally infirm,” and “the public interest will perforce be served by enjoining the enforcement of the invalid provisions of state law.” *Chamber of Commerce of U.S. v. Edmondson*, 594 F.3d 742, 771 (10th Cir. 2010); *see Awad v. Ziriya*, 670 F.3d 1111, 1131–32 (10th Cir. 2012) (“it is always in the public interest to prevent the violation of a party’s constitutional rights”); *Fish*, 840 F.3d at 754–56.

CONCLUSION

For the foregoing reasons, the Court should stay the District Court’s Order denying Plaintiff-Appellants’ Motion for Preliminary Injunction and enter an Order directing Defendant-Appellee Toulouse-Oliver to place Plaintiff-Appellants Perls and Vigil on New Mexico’s November 3, 2026 general election ballot as the New Mexico Forward Party’s nominees for United States Senate and State Auditor, respectively.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on September 8, 2026, a true and correct copy of the foregoing was filed electronically pursuant to the CM/ECF procedure for the District of New Mexico and caused counsel of record to be served by electronic means.

/s/A. Blair Dunn, Esq.

A. Blair Dunn, Esq.



New Mexico

Office of the Secretary of State

Maggie Toulouse Oliver

**2026 NOMINATING PETITION
FOR MINOR PARTIES AND
DECLINE TO STATE (INDEPENDENT)
CANDIDATES CALCULATIONS**

Version 1: March 2026 (Adjusted for 2026 Proclamation)



2026 NOMINATING PETITION CALCULATIONS

Introduction

This publication has been prepared by the Bureau of Elections to serve as a reference for candidates seeking office in the 2026 General Election. This publication contains information regarding nominating petition calculations pursuant to Article 9 of the New Mexico Election Code. While independent and minor party candidates do not participate in the Primary Election, they may be required to circulate petitions and file declarations of candidacy shortly following the Primary Election (a supplemental publication with those calculations will be available in 2026).

For candidates interested in public financing, please refer to the information on the Secretary of State's website: <https://www.sos.nm.gov/candidate-and-campaigns/2026-new-mexico-public-financing-information/>.

Please contact the Bureau of Elections at (505) 827-3600, and select option 2, or email the office with additional questions: elections@sos.nm.gov.

Federal Office

Office	Minor Parties % Threshold	Minor	Independent % Threshold	Independent
United States Senator	1%	7,100	2%	14,200
United States Representative District 1	1%	2,839	2%	5,678
United States Representative District 2	1%	1,951	2%	3,903
United States Representative District 3	1%	2,309	2%	4,619

Statewide Offices

Office	Minor Parties % Threshold	Minor	Independent % Threshold	Independent
Governor	1%	7,100	2%	14,200
Lieutenant Governor	1%	7,100	2%	14,200
Secretary of State	1%	7,100	2%	14,200
Attorney General	1%	7,100	2%	14,200
State Auditor	1%	7,100	2%	14,200
State Treasurer	1%	7,100	2%	14,200
Commissioner Of Public Lands	1%	7,100	2%	14,200
Court of Appeals Judge	1%	7,100	2%	14,200



2026 NOMINATING PETITION CALCULATIONS

District Court Offices

Judicial District Judges	Minor Parties % Threshold	Minor	Independent % Threshold	Independent
1 st Judicial District, Division 4	1%	927	2/3 of 2%	1,236
1 st Judicial District, Division 8	1%	927	2/3 of 2%	1,236
2 nd Judicial District, Division 2	1%	2,453	2/3 of 2%	3,271
2 nd Judicial District, Division 11	1%	2,453	2/3 of 2%	3,271
2 nd Judicial District, Division 19	1%	2,453	2/3 of 2%	3,271
2 nd Judicial District, Division 24	1%	2,453	2/3 of 2%	3,271
3 rd Judicial District, Division 4	1%	577	2/3 of 2%	770
5 th Judicial District, Division 5	1%	471	2/3 of 2%	628
10 th Judicial District, Division 1	1%	42	2/3 of 2%	56
11 th Judicial District, Division 2	1%	595	2/3 of 2%	794
11 th Judicial District, Division 6	1%	595	2/3 of 2%	794
11 th Judicial District, Division 8	1%	595	2/3 of 2%	794
12 th Judicial District, Division 2	1%	260	2/3 of 2%	347

New Mexico State Senators

Office	Minor Parties % Threshold	Minor	Independent % Threshold	Independent
State Senator District 33	1%	178	2%	357

New Mexico State Representatives

Office	Minor Parties % Threshold	Minor	Independent % Threshold	Independent
State Representative District 1	1%	111	2%	221
State Representative District 2	1%	81	2%	162
State Representative District 3	1%	98	2%	197
State Representative District 4	1%	78	2%	156
State Representative District 5	1%	91	2%	181
State Representative District 6	1%	78	2%	155
State Representative District 7	1%	82	2%	163
State Representative District 8	1%	116	2%	232
State Representative District 9	1%	66	2%	132
State Representative District 10	1%	79	2%	158
State Representative District 11	1%	116	2%	233
State Representative District 12	1%	61	2%	122
State Representative District 13	1%	57	2%	114
State Representative District 14	1%	79	2%	158



2026 NOMINATING PETITION CALCULATIONS

State Representative District 15	1%	128	2%	257
State Representative District 16	1%	111	2%	223
State Representative District 17	1%	118	2%	237
State Representative District 18	1%	125	2%	249
State Representative District 19	1%	65	2%	129
State Representative District 20	1%	124	2%	249
State Representative District 21	1%	83	2%	166
State Representative District 22	1%	159	2%	318
State Representative District 23	1%	137	2%	274
State Representative District 24	1%	131	2%	262
State Representative District 25	1%	125	2%	250
State Representative District 26	1%	69	2%	137
State Representative District 27	1%	146	2%	292
State Representative District 28	1%	147	2%	294
State Representative District 29	1%	140	2%	281
State Representative District 30	1%	125	2%	250
State Representative District 31	1%	159	2%	318
State Representative District 32	1%	76	2%	152
State Representative District 33	1%	83	2%	166
State Representative District 34	1%	52	2%	104
State Representative District 35	1%	83	2%	167
State Representative District 36	1%	99	2%	197
State Representative District 37	1%	98	2%	196
State Representative District 38	1%	90	2%	179
State Representative District 39	1%	121	2%	243
State Representative District 40	1%	99	2%	199
State Representative District 41	1%	105	2%	210
State Representative District 42	1%	116	2%	232
State Representative District 43	1%	129	2%	259
State Representative District 44	1%	148	2%	295
State Representative District 45	1%	114	2%	227
State Representative District 46	1%	144	2%	288
State Representative District 47	1%	175	2%	350
State Representative District 48	1%	111	2%	222
State Representative District 49	1%	118	2%	236
State Representative District 50	1%	174	2%	348
State Representative District 51	1%	95	2%	190
State Representative District 52	1%	70	2%	139
State Representative District 53	1%	64	2%	128
State Representative District 54	1%	83	2%	166
State Representative District 55	1%	87	2%	174
State Representative District 56	1%	121	2%	242
State Representative District 57	1%	119	2%	238
State Representative District 58	1%	52	2%	103



2026 NOMINATING PETITION CALCULATIONS

State Representative District 59	1%	94	2%	189
State Representative District 60	1%	104	2%	209
State Representative District 61	1%	38	2%	76
State Representative District 62	1%	72	2%	143
State Representative District 63	1%	62	2%	124
State Representative District 64	1%	90	2%	180
State Representative District 65	1%	77	2%	153
State Representative District 66	1%	73	2%	146
State Representative District 67	1%	91	2%	182
State Representative District 68	1%	115	2%	229
State Representative District 69	1%	72	2%	144
State Representative District 70	1%	100	2%	201

Public Education Commissioners

Office	Minor Parties % Threshold	Minor	Independent % Threshold	Independent
Public Education Commissioner District 2	1%	906	2/3 of 2%	1,209
Public Education Commissioner District 3	1%	760	2/3 of 2%	1,014
Public Education Commissioner District 5	1%	601	2/3 of 2%	801
Public Education Commissioner District 6	1%	751	2/3 of 2%	1,002
Public Education Commissioner District 7	1%	519	2/3 of 2%	692

County Offices

Office	Minor Parties % Threshold	Minor	Independent % Threshold	Independent
Bernalillo County Metropolitan Judge Division 5	1%	2,453	2/3 of 2%	3,271
Bernalillo County Metropolitan Judge Division 19	1%	2,453	2/3 of 2%	3,271
Bernalillo County Sheriff	1%	2,453	2%	4,906
Bernalillo County Assessor	1%	2,453	2%	4,906
Bernalillo County Commissioner District 1	1%	538	2%	1,076
Bernalillo County Commissioner District 5	1%	601	2%	1,202
Bernalillo Probate Judge	1%	2,453	2%	4,906
Catron County Magistrate Judge	1%	20	2/3 of 2%	27
Catron County Sheriff	1%	20	2%	40
Catron County Assessor	1%	20	2%	40
Catron County Commissioner District 1	1%	13	2%	26
Catron County Commissioner District 2	1%	9	2%	17



