

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**

VOLUME II (Pages App. 109 to App. 301)

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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**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.

No.: _____

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.

COMPLAINT

1. This is an action to challenge the constitutionality of New Mexico's unique two-tier ballot access scheme for minor political parties, which requires that each candidate of a qualified minor party submit a separate petition to qualify for the general election ballot. Plaintiffs seek declaratory and injunctive relief prohibiting Defendants from enforcing this statutory scheme as applied to them in the 2026 general election. Plaintiffs also seek an injunction requiring Defendants to place on the ballot those nominees of the New Mexico Forward Party who were denied access to the ballot by operation of the statutory provisions challenged herein.

JURISDICTION AND VENUE

2. This Court has jurisdiction over this case pursuant to 28 U.S.C. §§ 1331 and 1343(a)(3) because Plaintiffs' claims arise under the United States Constitution.

3. This suit is authorized by 42 U.S.C. § 1983 because Plaintiffs seek redress for the deprivation of their rights under color of state law.

4. The declaratory relief and further relief requested is authorized by 28 U.S.C. §§ 2201 and 2202.

5. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b) because Defendants are state and local officials of New Mexico and reside in New Mexico.

PARTIES

6. Plaintiff New Mexico Forward Party (“NMFP”) is a “minor political party” within the meaning of New Mexico Statutes § 1-7-7(B).¹ 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, to provide competition and voter choice in New Mexico’s many non-competitive elections and to promote and build support for its platform among New Mexico voters. It maintains a business address at P.O. Box 507, Corrales, New Mexico, 87048.

7. Plaintiff Bob Perls is Chair of NMFP and NMFP’s nominee for United States Senate in the 2026 general election. He resides in Sandoval County, New Mexico, where he is a registered voter, and intends to remain and vote in future elections. Perls seeks to run for public office as a candidate of NMFP and to campaign for, speak and associate with and vote for NMFP’s candidates, and he is harmed by their exclusion from New Mexico’s general election ballot.

8. Plaintiff Michael Vigil is NMFP’s nominee for New Mexico State Auditor in the 2026 general election. He resides in Bernalillo County, New Mexico, where he is a registered voter, and intends to remain and vote in future elections. Vigil seeks to run for public office as a

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

candidate of NMFP and to campaign for, speak and associate with and vote for NMFP's candidates, and he is harmed by their exclusion from New Mexico's general election ballot.

9. Plaintiff Dennis Dingé is NMFP's State Secretary and NMFP's nominee for Public Education Commission District 3 in the 2026 general election. He resides in Bernalillo County, New Mexico, where he is a registered voter, and intends to remain and vote in future elections. Dingé seeks to run for public office as a candidate of NMFP and to campaign for, speak and associate with and vote for NMFP's candidates, and he is harmed by their exclusion from New Mexico's general election ballot.

10. Plaintiff Harry Montoya is a member of NMFP and NMFP's nominee for Santa Fe County Magistrate Judge in the 2026 general election. He resides in Santa Fe County, New Mexico, where he is a registered voter, and intends to remain and vote in future elections. Montoya seeks to run for public office as a candidate of NMFP and to campaign for, speak and associate with and vote for NMFP's candidates, and he is harmed by their exclusion from New Mexico's general election ballot.

11. Plaintiff Frances Kava is NMFP's nominee for Luna County Magistrate Judge in the 2026 general election. She resides in Luna County, New Mexico, where she is a registered voter, and intends to remain and vote in future elections. Kava seeks to run for public office as a candidate of NMFP and to campaign for, speak and associate with and vote for NMFP's candidates, and she is harmed by their exclusion from New Mexico's general election ballot.