2026 NOMINATING PETITION CALCULATIONS

Catron Probate Judge	1%	20	2%	40
Chaves County Magistrate Judge Division 1	1%	52	2/3 of 2%	70
Chaves County Magistrate Judge Division 2	1%	111	2/3 of 2%	148
Chaves County Sherrif	1%	163	2%	327
Chaves County Assessor	1%	163	2%	327
Chaves County Commissioner District 1	1%	28	2%	56
Chaves County Commissioner District 5	1%	32	2%	64
Chaves Probate Judge	1%	163	2%	327
Cibola County Magistrate Judge Division 1	1%	69	2/3 of 2%	92
Cibola County Magistrate Judge Division 2	1%	69	2/3 of 2%	92
Cibola County Sherriff	1%	69	2%	137
Cibola County Assessor	1%	59	2%	137
Cibola County Commissioner District 1	1%	10	2%	21
Cibola County Commissioner District 3	1%	24	2%	47
Cibola Probate Judge	1%	69	2%	137
Colfax County Magistrate Judge Division 1	1%	26	2/3 of 2%	36
Colfax County Magistrate Judge Division 2	1%	26	2/3 of 2%	36
Colfax County Sherriff	1%	26	2%	53
Colfax County Assessor	1%	26	2%	53
Colfax County Commissioner District 1	1%	9	2%	19
Colfax County Commissioner District 2	1%	11	2%	22
Colfax Probate Judge	1%	26	2%	53
Curry County Magistrate Judge Division 1	1%	35	2/3 of 2%	46
Curry County Magistrate Judge Division 2	1%	68	2/3 of 2%	91
Curry County Sherriff	1%	102	2%	205
Curry County Assessor	1%	102	2%	205
Curry County Commissioner District 1	1%	12	2%	23
Curry County Commissioner District 2	1%	26	2%	51
Curry County Commissioner District 3	1%	22	2%	45
Curry Probate Judge	1%	102	2%	205
De Baca County Magistrate Judge	1%	8	2/3 of 2%	10
De Baca County Sherriff	1%	8	2%	15
De Baca County Assessor	1%	8	2%	15
De Baca County Commissioner District 1	1%	2	2%	3
De Baca County Commissioner District 2	1%	4	2%	7
De Baca Probate Judge	1%	8	2%	15
Doña Ana County Magistrate Judge Division 1	1%	577	2/3 of 2%	770
Doña Ana County Magistrate Judge Division 2	1%	577	2/3 of 2%	770
Doña Ana County Magistrate Judge Division 3	1%	577	2/3 of 2%	770
Doña Ana County Magistrate Judge Division 4	1%	577	2/3 of 2%	770



2026 NOMINATING PETITION CALCULATIONS

Doña Ana County Magistrate Judge Division 5	1%	577	2/3 of 2%	770
Doña Ana County Magistrate Judge Division 6	1%	577	2/3 of 2%	770
Doña Ana County Magistrate Judge Division 7	1%	577	2/3 of 2%	770
Doña Ana County Sherriff	1%	577	2%	1,154
Doña Ana County Assessor	1%	577	2%	1,154
Doña Ana County Commissioner District 1	1%	134	2%	267
Doña Ana County Commissioner District 3	1%	121	2%	241
Doña Ana Probate Judge	1%	577	2%	1,154
Eddy County Magistrate Judge Division 1	1%	33	2/3 of 2%	44
Eddy County Magistrate Judge Division 2	1%	67	2/3 of 2%	90
Eddy County Magistrate Judge Division 3	1%	67	2/3 of 2%	89
Eddy County Assessor	1%	167	2%	334
Eddy County Clerk	1%	167	2%	334
Eddy County Commissioner District 1	1%	28	2%	56
Eddy County Commissioner District 4	1%	40	2%	81
Eddy Probate Judge	1%	167	2%	334
Grant County Magistrate Judge Division 2	1%	117	2/3 of 2%	156
Grant County Sherriff	1%	117	2%	234
Grant County Assessor	1%	117	2%	234
Grant County Commissioner District 1	1%	25	2%	49
Grant County Commissioner District 2	1%	22	2%	44
Grant Probate Judge	1%	117	2%	234
Guadalupe County Magistrate Judge	1%	17	2/3 of 2%	24
Guadalupe County Sherriff	1%	17	2%	35
Guadalupe County Assessor	1%	6	2%	12
Guadalupe County Commissioner District 1	1%	4	2%	8
Guadalupe County Commissioner District 2	1%	17	2%	35
Guadalupe Probate Judge	1%	17	2%	35
Harding County Magistrate Judge	1%	4	2/3 of 2%	6
Harding County Sherriff	1%	4	2%	8
Harding County Assessor	1%	4	2%	8
Harding County Commissioner District 1	1%	2	2%	3
Harding County Commissioner District 2	1%	4	2%	8
Harding Probate Judge	1%	2	2%	8
Hidalgo County Magistrate Judge	1%	16	2/3 of 2%	22
Hidalgo County Sherriff	1%	16	2%	32
Hidalgo County Assessor	1%	16	2%	32
Hidalgo County Commissioner District 1	1%	16	2%	32
Hidalgo County Commissioner District 2	1%	16	2%	32
Hidalgo Probate Judge	1%	16	2%	32



2026 NOMINATING PETITION CALCULATIONS

Lea County Magistrate Judge Division 1	1%	46	2/3 of 2%	62
Lea County Magistrate Judge Division 2	1%	18	2/3 of 2%	24
Lea County Magistrate Judge Division 3	1%	40	2/3 of 2%	54
Lea County Magistrate Judge Division 4	1%	36	2/3 of 2%	49
Lea County Sherriff	1%	140	2%	280
Lea County Assessor	1%	140	2%	280
Lea County Commissioner District 2	1%	34	2%	69
Lea County Commissioner District 3	1%	32	2%	64
Lea Probate Judge	1%	140	2%	280
Lincoln County Magistrate Judge Division 1	1%	84	2/3 of 2%	112
Lincoln County Magistrate Judge Division 2	1%	84	2/3 of 2%	112
Lincoln County Clerk	1%	84	2%	167
Lincoln County Treasurer	1%	84	2%	167
Lincoln County Commissioner District 2	1%	14	2%	28
Lincoln County Commissioner District 4	1%	19	2%	39
Lincoln County Commissioner District 5	1%	13	2%	25
Lincoln Probate Judge	1%	84	2%	167
Los Alamos County Magistrate Judge	1%	101	2/3 of 2%	136
Los Alamos Municipal Judge	1%	101	2%	203
Los Alamos County Sherriff	1%	101	2%	203
Los Alamos County Assessor	1%	101	2%	203
Los Alamos County Councilor(s)	1%	101	2%	203
Los Alamos Probate Judge	1%	101	2%	203
Luna County Magistrate Judge	1%	59	2/3 of 2%	79
Luna County Sherriff	1%	59	2%	118
Luna County Assessor	1%	59	2%	118
Luna County Commissioner District 1	1%	15	2%	30
Luna County Commissioner District 2	1%	27	2%	54
Luna Probate Judge	1%	59	2%	118
McKinley County Magistrate Judge Division 1	1%	195	2/3 of 2%	260
McKinley County Magistrate Judge Division 2	1%	195	2/3 of 2%	260
McKinley County Magistrate Judge Division 3	1%	195	2/3 of 2%	260
McKinley County Sherriff	1%	195	2%	390
McKinley County Assessor	1%	195	2%	390
McKinley County Commissioner District 1	1%	77	2%	155
McKinley County Commissioner District 2	1%	56	2%	112
McKinley Probate Judge	1%	195	2%	390
Mora County Magistrate Judge	1%	25	2/3 of 2%	33
Mora County Sherriff	1%	25	2%	49
Mora County Assessor	1%	25	2%	49



2026 NOMINATING PETITION CALCULATIONS

Mora County Commissioner District 1	1%	8	2%	17
Mora County Commissioner District 2	1%	10	2%	20
Mora Probate Judge	1%	25	2%	49
Otero County Magistrate Judge Division 1	1%	176	2/3 of 2%	236
Otero County Magistrate Judge Division 2	1%	176	2/3 of 2%	236
Otero County Sherriff	1%	176	2%	353
Otero County Assessor	1%	176	2%	353
Otero County Commissioner District 1	1%	45	2%	89
Otero County Commissioner District 2	1%	53	2%	107
Otero Probate Judge	1%	176	2%	353
Quay County Magistrate Judge	1%	30	2/3 of 2%	41
Quay County Sherriff	1%	30	2%	61
Quay County Assessor	1%	30	2%	61
Quay County Commissioner District 3	1%	13	2%	26
Quay Probate Judge	1%	30	2%	61
Rio Arriba County Magistrate Judge Division 1	1%	130	2/3 of 2%	173
Rio Arriba County Magistrate Judge Division 2	1%	130	2/3 of 2%	173
Rio Arriba County Sherriff	1%	130	2%	259
Rio Arriba County Assessor	1%	130	2%	259
Rio Arriba County Commissioner District 1	1%	43	2%	85
Rio Arriba County Commissioner District 2	1%	44	2%	88
Rio Arriba Probate Judge	1%	130	2%	259
Roosevelt County Magistrate Judge	1%	47	2/3 of 2%	62
Roosevelt County Sherriff	1%	47	2%	93
Roosevelt County Assessor	1%	47	2%	93
Roosevelt County Commissioner District 3	1%	10	2%	21
Roosevelt County Commissioner District 4	1%	13	2%	25
Roosevelt County Commissioner District 5	1%	8	2%	16
Roosevelt Probate Judge	1%	47	2%	93
San Juan County Magistrate Judge Division 1	1%	81	2/3 of 2%	108
San Juan County Magistrate Judge Division 2	1%	60	2/3 of 2%	80
San Juan County Magistrate Judge Division 3	1%	84	2/3 of 2%	112
San Juan County Magistrate Judge Division 4	1%	68	2/3 of 2%	90
San Juan County Magistrate Judge Division 5	1%	58	2/3 of 2%	78
San Juan County Magistrate Judge Division 6	1%	53	2/3 of 2%	71
San Juan County Sherriff	1%	401	2%	801
San Juan County Assessor	1%	401	2%	801
San Juan County Commissioner District 1	1%	69	2%	139
San Juan County Commissioner District 2	1%	73	2%	145
San Juan Probate Judge	1%	401	2%	801



2026 NOMINATING PETITION CALCULATIONS

San Miguel County Magistrate Judge Division 1	1%	95	2/3 of 2%	126
San Miguel County Magistrate Judge Division 2	1%	95	2/3 of 2%	126
San Miguel County Sherriff	1%	95	2%	189
San Miguel County Assessor	1%	95	2%	189
San Miguel County Commissioner District 1	1%	22	2%	44
San Miguel County Commissioner District 3	1%	21	2%	42
San Miguel Probate Judge	1%	95	2%	189
Sandoval County Magistrate Judge Division 1	1%	612	2/3 of 2%	817
Sandoval County Magistrate Judge Division 2	1%	612	2/3 of 2%	817
Sandoval County Magistrate Judge Division 3	1%	612	2/3 of 2%	817
Sandoval County Sherriff	1%	612	2%	1,225
Sandoval County Assessor	1%	612	2%	1,225
Sandoval County Commissioner District 1	1%	155	2%	310
Sandoval County Commissioner District 3	1%	145	2%	290
Sandoval Probate Judge	1%	612	2%	1,225
Santa Fe County Magistrate Judge Division 1	1%	696	2/3 of 2%	928
Santa Fe County Magistrate Judge Division 2	1%	696	2/3 of 2%	928
Santa Fe County Magistrate Judge Division 3	1%	696	2/3 of 2%	928
Santa Fe County Magistrate Judge Division 4	1%	696	2/3 of 2%	928
Santa Fe County Sherriff	1%	696	2%	1,392
Santa Fe County Assessor	1%	696	2%	1,392
Santa Fe County Commissioner District 1	1%	139	2%	278
Santa Fe County Commissioner District 3	1%	113	2%	225
Santa Fe Probate Judge	1%	696	2%	1,392
Sierra County Magistrate Judge	1%	49	2/3 of 2%	66
Sierra County Sherriff	1%	49	2%	98
Sierra County Assessor	1%	49	2%	98
Sierra County Commissioner District 1	1%	13	2%	27
Sierra County Commissioner District 2	1%	17	2%	35
Sierra Probate Judge	1%	49	2%	98
Socorro County Magistrate Judge	1%	61	2/3 of 2%	82
Socorro County Sherriff	1%	61	2%	123
Socorro County Assessor	1%	61	2%	123
Socorro County Commissioner District 1	1%	11	2%	21
Socorro County Commissioner District 3	1%	12	2%	24
Socorro Probate Judge	1%	61	2%	123
Taos County Magistrate Judge Division 1	1%	133	2/3 of 2%	178
Taos County Magistrate Judge Division 2	1%	133	2/3 of 2%	178
Taos County Sherriff	1%	133	2%	267



2026 NOMINATING PETITION CALCULATIONS

Taos County Assessor	1%	133	2%	267
Taos County Commissioner District 1	1%	23	2%	47
Taos County Commissioner District 2	1%	25	2%	50
Taos County Commissioner District 5	1%	26	2%	51
Taos Probate Judge	1%	123	2%	267
Torrance County Magistrate Judge	1%	55	2/3 of 2%	74
Torrance County Sherriff	1%	55	2%	111
Torrance County Assessor	1%	55	2%	111
Torrance County Commissioner District 1	1%	18	2%	37
Torrance County Commissioner District 2	1%	15	2%	31
Torrance Probate Judge	1%	55	2%	111
Union County Magistrate Judge	1%	15	2/3 of 2%	20
Union County Sherriff	1%	15	2%	30
Union County Assessor	1%	15	2%	30
Union County Commissioner Position 1	1%	15	2%	30
Union County Commissioner Position 2	1%	15	2%	30
Union Probate Judge	1%	15	2%	30
Valencia County Magistrate Judge Division 1	1%	255	2/3 of 2%	340
Valencia County Magistrate Judge Division 2	1%	255	2/3 of 2%	340
Valencia County Magistrate Judge Division 3	1%	255	2/3 of 2%	340
Valencia County Sherriff	1%	255	2%	509
Valencia County Assessor	1%	255	2%	509
Valencia County Commissioner District 1	1%	58	2%	116
Valencia County Commissioner District 3	1%	49	2%	98
Valencia Probate Judge	1%	205	2%	509

***To be appended when 2026 Proclamation when amendments are issued.

**IN THE UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT**

NEW MEXICO FORWARD PARTY,
et al.,

Plaintiffs – Appellants,

v.

No. 26-2145

MAGGIE TOULOUSE OLIVER, in her
official capacity as Secretary of State of
New Mexico, et al.,

Defendants – Appellees.

**THE SECRETARY OF STATE’S RESPONSE
IN OPPOSITION TO APPELLANTS’ EMERGENCY
MOTION FOR STAY AND INJUNCTION PENDING APPEAL**

Secretary of State Maggie Toulouse Oliver (the Secretary) opposes Appellants’ motion. The motion asks not for a stay, but for the exact injunctive relief the district court found inappropriate, twice. On an emergency basis, without the benefit of the record, transcript of the evidentiary hearing, or merits briefing, Appellants seek an order from this Court compelling the Secretary to place two candidates on New Mexico’s general election ballot who did not qualify. This would not be an injunction pending appeal, but an award of all relief Appellants seek.

As explained in the district court’s two orders on this issue, and in the Secretary’s briefing in the district court, Appellants cannot meet the requirements

for an injunction. They are unlikely to succeed on the merits because New Mexico’s requirements for minor party candidates to qualify are minimal and achievable for a reasonably diligent candidate. Appellants will not suffer irreparable harm absent an injunction because none of their constitutional rights are threatened—there is no automatic guarantee that a candidate will appear on a ballot in New Mexico, whether for a minor or major political party. Granting an injunction would harm the State’s interest in administering an election in which ballot-qualified candidates have shown a modicum of support, and, at this late hour, cause extreme disruption to New Mexico’s ballot printing efforts and election preparation. Critical deadlines have already passed and altering the ballot now risks significant errors in ballot accuracy. *See* Declaration of Mandy Vigil, September 11, 2026, attached as **Exhibit A**, ¶¶ 4–8. For these reasons, explained in more detail below, the Court should deny Appellants’ motion.

ARGUMENT

Appellants’ chief complaint on appeal is that the district court mismeasured the burden imposed on minor party candidates under New Mexico’s Election Code, N.M. Stat. Ann. §§ 1-1-1 to 1-26-6. The two candidates who didn’t qualify here, Bob Perls and Michael Vigil, needed to each file petitions containing 14,200 signatures

from voters.¹ Order Denying Mot. for Preliminary Inj., Sept. 2, 2026, D.N.M. Doc. 22, at 10–11; N.M. Stat. Ann. § 1-8-2(B). But Appellants claim the true burden is what the Election Code requires of minor parties who wish to fill every statewide position, for a total of 131,361 signatures. What Appellants do not mention, however, is that no individual candidate in 2026 would need that many signatures, it would only ever be 14,200 at most.

This number, as recognized by the district court, is far fewer than requirements in other states that have been upheld even by the Supreme Court. D.N.M. Doc. 22, at 19. Under the Supreme Court’s balancing test applicable to ballot access cases, this burden is minimal against New Mexico’s recognized interests in requiring candidates to show support before qualifying for ballot placement. Appellants’ issue on appeal is therefore unlikely to warrant reversal, and an injunction forcing the Secretary to put Mr. Perls and Mr. Vigil on the ballot cannot be justified. The district court appropriately denied an extremely disfavored preliminary injunction, and nothing in Appellants’ motion suggests that this Court should reverse.

¹ Appellants’ motion and this response focus on Mr. Perls and Mr. Vigil because this Court can provide no other Appellant relief. *See* Doc. 2-1 at 16. The district court has issued an order to show cause why the other plaintiffs should not be dismissed. D.N.M. Doc. 23.