12. Defendant Maggie Toulouse Oliver is the Secretary of State of the State of New Mexico ("the Secretary"). The Secretary is New Mexico's chief elections official and is responsible for administering and enforcing the New Mexico Election Code, including the provisions challenged herein. The Secretary's business address is New Mexico Secretary of State,

325 Don Gaspar, Suite 300, Santa Fe, New Mexico, 87501. Secretary Toulouse Oliver is sued in her official capacity only.

13. Defendant Barbara DeLaney is the County Clerk of Luna County, New Mexico. The County Clerk is Luna County's chief elections official and is responsible for administering and enforcing the New Mexico Election Code, including the provisions challenged herein as applied to candidates for countywide offices. The County Clerk's business address is Luna County Clerk's Office, 700 S. Silver Ave., Box 7, Deming, New Mexico, 88030. County Clerk DeLaney is sued in her official capacity only.

FACTUAL ALLEGATIONS

I. Ballot Access Requirements Under the New Mexico Election Code

14. New Mexico is the only state in the nation that requires the candidates of a minor political party that has successfully qualified by petition to submit their own individual petitions for placement on the general election ballot. This two-petition requirement has been in effect since 1979.

15. To place its candidates on New Mexico's general election ballot, a new political party must first petition for recognition as a qualified political party. *See* § 1-7-2(A). The petition must be signed by registered voters equal in number to 0.5 percent of the total vote in the preceding election for Governor. *See id.*

16. The petition required by § 1-7-2(A) must be submitted within 30 days after the party's organization and no later than 23 days after New Mexico's primary election day. *See* § 1-7-4(A). A new party that complies with these requirements becomes a qualified "minor political party." *See* § 1-7-4(B); § 1-7-7(B). The Secretary of State must notify the new party whether it successfully qualified within seven days. *See* § 1-7-4(B).

17. A qualified minor political party is not entitled to place its nominees on the general election ballot unless each candidate (except for President and Vice President) timely submits a petition with the required number of signatures. *See* § 1-8-1(B); § 1-8-2. The petitions required of each candidate must be submitted within 23 days after New Mexico’s primary election day—*i.e.*, on the last day that the new party may submit the petition required by § 1-7-2(A). *See* §§ 1-8-2(A), (B).

18. A new party’s candidates also must become members of the party no later than the date on which the party files its petition pursuant to § 1-7-2(A). *See* § 1-8-2(E)(1). The candidates therefore must join the party before they know whether it will become qualified.

19. The number of signatures a minor party candidate’s petitions must contain varies depending on the party’s size. If the party’s registered members statewide (for candidates for statewide office) or in the district in which the candidate runs (for candidates for offices other than statewide office) are no less than 1 percent of the total number of votes for Governor in the preceding election in that jurisdiction, then its candidates’ petitions must contain signatures totaling at least 1 percent of the total vote cast in the preceding election for Governor within that jurisdiction. *See* §§ 1-8-2(B)(1), (2). If the party’s members within the relevant jurisdiction equal less than 1 percent of the total vote cast in the preceding election for Governor within that jurisdiction, then its candidates’ petitions must contain signatures totaling at least 2 percent of the total vote cast in the preceding election for Governor within that jurisdiction. *See* §§ 1-8-2(B)(1), (2); §§ 1-8-51(C), (D), (E).

20. Minor party candidates must submit nomination petitions “on forms prescribed by law.” *See* § 1-8-65(B). The Secretary of State is required to post the nomination petition form on

its website and to furnish it to county clerks in March of even-numbered years—that is, the year in which the candidate seeks to qualify for the general election ballot. *See* § 1-8-65(D).

21. The primary election is held on the first Tuesday after the first Monday in June. *See* § 1-8-11.

22. Under New Mexico law, a “major political party” is any qualified political party that had a candidate who 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, and whose membership totals not less than one-third of one percent of statewide registered voters. *See* § 1-7-7(A).

23. Major parties nominate their candidates in the primary election. *See* § 1-8-1(A). Major parties can designate candidates for placement on the primary election ballot by holding a vote at convention; each candidate who receives at least 20 percent of the vote qualifies for placement on the primary election ballot. *See* § 1-8-21.1.

24. Major party candidates can also qualify for the primary election ballot by submitting petitions and declarations of candidacy. *See* §§ 1-8-21(A), (B).