I
THIS COURT MUST CLOSELY
SCRUTINIZE APPELLANTS' REQUEST

The district court recognized that Appellants seek a highly disfavored injunction. D.N.M Doc. 22 at 8. This Court should as well. Disfavored injunctions are those that alter the status quo, mandate a party to act, or afford all relief a party seeks. *Schrier v. Univ. of Colo.*, 427 F.3d 1253, 1259 (10th Cir. 2005). Appellants' request does all three. The status quo is Mr. Perls and Mr. Vigil are not qualified candidates, yet they ask to now be placed on the ballot. An injunction would also mandate the Secretary to print unqualified candidates on the ballot throughout the state. It is not a matter of simply refraining from enforcement, because there is no automatic right to appear on a ballot in New Mexico—every candidate in the State must show some support, but Appellants want an exception. Finally, an injunction would give Appellants everything they want out of this lawsuit: access to the ballot. Because an injunction here falls into every disfavored category, Appellants' request must be “closely scrutinized,” and they must make a “strong showing” of likely success and that the balance of equities is in their favor. *O Centro Espirita Beneficiente Uniao Do Vegetal v. Ashcroft*, 389 F.3d 973, 975–76 (10th Cir. 2004), *aff'd*, 546 U.S. 418 (2006).

All the more reason to hold Appellants to a higher standard is the fact that they seek immediate relief on an emergency basis in this Court. Despite the motion's

name, Appellants are not seeking a stay, because there is nothing to stay. Indeed, the motion is a near duplicate of a motion filed below, and the district court was unpersuaded by Appellants' arguments as nothing more than a rehash of the original preliminary injunction petition. *See* Order Denying Plaintiffs' Opposed Emergency Motion for Stay and Injunction Pending Appeal, Sept. 9, 2026, D.N.M. Doc. 28, at 2. The district court denied a preliminary injunction and thereby maintained the status quo in this case. *See Schrier*, 427 F.3d at 1259. Appellants seek to undo that decision through their emergency motion, circumscribing the usual course of an appeal.

II

APPELLANTS ARE UNLIKELY TO SUCCEED ON APPEAL

Appellants phrase the question on appeal as whether the district court erred by “minimizing the burden New Mexico’s statutory scheme imposes” under the ballot access balancing framework of *Anderson v. Celebrezze*, 460 U.S. 780, 789 (1983) and *Burdick v. Takushi*, 504 U.S. 428, 433 (1992). Doc. 2-1, at 3. But the opposite is true. Appellants on appeal inflate their burden by assuming they must obtain nearly ten times the signatures actually imposed on minor party candidates. When comparing the actual burden imposed on New Mexico Forward Party candidates against the State’s interests in regulating elections, the district court correctly concluded that Appellants are unlikely to succeed on the merits or on appeal. D.N.M Docs. 22, 28.

**A. New Mexico's Ballot Access Requirements
can be Met by a Reasonably Diligent Candidate**

The Supreme Court has recognized that “there must be a substantial regulation of elections if they are to be fair and honest and if some sort of order, rather than chaos, is to accompany the democratic process.” *Burdick*, 504 U.S. at 433. Because states are empowered to regulate elections under Article I, Section 4 of the United States Constitution, they may include limits on “the field of candidates from which voters might choose,” and that “does not of itself compel close scrutiny.” *Bullock v. Carter*, 405 U.S. 134, 143 (1972). If the burden on candidates imposed by those limits is justified given a state’s interests in regulating elections, then they are not unconstitutional. *Anderson*, 460 U.S. at 789. When the laws governing ballot access imposes “reasonable, nondiscriminatory restrictions,” then “the State’s important regulatory interests are generally sufficient to justify” those laws. *Id.* at 788.

For Mr. Perls and Mr. Vigil to succeed on appeal they must show that § 1-8-2(B) imposes an unconstitutional burden. The statute establishes the number of signatures a minor party candidate must obtain to qualify for the general ballot. *Id.* Despite Appellants’ insistence that such a framework is unusual, Doc. 2-1 at 3, “the constitutionality of statutes requiring nominating petitions, or their functional equivalent, which contain a number of signatures equal to a percentage of total voters is beyond question,” *Dillon v. Evans*, 549 F.2d 183, 184 (10th Cir. 1977). There are no circumstances here for the Court to question New Mexico’s statutory framework,

a framework the Court has already upheld once before. *See Libertarian Party of N.M. v. Herrera*, 506 F.3d 1303 (10th Cir. 2007).

Section 1-8-2(B) sets different signature requirements depending on the size of the political party. If the party has membership amounting to one percent (or more) of the total votes for governor in the last election, then they must gather signatures from any voter in New Mexico amounting to the same one percent. *Id.* If the party is smaller than that, then the candidates must collect signatures amounting to two percent to demonstrate sufficient support. *Id.*; *see also* § 1-8-51(C). In 2026, that two percent was 14,200, and New Mexico Forward Party candidates for statewide office had to meet that requirement because the party only had 227 registered members. D.N.M. Doc. 22, at 9–10.

To state the obvious, 14,200 is not 131,361. Appellants arrive at that number by including the 3,561 signatures the New Mexico Forward Party needed to form and then imagining that the party was able to field a full slate of nine statewide candidates in the general election. Doc. 2-1 at 6. Appellants also imply that a voter may only sign one candidate’s petition. Needless to say, there are not nine candidates in this lawsuit who failed to qualify for the ballot. There are two, Mr. Perls and Mr. Vigil, and they only had to obtain 14,200 signatures.² These could be from the same

² Appellants only argue that the Election Code is unconstitutional as applied to them in these circumstances. D.N.M. Doc. 22 at 8.

14,200 voters, because New Mexico’s Election Code does not restrain the same voter from signing petitions for multiple seats, only multiple candidates for the same seat. *See* N.M. Stat. Ann. § 1-8-65(C). Even if a minor political party had nine candidates for all statewide offices, candidates could obtain signatures from the same 14,200 voters. If the minor party had sufficient members then that number would be cut in half—in 2026, it would be 7,100, or one percent of the votes for governor in the last election. *See* § 1-8-2(B).

This is not a significant burden on a reasonably diligent candidate. The Secretary made available petitions for signature collection on March 2 this year, the first day she could do so under § 1-8-65(D), and candidates had until June 25 to solicit signatures from voters. §§ 1-8-2(B), 1-8-11. Collecting 14,200 signatures from any voter in New Mexico in that 115-day window would amount to 123 signatures per day. The Supreme Court has accepted that as many as 13,542 signatures in a day is not an “impossible” or “impractical undertaking.” *Storer v. Brown*, 415 U.S. 724, 740 (1974). Requiring a candidate to collect 22,000 signatures has survived scrutiny. *American Party of Texas v. White*, 415 U.S. 767, 786 (1974). And New Mexico requiring an amount of one or two percent of *votes cast* is far fewer than five percent of *eligible* voters in Georgia’s framework, which likewise withstood scrutiny. *Jenness v. Fortson*, 403 U.S. 431, 433 (1971). Ballot access requirements do not impose impermissible burdens when “a reasonably diligent

independent candidate” could meet them. *Storer*, 415 U.S. at 742. As has been recognized by courts upholding New Mexico’s signature requirements, the Election Code “‘imposes no suffocating restrictions whatever upon the free circulation of nominating petitions.’” *Parker v. Duran*, 180 F. Supp. 3d 851, 858 (D.N.M. 2015) (quoting *Jenness*, 403 U.S. at 438). In 2026 with modern technology and during a time when voters are politically engaged, obtaining 123 signatures in a day is more than achievable. *See id.* at 862 (upholding a former three percent signature requirement for independent candidates).

Appellants suggest that the district court found Mr. Perls and Mr. Vigil to have acted diligently here. That is not the case, and it is evident from the district court’s order. The New Mexico Forward Party formed late into an election year, even though it could have formed at any time. Doc. 22 at 2; N.M. Stat. Ann. § 1-7-2. Even though the party had prospective candidates who contacted the Secretary’s office in January, the New Mexico Forward Party did not announce its efforts to run in the election until April. D.N.M. Doc. 13-1, ¶ 8; D.N.M. Doc. 13, at 8 n. 2. Even though those candidates could begin petitioning for signatures on March 2—as they did *not* need to wait until their party had qualified—they chose to wait until May to begin. D.N.M. Doc. 8-2, ¶ 4; § 1-8-3.1; § 1-8-65(C) (informing voters signing petitions that “if the candidate’s political party does not qualify as a minor political party, the candidate may run as an unaffiliated independent candidate”). And even though the Secretary’s

office told those candidates that their preferred petitioning option, a newly established online petitioning platform, would not be available because of a statutory period where new voter registrations cannot be processed, the candidates opted to spend tens of thousands of dollars on a text campaign directing voters to the online petition. D.N.M. Doc. 13, at 10 n. 3; D.N.M. Doc. 13-1, ¶¶ 17–18; D.N.M. Doc. 8-2, ¶¶ 10,12. During that time Appellants knew and were encouraged by the Secretary’s office to focus on paper petitions instead, but they chose not to. D.N.M. Doc. 13, at 10 n. 3. The district court appropriately recognized that whatever burdens Appellants faced were “self-imposed” and not the result of New Mexico’s “regulatory architecture.” D.N.M. Doc. 22, at 17. Appellants did not “use[] the time the State allotted,” and the statutory period did not “compound” their burden. doc. 2-1 at 12–13. Appellants’ two unsuccessful candidates dragged their feet and failed to gain voter support in time because of it.³

Lastly, although Appellants argue that the burden imposed by New Mexico’s Election Code is so severe that it effectively freezes the status quo, doc. 2-1 at 9–11, three New Mexico Forward Party candidates made the ballot—60% of the individual appellants—and the party itself qualified to be recognized under New Mexico law.

³ Appellants mistakenly, and repeatedly, assert that the online petition platform was dysfunctional. D.N.M. Doc. 8-2, ¶¶ 8–12. It was not. The online platform was functional from March 18, 2026, the earliest possible date, for all general ballot candidates who were ready to use it. D.N.M. Doc. 13-1, ¶ 16.

D.N.M. Doc. 13-1, ¶¶ 8, 19; D.N.M. Doc. 23, at 2. Moreover, New Mexico has a history of third party and independent candidates qualifying for the ballot. In addition to the plaintiffs, three candidates from the Libertarian Party qualified for this year’s ballot. D.N.M. Doc. 13-1, ¶ 11. In the last ten years, fourteen candidates from parties like the Green Party, Constitutional Party, American Delta Party, and Better for America Party have qualified, both for local and statewide elections. *Id.* ¶ 11. Until 2025, the Libertarian Party even garnered enough votes in New Mexico elections to qualify as a major political party for seven years. *Id.* ¶ 12; N.M. Stat. Ann. § 1-7-7 (defining major political parties based in part on percentage support in prior elections). Appellants are simply incorrect that New Mexico’s Election Code imposes such a massive burden on minor party candidates that only major parties have access to the ballot. Appellants never even presented evidence that other minor party candidates for statewide office in New Mexico have sought and failed to gain access to the ballot due to the supposed burden Appellants claim.

**B. New Mexico’s Minor Party Candidate Qualification
Framework Serves Well-Recognized State Interests**

The district court recognized that New Mexico maintains an important interest in requiring candidates to demonstrate support to get on the ballot. D.N.M. Doc. 22, at 19. It is not alone, because those interests have been recognized by court after court, even in connection with New Mexico, and they are “admittedly vital.” *Am. Party of Tex.*, 415 U.S. at 782. A functioning democracy is not served by a

disorganized election, and the Constitution imparts on states the power to regulate the election process. U.S. Const. Art. I, § 4, cl. 1. It is “clear that States may, and inevitably must, enact reasonable regulations of parties, elections, and ballots to reduce election—and campaign—related disorder.” *Timmons v. Twin Cities Area New Party*, 520 U.S. 351, 358 (1997). To prevent overcrowding, voter confusion, and frivolous candidacies that could otherwise result, states have an “undoubted right to require candidates to make a preliminary showing of substantial support in order to qualify for a place on the ballot.” *Munro v. Socialist Workers Party*, 479 U.S. 189, 194 (1986).

New Mexico’s interests are served by its balanced and nondiscriminatory approach to ballot access, which ensures *all* candidates on a ballot have sufficient support. *See Werme v. Merrill*, 84 F.3d 479, 484 (1st Cir. 1996) (finding nondiscrimination when regulations do “not differentiate among Republicans, Democrats, and Libertarians” on their face). All political parties in New Mexico are formed the same way, by collecting signatures. § 1-7-2(A). Major parties are those that continue to have substantial support, measured by the number of members they have and the percentage of votes their candidates receive in the previous election. § 1-7-7. Even then, to get on the primary ballot, major party candidates must be nominated by 20 percent of party delegates at a convention *and* collect signatures from voters enrolled with the party. N.M. Stat. Ann. § 1-8-33 (“Candidates who seek

preprimary convention designation shall file nominating petitions . . . signed by a number of voters equal to at least two percent of the total vote of the candidate’s party in the state or congressional district . . .”). If they fail to get 20 percent, they have an increased obligation to obtain four percent of the total vote for the candidate’s party. *Id.* Then the candidates go through a primary election, where voters from their party choose the candidate to appear on the general ballot.⁴

Minor parties, by statutory definition, do not have the established candidate support and membership. *See* § 1-7-7. Like major party candidates, they must collect signatures to appear on the general ballot. If the party is large enough—membership amounting to more “than the number of signatures required for that office”—then candidates need only collect signatures amounting to one percent of votes for governor in the previous election. § 1-8-2(B). This means signatures only from the party’s members would suffice to get their candidates qualified. But if the party has fewer members (in other words they do not have the same base support) candidates must collect more signatures, two percent. *Id.*

⁴ The district court mistakenly stated that major party candidates were *either* required to obtain the vote of twenty percent of party delegates or signatures amounting to two percent. D.N.M. Doc. 22, at 21. N.M. Stat. Ann. § 1-8-21.1(C) permits minor parties to designate candidates for nomination, but candidates must still submit a declaration of candidacy and nominating petition with signatures. N.M. Stat. Ann. § 1-8-21, § 1-8-33(B).

Every step in this framework, be it major or minor party candidates, is designed to involve voters to ensure that candidates on statewide ballots have some support. This structure does not have gross disparities between major and minor party candidates, and what differences there are exist by reason. Differences between how major and minor political parties are regulated “are not *per se* unconstitutional.” *Rogers v. Corbett*, 468 F.3d 188, 196 (3d Cir. 2006). Requiring candidates to collect signatures separately from their party recognizes the obvious fact that a candidate, even though a member of a political party, may not have any real voter support individually. The “candidate petitioning requirement does add more in the way of showing public support.” *Libertarian Party of N.M. v. Vigil-Giron*, CIV-06-0615 MV/ACT, 2006 WL 8443845, at *11 (D.N.M. Sept. 18, 2006). And it serves New Mexico’s interest in ensuring that serious candidates appear on the ballot, which can reduce ballot crowding, costs, and voter confusion—issues New Mexico has specifically experienced in its past. *See Dillon v. King*, 1974-NMSC-096, ¶ 12, 87 N.M. 79 (overcrowding was “a real and present danger in New Mexico”); *Vigil-Giron*, 2006 WL 8443845, at *6 (citing 41st Legislature, First Session 1993, House Memorial #56 and discussing its directive to the Secretary to recommend changes to the Election Code to address overcrowding).

Appellants complain that the district court was “uncritical” in its acceptance of New Mexico’s interests, doc. 2-1, at 14, but this ignores New Mexico’s

experienced history of crowded ballots. Moreover, “[t]he Supreme Court has ‘never required a State to make a particularized showing of the existence of voter confusion, ballot overcrowding, or the presence of frivolous candidacies prior to the imposition of reasonable restrictions on ballot access.’” *Parker*, 180 F. Supp. 3d at 861 (D.N.M. 2015) (quoting *Munro*, 479 U.S. at 194–95). There is nothing uncritical about accepting well-recognized interests supporting New Mexico’s current election framework.

Appellants also make much about New Mexico being “unique” in its Election Code requirements, and compare it to other states where it may be easier for candidates to get on the ballot. Doc. 2-1, at 8–9. Nothing requires ballot access requirements to be uniform across all states, and the fact that the Constitution gives states power to regulate even federal elections practically guarantees they won’t be. *See* Const. art. I, § 4. If states are indeed “laboratories of democracy,” it is certainly evident in the manner in which they each regulate elections. *See New State Ice Co. v. Liebmann*, 285 U.S. 262, 311 (1932) (Brandeis J., dissenting). The federal reports are practically littered with lawsuits involving these myriad regulatory schemes, so it is not convincing to criticize New Mexico as “unique” when the same point may be lobbied against aspects of any state’s election code. Moreover, it is contested whether New Mexico is actually unique for its system in which individual candidates must collect signatures in addition to their party—Appellants reach to granular levels

to make this claim while ignoring obvious similarities between New Mexico and other states. *See Rogers*, 468 F.3d at 197 (upholding a similar “two-tiered” system, noting New Mexico, and stating “the minimal burdens on minor political parties was justified by Pennsylvania’s interest in preventing ballot clutter and ensuring viable candidates.”).

Like many other states, New Mexico’s Legislature has determined that its “admittedly vital” interests are best served by the signature requirements of the Election Code, and these interests outweigh the minimal burden imposed on Appellants. *See Am. Party of Tex.*, 415 U.S at 782. Appellants cannot make a strong showing that those signature requirements will be held unconstitutional.

III **APPELLANTS CANNOT ESTABLISH IRREPARABLE HARM**

The Court could deny an injunction on appeal for failure to show a likelihood of success alone. *See Sierra Club, Inc. v. Bostick*, 539 F. App’x 885, 888 (10th Cir. 2013). Appellants do not disagree that the presence of irreparable injury to their rights “turns on whether the plaintiff has shown a clear likelihood of success on the merits,” yet they have not done so. *See SAM Party of New York v. Kosinski*, 987 F.3d 267, 278 (2d Cir. 2021). Moreover, the mere fact that Mr. Perls and Mr. Vigil were unable to meet the Election Code’s requirements does not indicate some infringement on their constitutional rights, but a system working correctly to filter out candidates who cannot obtain sufficient voter support for *statewide* general

elections. When boiling down petition signature requirements to numbers, it is easy to forget what the signatures are: individual voters saying they would support a candidate. *See* § 1-8-65(C). Mr. Perls and Mr. Vigil, despite pursuing the admirable goal of participating in a statewide election, could not find enough voters willing to support them. Yet they believe they are irreparably harmed absent a court order forcing them on the general ballot to be presented to every voter in the state on election day. Appellants have not justified such an order.