25. For statewide office, major party candidates’ petitions must contain signatures from party members equal to 3 percent of the total vote in the party’s preceding primary election for Governor. *See* § 1-8-33(C).² Candidates for other offices are subject to lesser requirements. *See id.*

26. Major party candidates’ petitions and declarations must be filed on the second Tuesday of March in even-numbered years. *See* § 1-8-26(B).

² The Candidate Information Guide published by the Secretary states, apparently erroneously, that major party candidates are subject to a 2 percent signature requirement. *See* New Mexico Secretary of State, *2026 Candidate Information Guide*, at 30, available at <https://www.sos.nm.gov/candidate-and-campaigns/how-to-become-a-candidate/2026-elections-candidate-information/> (accessed July 10, 2026).

27. Like minor party candidates, major party candidates must circulate a nomination petition form prepared by the Secretary of State. *See* §§ 1-8-30(A), (B). Unlike the nomination petition form for minor party candidates, which is not available until March of the election year, *see* § 1-8-65(D), the Secretary of State must post the major party nomination form online and make it available in October of the preceding year. *See* § 1-8-30(D).

II. New Mexico’s Ballot Access Requirements Impose Severe and Unequal Burdens on Minor Political Parties and Their Candidates, Including Plaintiffs

28. New Mexico is the only state that imposes a petitioning requirement on each candidate of a qualified minor party. Maryland previously did, but its statutory scheme was struck down under the state Constitution. *See Maryland Green Party v. Maryland Bd. of Elections*, 832 A.2d 214, 231 (Md. 2003) (holding that Maryland’s “two-tiered petitioning requirement for minor parties discriminates against minor political parties in violation of the equal protection component of Article 24 of the Maryland Declaration of Rights.”). A major party candidate, the Court reasoned, “does not have to show any personal ‘modicum of support’ to be on the general election ballot; the ‘modicum of support’ is the prior support of the party itself.” *Id.* at 232-33. By contrast, for a minor party candidate, “the requisite 1% showing of support is *in addition* to the initial showing of support which the minor political party has already demonstrated upon submitting its party-forming petition.” *Id.* at 233 (emphasis original).

29. In New Mexico, a newly qualified minor political party and its candidates are in precisely the same position that minor parties and their candidates were in Maryland before its two-tiered statutory scheme was struck down. Like the additional petitioning requirement that Maryland imposed on individual candidates of minor parties, the additional petitioning requirement that New Mexico imposes on individual candidates of minor parties is wholly

unnecessary to protect any legitimate state interest. It serves only to erect a drastic barrier against minor parties' participation in New Mexico's electoral process.

30. There were 712,256 total votes in New Mexico's last election for Governor in 2022. *See* New Mexico Secretary of State, 2022 Nov. 8 General, Governor, available at <https://electionstats.sos.nm.gov/contest/11090> (accessed July 8, 2026). To qualify in 2026, therefore, NMFP was required to submit a petition with 3,561 signatures of New Mexico voters. *See* § 1-7-2(A).

31. NMFP's party petition was due within 30 days of its organization and no later than 23 days after New Mexico's primary election. NMFP's organizing event was held on April 10, 2026, when a national Forward Party co-founder, Andrew Yang, visited New Mexico to publicize and launch the state party. *See* §§ 1-7-4(A); 1-8-11. The primary election was held on June 2, 2026; NMFP's party petition was therefore due no later than June 25, 2026. *See id.*

32. NMFP timely filed its party petition on May 8, 2026. The petition contained approximately 5,500 signatures, and the Secretary notified NMFP that it was a qualified minor political party on or about May 14, 2026.

33. NMFP and any candidates seeking to run as its nominees faced an initial quandary. Pursuant to § 1-8-2(B), such candidates were required to submit their petitions on June 25, 2026, but pursuant to § 1-8-2(E)(1), the petitions would not be valid unless the candidates had registered with NMFP on or before May 8, the date on which NMFP submitted its party petition. The candidates were therefore required to change their voter registration to NMFP before they knew whether NMFP would be a qualified party in the 2026 election cycle. *See* §§ 1-8-2(B), (E)(1).