IV
AN INJUNCTION WOULD HARM
THE PUBLIC INTEREST IN NEW MEXICO

Appellants give short shrift to the public's interest in enforcing its own election laws, even though those laws are designed to put candidates forward that the public has shown some support for. They hang their hat on two assertions: that New Mexico has no legitimate interest in enforcing invalid laws, and that adding Mr. Perls and Mr. Vigil to the ballot is “a negligible administrative burden.” Doc. 2-1, at 16. The first point relies on the hefty assumption that Appellants will succeed on the merits, which is unlikely given the reasons above and those in the district court's order. Preventing a state “from conducting this year's elections pursuant to a statute enacted by the Legislature,” unless unconstitutional, would “seriously and irreparably harm the State.” *Abbott v. Perez*, 585 U.S. 579, 602 (2018). The second

point misunderstands the work that goes into planning, conducting, and executing a statewide election.

The Election Code sets forth strict deadlines for printing, proofing, certifying, and mailing ballots. One of those deadlines has already passed. All 33 county clerks have now prepared and certified a separate ballot for each precinct in the county and sent those ballots to the printer. Vigil Decl., Ex. 1, ¶ 4; N.M. Stat. Ann. § 1-10-4. Adding Mr. Perls and Mr. Vigil to the ballot would require ignoring that deadline and having each county clerk prepare new ballots and re-certify them. County Clerks must have sufficient ballots ready to mail to federal qualified electors by September 18, and actually mail them by September 19. Vigil Decl., Ex. 1, ¶ 4. The Secretary’s Elections Director has attested to the sheer amount of work it takes to print ballots, ensure that they are properly coded and readable by tabulators, tested and re-tested, and available to the 33 counties and 2,204 precincts in New Mexico. *Id.* ¶ 7. The notion that additional candidates can simply be added to a ballot this late in an election year—and doing so would constitute “a negligible administrative burden”—is naive and a severe misunderstanding of reality. *Id.* ¶¶ 5–10. The Secretary is no longer able to guarantee that New Mexico can place new candidates on the ballot without violating state and federal law and causing errors in the ballot. Vigil Decl., Ex. 1, ¶¶ 5–10.

V
**THE SECRETARY REPRESENTS
NEW MEXICO’S INTERESTS IN THIS MATTER**

On September 10, the New Mexico Attorney General filed an amicus brief purporting to be “on behalf of” New Mexico and in support of Appellants. Doc. 4. The Attorney General did not appear in the matter below, despite his statutory duty to defend the laws of New Mexico and its officers. *See* N.M. Stat. Ann. § 8-5-2. The brief parrots Appellants’ arguments, both the ones made in the motion here and at the district court, and altogether adds nothing new. The amicus ignores—or is unaware of—evidence presented at the district court’s evidentiary hearing, for example how limitations on the time New Mexico Forward Party candidates had to gather signatures was “self-imposed and . . . not a burden imposed on Plaintiffs by the regulatory architecture.” D.N.M. Doc. 22, at 17. The arguments made by the Secretary before the district court, and here, refute the content of the amicus brief.

Further, New Mexico has a divided executive department, in which the Secretary of State and Attorney General are independent and separately elected co-equal offices. N.M. Const. art. V, § 1. The Secretary of State is unequivocally the State’s “chief election officer.” N.M. Stat. Ann. § 1-2-1. She is charged with the duty to “maintain uniformity in the application, operation and interpretation of the Election Code.” *Id.* The Attorney General does not share that duty. The amicus brief expresses a policy preference, but as explained above it misunderstands the law

when it proclaims New Mexico’s signature requirements “are plainly unconstitutional” and “are not defensible under any state interest, much less a compelling one.” Doc. 4-1, at 6. The New Mexico Supreme Court has explained that courts are not bound by even formal Attorney General opinions, issued under Section 8-5-2(D), “giving them such weight only as we deem they merit and no more. If we think them right, we follow and approve, and if convinced they are wrong, we reject and decline to feel ourselves bound.” *City of Santa Rosa v. Jaramillo*, 1973-NMSC-119, ¶ 12, 85 N.M. 747. Because the amicus brief is wrong, it carries no weight here.

CONCLUSION

There is nothing to “stay” and Appellants cannot meet their burden of demonstrating the disfavored injunction they seek should be issued. The motion should be denied.

Dated: September 11, 2026.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME LIMIT

Pursuant to Fed. R. App. P. 32(g), this document complies with the type-volume limit of Fed. R. App. P. 27(d)(1)(D) and the word limit of Fed. R. App. P. 27(d)(2)(A) because, excluding the parts of the document exempted by Fed. R. App. P. 32(f), this document contains 5,184 words.

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BARDACKE ALLISON MILLER LLP

By: /s/ Justin Miller

CERTIFICATE OF DIGITAL SUBMISSION

I certify that with respect to the foregoing, all required privacy redactions have been made under 10th Cir. R. 25.5; if required to file additional hard copies, the ECF submission is an exact copy of those documents; and this digital submission was scanned for viruses with the most recent version of a commercial virus scanning program and is free of viruses.

BARDACKE ALLISON MILLER LLP

By: /s/ Justin Miller

CERTIFICATE OF SERVICE

I certify that I caused a true and correct copy of the foregoing to be filed through the Court's CM/ECF system, which caused all parties and counsel entitled to receive notice to be served electronically as more fully described on the Notice of Electronic Filing.

BARDACKE ALLISON MILLER LLP

By: /s/ Justin Miller

**IN THE UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT**

NEW MEXICO FORWARD PARTY,
et al.,

Plaintiffs – Appellants,

v.

No. 26-2145

MAGGIE TOULOUSE OLIVER, in her
official capacity as Secretary of State of
New Mexico, et al.,

Defendants – Appellees.

DECLARATION OF MANDY VIGIL

I, Mandy Vigil, declare as follows:

1. I have personal knowledge of the matters below, am over the age of eighteen, and am competent to make this declaration. I am able to testify to these matters if called as a witness.

2. I am the State Elections Director in New Mexico. I work for the Secretary of State and support her in her official capacity as the Chief Elections Officer for the State of New Mexico. In my role, I assist the Secretary in the execution and enforcement of all state and federal laws relating to elections.

3. I submitted a previous declaration in this matter at the District Court, attached to the Secretary's response in opposition to plaintiffs' motion for a

preliminary injunction. Doc. 13-1. The statements made in that declaration remain true and correct.

4. I understand this Court has directed the Secretary to submit a response to Appellants' motion for an injunction and a stay, and that the response must include information on the timeline associated with printing ballots for the upcoming election. That information is consolidated into a chart attached to this declaration as **Exhibit 1**, and is as follows:

- a. As of this writing, a significant deadline for the upcoming general election already has passed. Section 1-10-4 of the New Mexico Election Code provides that not less than sixty days before the election, each of the 33 county clerks shall prepare and certify a separate ballot for each precinct in the county and then send each such certified ballot to the ballot printer. N.M. Stat. Ann. § 1-10-4. In this election cycle, sixty days before the election fell on **September 4, 2026**. All 33 counties have complied with this deadline and the certified ballots have been sent to New Mexico's ballot printer.
- b. Several more significant deadlines are imminent. No later than **September 18, 2026**, the county clerks are required to have access to sufficient ballots to send to federal qualified electors (sometimes

referred to as UOCAVA voters pursuant to the Uniformed and Overseas Citizens Absentee Voter Act). N.M. Stat. Ann. § 1-10-5.

- c. By the forty-fifth day before the election, which is **September 19, 2026**—even if that day falls on a Saturday, which it does in this election cycle—the UOCAVA ballots must be transmitted to all federal qualified electors who have timely submitted a valid military-overseas ballot application. To date, 1,852 New Mexico federal qualified electors have requested a ballot.
- d. All other pre-printed ballots are required to be in the possession of the county clerks at least forty days before the election, which is **September 24, 2026**. N.M. Stat. Ann. § 1-10-5. Also by **September 24, 2026**, if a county is using a system designed to print ballots at a polling location, the system shall be programmed and capable of operation. *Id.*
- e. On **September 22, 2026**, county clerks may begin to prepare, inspect, certify, and seal electronic voting machines that are to be used in the election. Changing the certified ballot by either adding or removing a candidate changes the layout of the ballot and how the voting machine reads the bubbles for each contest and candidate. If a candidate's name is added to or removed from the certified ballot, the process of

preparing, inspecting, certifying, and sealing all the voting machines—or tabulators in common parlance—would have to be repeated.

5. Time is of the essence in preparing the final ballot. Ballot preparation, including certification of contests and careful proofing of ballot content, is already near completion. Ballots that have been finalized by county clerk offices are currently being uploaded followed by testing into multiple election systems that provide the statutorily required mechanism of electronic delivery. Redoing the process would require the cooperation of third parties, including all 33 county clerks and private ballot vendors in other states, over whom the Secretary has no direct authority. It would entail a huge investment in time, manpower, and cost. The resources to redo the process to accommodate a change are not available. It would jeopardize the ability of county clerks to meet deadlines under federal and state law and risk the accuracy of final ballots.

6. For all these reasons, the Secretary cannot guarantee that the general election ballot can be changed at this time without violating state and federal law or without introducing severe and consequential errors to ballots statewide.

7. As stated above, each county clerk has prepared and certified a unique ballot for every precinct in the state. The ballot printer already has begun its process of proofing reports against the certified ballots received from the clerks, then coding the ballots so that the tabulators are able to read each bubble and properly account

for the vote. The tabulators themselves also must be programmed to recognize the many ballot styles for each of the 33 counties and 2,204 precincts.

8. Because the two candidates seeking to be added to the ballot in this case are running for statewide offices, every ballot style for all counties and precincts would be affected.

9. New Mexico utilizes almost 1,800 tabulators statewide. Logic and accuracy testing must be performed on each machine. Logic and accuracy testing involves running each ballot style through a tabulator to ensure that there are no errors in the programming, that the votes are properly collected, and that the results are accurately tabulated. Mock election runs are performed for all counties to ensure that everything is working as it should. If a certified ballot is changed, the entire process must begin again. It is not a simple matter of deleting or adding a name, as one might do in a word-processing program. Any change to the ballot requires the entire process—re-designing the ballot, the ballot proofing, the code programming, the logic and accuracy testing, the quality assurance review, and the mock elections—to be repeated.

10. The Election Code provides safeguards for a timely and orderly process. Repeating these time-consuming and complicated steps will significantly increase the risk of error, require many overtime hours, and disrupt the orderly administration of the election.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct to the best of my knowledge.

Dated: September 11, 2026.



Mandy Vigil

EXHIBIT 1**Timeline Associated with
Printing Ballots for the General Election**

Date	Event	Statute/source
September 4, 2026	Each of New Mexico's 33 county clerks shall prepare and certify in writing a separate ballot for each precinct in the county. Each certified ballot shall be sent to the ballot printer and the Secretary of State.	N.M. Stat. Ann. 1-10-4(B) and (H)
September 18, 2026	County clerks shall have access to sufficient ballots to send to federal qualified electors. A federal qualified elector is a uniformed-service voter or an overseas voter, and includes voters entitled to a mailed ballot under the federal Uniformed and Overseas Citizens Absentee Voter Act (UOCAVA).	N.M. Stat. Ann. 1-10-5 N.M. Stat. Ann. 1-1-4.1
September 19, 2026	The county clerk shall send a ballot and balloting materials to all federal qualified electors who have submitted a valid application.	N.M. Stat. Ann. 1-6B-7(A)
September 22, 2026	County clerks may begin to prepare, inspect, certify, and seal electronic voting machines that will be used in the election.	N.M. Stat. Ann. 1-11-5
September 24, 2026	All pre-printed ballots shall be in the possession of the county clerk. When a county is using a system designed to print ballots at a polling location, the system shall be programmed and capable of operation.	N.M. Stat. Ann. 1-10-5

IN THE UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

NEW MEXICO FORWARD PARTY, BOB
PERLS, MICHAEL VIGIL, DENNIS DINGE,
HARRY MONTOYA and FRANCES KAVA,

Appellants,

v.

MAGGIE TOULOUSE OLIVER, in her official
capacity as Secretary of State of New Mexico,
and BARBARA DELANEY, in her official
capacity as County Clerk of Luna County, New
Mexico,

Appellees.

No.: 26-2145

**APPELLANTS’ REPLY TO THE SECRETARY OF STATE’S RESPONSE IN
OPPOSITION TO APPELLANTS’ EMERGENCY MOTION FOR STAY AND
INJUNCTION PENDING APPEAL**

Plaintiff-Appellants New Mexico Forward Party (“NMFP”), Bob Perls, Michael Vigil, Dennis Dingo, Harry Montoya and Frances Kava (collectively, “Appellants”) respectfully submit this Reply to the Secretary of State’s Response in Opposition to Appellants’ Emergency Motion for Stay and Injunction Pending Appeal, ECF No. 5-1, filed on September 11, 2026 (“Opp.”).

**I. APPELLANTS SEEK A PROHIBITORY INJUNCTION AND HAVE A STRONG
LIKELIHOOD OF SUCCESS UNDER ANY STANDARD**

The Secretary’s assertion that Appellants’ request for relief must be “closely scrutinized” because they seek a “disfavored” mandatory injunction is incorrect but also immaterial because Appellants have a strong likelihood of success under any standard. Opp. at 4. An order enjoining a defendant from enforcing a statute is the paradigm of prohibitory relief, and that is what

Appellants request here: an injunction against enforcement of N.M. Stat. Ann. §§ 1-8-2(B) and (E) as applied to them in the 2026 election cycle.¹ This Court has affirmed exactly that kind of preliminary injunction against the Secretary’s enforcement of an election statute. *See Fish v. Kobach*, 840 F.3d 710, 724 (10th Cir. 2016). Further, the Secretary is incorrect that the requested injunction “would give Appellants everything they want out of this lawsuit.” Opp. at 4. In addition to challenging other statutory provisions not at issue here, Appellants seek declaratory and permanent injunctive relief that the injunction will not grant. Compl., ECF No. 1, ¶ 91. In any event, the “disfavored” label requires closer scrutiny, *Schrier v. University of Colorado*, 427 F.3d 1253, 1261 (10th Cir. 2005); it is not a procedural bar that extinguishes constitutional claims which, by their nature, must be resolved before ballots are printed. *See Fish*, 840 F.3d at 724 (affirming injunction “even assuming *arguendo* that the heightened standard applies”). Appellants’ showing survives close scrutiny for the reasons below.

II. APPELLANTS HAVE A STRONG LIKELIHOOD OF SUCCESS

A. The Burden on Appellants’ Rights Is Severe.

Appellants have established that the 10 separate petitions containing 131,361 signatures New Mexico requires of them is severely burdensome under every standard the Supreme Court has recognized. Appellants’ Motion, Doc. 2-1, at 8-12. The Secretary does not even attempt to show that burden can withstand constitutional scrutiny. Instead, like the District Court, the Secretary improperly measures Appellants’ burden based on the 14,200-signature requirement imposed on a single candidate for statewide office. That is clear error. Under this Court’s and the Supreme Court’s binding precedent, ballot access requirements must be analyzed “in sum rather

¹ Defendant-Appellee DeLaney has conceded that N.M. Stat. Ann. § 1-8-2(E) is unconstitutional as applied to Plaintiff-Appellant Kava and agreed to place her on the ballot. Consequently, Appellants only need injunctive relief from N.M. Stat. Ann. § 1-8-2(B).

than in isolation,” considering their “practical effect ... viewed in their totality.” *Utah Republican Party v. Cox*, 892 F.3d 1066, 1088 (10th Cir. 2018) (citations omitted). Appellants do not seek to run a single candidate for statewide office. They seek to establish a new political party and run candidates for all offices at the local, state and federal level—indeed, Appellants established NMFP specifically because they seek “to provide competition and voter choice in New Mexico’s many non-competitive elections.” Compl., ECF No. 1, at ¶ 6. To do that, they must comply with § 1-8-2(B) in each race in which they compete—meaning they must submit 10 separate petitions with 131,361 signatures just to run their slate of statewide candidates, plus additional petitions with additional signatures for each candidate in a down-ballot race. That is the true “character and magnitude” of the burden on Appellants’ First and Fourteenth Amendment rights. *Anderson v. Celebrezze*, 460 U.S. 780, 789 (1983).

The Secretary notes that “there are not nine candidates in this lawsuit who failed to qualify for the ballot,” Opp. at 7, as if that diminishes the burden that § 1-8-2(B) imposes. It does not. The uncontested evidence shows that the challenged provisions—and § 1-8-2(B) in particular—eviscerated NMFP’s ability to recruit candidates. Perls Decl., ECF No. 8-3, ¶¶ 7-8, 11. Appellants lost 12 credible candidates as a result. *Id.* at ¶ 7. That § 1-8-2(B) dissuades candidates from attempting to run for office—that it chills their exercise of First Amendment rights—is itself a constitutional violation. *See New Mexicans for Bill Richardson v. Gonzales*, 64 F.3d 1495, 1500-01 (10th Cir. 1995) (recognizing that the “mere existence” of an unconstitutional statute chilled plaintiff from exercising his rights); *Constitution Party of Pennsylvania v. Aichele*, 757 F.3d 347, 364 (3rd Cir. 2014) (recognizing that unconstitutional statute “inherently burdens [plaintiffs] electioneering activity.”).

The Secretary next attempts to minimize Appellants’ burden by noting that voters may sign multiple petitions, and that NMFP’s candidates could have obtained signatures from the same 14,200 voters. Opp. at 7-8. Setting aside the utter impracticality of such an endeavor, this proves Appellants’ point: if the support of 14,200 voters is sufficient to qualify NMFP’s entire slate of statewide candidates, what interest does New Mexico have in requiring that they submit 10 separate petitions with 131,361 total signatures—even if the same voter can sign all 10 petitions? That is the unique—and uniquely burdensome—aspect of New Mexico’s statutory scheme. Every other state that allows political parties to qualify by petition allows them to do so by means of one petition that entitles the party to place all its nominees on the general election ballot. Winger Decl., ECF No. 8-1, ¶¶ 15-17.

Appellants thus challenge New Mexico’s statutory scheme not simply because it is “unique,” as the Secretary suggests, Opp. at 15, but because its requirements are more restrictive, by far, than any other state in the nation, and because they exceed those of New Mexico’s neighboring states by many orders of magnitude even though those states have much larger populations. Appellant’s Motion, ECF No. 2-1, at 8-9. The Secretary insists that it is “contested” whether New Mexico is unique in imposing a separate petition requirement on each candidate nominated by a qualified minor party, but conspicuously fails to cite even one other example. The Secretary fails because there is no such state. Winger Decl., ECF No. 8-1, ¶ 17. The best the Secretary can do is vaguely assert that Pennsylvania’s “two-tiered” system is “similar” to New Mexico’s. Opp. at 16 (citing *Rogers v. Corbett*, 468 F.3d 188, 197 (3rd Cir. 2006)). That is incorrect. Pennsylvania’s system is nothing like New Mexico’s in any constitutionally relevant sense: it does not require an unqualified party to submit a petition, and then require each of the party’s nominees to submit a separate petition; indeed, it does not require a separate party petition

at all but allows all the party's candidates to qualify via the same single petition. *See* 25 P.S. § 2911 (nominations by political bodies). Thus, neither the character nor the magnitude of the burden Pennsylvania's scheme imposes is similar to the burden imposed by New Mexico here. Moreover, the scheme upheld in *Rogers* has since been held unconstitutional, and its signature requirement—which was already much lower than New Mexico's—has been substantially reduced by court order. *See Constitution Party of Pa. v. Cortes*, 116 F.Supp.3d 486 (E.D. Pa. 2015), *aff'd*, 824 F.3d 386 (3rd Cir. 2016).

The pre-*Anderson* cases the Secretary cites are also unavailing, Opp. at 8-9, because they apply a “less stringent framework” than the *Anderson/Burdick* analysis now requires. *Graveline v. Johnson*, 747 F. App'x 408, 413-14 (6th Cir. 2018); *see also Anderson*, 460 U.S. at 817 (Rehnquist, J., dissenting) (noting that prior cases had not used the “narrowly tailored” test applied in *Anderson*). Additionally, the Secretary misstates what these cases say. In *Storer* the Supreme Court did not “accept” that California's ballot access requirements survived scrutiny, as the Secretary suggests, Opp. at 8, but rather remanded for further findings to make that determination. *See Storer v. Brown*, 415 U.S. 724, 738-40 (1974). In *American Party of Texas* the 22,000 signature requirement applied not to a single candidate, as the Secretary incorrectly asserts, Opp. at 8, but to a petition entitling a party to place all its candidates for federal, state and local offices on the general election ballot. *See American Party of Texas v. White*, 415 U.S. 767, 777 (1974). And in *Jenness* the Court upheld Georgia's statutory scheme largely because candidates had complied with it in each of the two preceding election cycles. *See Jenness v. Fortson*, 403 U.S. 431, 439 (1971). The Secretary cannot make the same showing here, because the uncontested facts—New Mexico's official election results—establish that for at least two decades, minor party and independent candidates almost never qualify, particularly for statewide office. Compl., ECF No.

1, ¶¶ 54-76; Winger Decl., ECF No. 8-1, ¶¶ 22-25. From 2002 to 2024, there have been no federal or state office races (other than President) with more than three candidates on the ballot, and in almost every one of those races, just two candidates or one candidate qualified for the ballot. Winger Decl., ECF No. 8-1, ¶ 23. That is also true of statewide state offices. *Id.* ¶ 24. In that same period, in all general elections for state and federal office (except President) the average number of candidates in each race was less than two. *Id.* ¶ 25.

Against this undeniable evidence of a frozen political status quo, *see Jenness*, 403 U.S. at 439, the Secretary notes that “60%” of NMFP’s candidates qualified, Opp. at 10, but all three were candidates for local office who needed a fraction of the signatures required of candidates for statewide office, and one—Appellant Kava—was placed on the ballot as a result of this action. Appellant’s Motion at 11. The qualification of these local candidates does not undermine the uncontroverted historical evidence that candidates for federal and state office almost never qualify. Furthermore, the Secretary’s assertion that several minor parties’ candidates for statewide office have qualified in the last ten years is misleading: the candidates cited all ran for President, and New Mexico imposes no petition requirement whatsoever upon candidates for President. Opp. at 11; *but see* § 1-8-2(A)(1).² And while the Secretary protests the lack of evidence that other minor party candidates have tried but failed to qualify, that is because New Mexico does not keep records of failed petition drives. Furthermore, the “past experience” test in *Storer* does not demand such evidence: rather, a showing that candidates “only rarely” comply is itself sufficient to support the conclusion that ballot access requirements are severely burdensome. *Storer*, 415 U.S. at 742. The record here satisfies that test.

² The Libertarian Party’s fleeting success is the exception that proves the rule: it rode the coattails of its Presidential nominee Gary Johnson, a popular former Republican two-term Governor, but it has since lost its status and faces the same predicament as NMFP.

Finally, the Secretary attacks NMFP's statewide candidates for being insufficiently "diligent" but disregards that both gathered enough signatures to exceed the requirements on major party candidates seeking access to the primary ballot. Opp. at 9-10; Perls Decl., ECF No. 8-3, ¶ 17; Vigil Decl., ECF No. 8-2, ¶ 12. They have demonstrated a modicum of support and are entitled to appear on the general election ballot no less than the nominees of any other qualified party.³

B. The Secretary's Assertion of Generic State Interests Does Not Justify the Severe Burden Imposed on Appellants.

The familiar litany of state interests the Secretary asserts—the prevention of "overcrowding, voter confusion, and frivolous candidacies"—cannot justify the severe burdens Appellants have established here. Opp. at 12. Instead, when election laws impose "severe" burdens, as New Mexico's surely do, they must be "narrowly drawn to advance a state interest of compelling importance." *Burdick v. Takushi*, 504 U.S. 428, 434 (1992) (citation and quotation marks omitted). The Secretary makes no attempt to meet that standard.

The issue is not whether New Mexico has an "interest in requiring candidates to demonstrate support to get on the ballot," as the Secretary suggests, Opp. at 11, but whether the support that New Mexico requires is unconstitutionally burdensome. The Secretary never addresses that issue. Plaintiffs have shown that New Mexico's requirements are, by far, the highest in the nation, that they are more than 13 times greater than Colorado's, more than 65 times greater

³ The District Court's disagreement on this point was based on error: it distinguished *Maryland Green Party v. Maryland Bd. of Elections*, 832 A.2d 214 (2003), which invalidated the only other state statutory scheme that required nominees of a qualified minor party to petition for access to the general election ballot, on the ground that "the candidate's signature requirement was less than the minor party's requirement," whereas "minor party candidates in New Mexico must demonstrate support equal to or greater than the minor party. Order Denying Motion for Preliminary Injunction, ECF No. 22 (Sept. 2, 2026), at 23. In fact, however, Maryland's 1 percent signature requirement for statewide candidates was far greater than the 10,000 signatures required of the party itself. See *Maryland Green Party*, 832 A.2d at 219-20. It translated to approximately 27,000 signatures. See Maryland State Board of Elections, *Voter Registration Figures By County* (October 15, 2002), available at https://elections.maryland.gov/pdf/vrar/0002_1015.pdf (accessed September 12, 2026). Maryland's statutory scheme was therefore materially indistinguishable from New Mexico's, and the District Court erred in concluding otherwise.

than Utah's, and that they surpass even those of Texas, even though each of these states' populations is far larger than New Mexico. Yet the Secretary fails to assert any reason why New Mexico must impose such wildly disproportionate requirements.

Nor can the Secretary's invocation of ballot "overcrowding" or "frivolous candidacies" be credited. The uncontested evidence proves that, far from a ballot cluttered with unqualified candidates, in the last two decades New Mexico has averaged less than two candidates per race in all general elections for state and federal office (except President). Winger Decl., ECF No. 8-1, ¶ 25. States may not be required to present evidence of harm to their electoral processes prior to enacting reasonable regulations, Opp. at 15, but that does not give them license to ignore evidence establishing that their requirements are not reasonable. That is what the evidence shows here: New Mexico's requirements are far more severe than any other state's, and the result is that minor party and independent candidates almost never comply.

The Secretary's asserted interests ring hollow for another reason. New Mexico imposes no petition requirement whatsoever on Presidential candidates, yet New Mexico never suffers from overcrowded ballots or frivolous candidacies in its presidential elections. That is further confirmation that the party petition required by § 1-7-2(A) is sufficient, by itself, to protect New Mexico's regulatory interests, and that the candidate petitions required by § 1-8-1(B) are superfluous.

Finally, the State of New Mexico itself has submitted an amicus brief conceding that its statutory scheme is "plainly unconstitutional." The Secretary's unsupported assertions to the contrary should be rejected.

CONCLUSION

For the foregoing reasons, the Court should stay the District Court's Order denying Appellants a preliminary injunction, and the Court should grant Appellants' Motion and Order the Secretary to place Appellants Perl and Vigil on New Mexico's 2026 general election ballot.

Respectfully submitted,

/s/ Oliver B. Hall

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Pro hac vice

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on September 13, 2026, a true and correct copy of the foregoing was filed electronically pursuant to the CM/ECF procedure for the District of New Mexico and caused counsel of record to be served by electronic means.

/s/Oliver B. Hall

Oliver B. Hall