34. The next challenge facing NMFP's candidates is the onerous signature requirements imposed by § 1-8-2(B). As calculated by the Secretary for purposes of the 2026

general election, 1 percent of the total vote for Governor in the preceding election equals 7,100, and 2 percent equals 14,200. *See* 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, available at <https://www.sos.nm.gov/wp-content/uploads/2026/04/2026-Nominating-Petition-Calculations-for-Minor-Parties-and-Independent.pdf> (accessed July 8, 2026). Pursuant to §§ 1-8-2(B)(1) and (2), therefore, if a minor party has more than 7,100 registered members statewide, then its candidates for statewide office must submit petitions containing 7,100 signatures, but if it has fewer than 7,100 registered members statewide, then its candidates for statewide office must submit petitions containing 14,200 signatures.

35. It was practically impossible for NMFP to register 7,100 members by June 25, 2026, the date on which NMFP’s candidates’ petitions were due, because NMFP was not certified as a qualified minor party until May 14, just six weeks prior. Additionally, voters could not change their registration to NMFP online from May 5, 2026 until June 8, 2026 because the New Mexico Online Voter Registration Portal was unavailable during that period. *See* New Mexico Secretary of State, *New Mexico Online Voter Registration*, available at [https://portal1.sos.nm.gov/OVR/\(S\(t3rg3zgdnlxq4r3qndopojdq\)\)/WebPages/InstructionsStep1.aspx](https://portal1.sos.nm.gov/OVR/(S(t3rg3zgdnlxq4r3qndopojdq))/WebPages/InstructionsStep1.aspx) (accessed July 12, 2026).

36. As a qualified minor party with fewer than 7,100 members, NMFP’s candidates for statewide office were required to submit petitions with 14,200 signatures. *See* §§ 1-8-2(B)(1), (2).

37. The Secretary of State’s Petition Calculations, *supra*, do not specify the signature requirements applicable to a newly qualified minor party like NMFP, and only include the signature requirements applicable to minor parties that meet the membership threshold set forth in § 1-8-2(B)(1), as well as the signature requirements for independent candidates—which is the

requirement that NMFP candidates must meet pursuant to § 1-8-2(B)(1). *See* Petition Calculations at 2-11.

38. NMFP repeatedly sought clarification from the Secretary's office, via written requests, to determine whether its candidates were required to comply with the signature requirements applicable to minor parties, or to independent candidates. The Secretary's General Counsel confirmed in writing that NMFP's candidates must meet the requirements that apply to independent candidates.

39. As specified by § 1-8-2(B)(1), to run a full slate of candidates for statewide office, a newly qualified party like NMFP that has fewer than 7,100 members was required to meet the higher signature requirement applicable to independent candidates, as follows:

United States Senate:	14,200
Governor:	14,200
Lieutenant Governor:	14,200
Secretary of State:	14,200
Attorney General:	14,200
State Auditor:	14,200
State Treasurer:	14,200
Commissioner of Public Lands:	14,200
Court of Appeals Judge:	14,200

That is a total of 127,800 signatures required for NMFP to qualify its candidates for all statewide offices in New Mexico. Together with the new party petition NMFP itself was required to submit with 3,561 signatures, NMFP needed to submit 10 separate petitions with 131,361 total signatures to qualify its candidates for all statewide offices. But even if NMFP complied with that

requirement, as onerous as it is, it still would not be permitted to run any candidates for the hundreds more offices for state legislature, judicial office, public education commissioner and county office unless its candidates submitted separate petitions for each of those offices. *See* Petition Calculations, *supra*, at 2-11.

40. On its face, New Mexico’s statutory scheme makes it practically impossible for a new party to become qualified to run candidates for federal, state and local offices.

41. Even if NMFP were subject to the signature requirements applicable to minor parties—and as a newly qualified party with fewer than 7,100 members, it is not, *see* § 1-8-2(B)(1)—it would still need to submit 10 separate petitions with a total of 67,461 signatures to run a full slate of statewide candidates. Its candidates for the hundreds of other offices on the general election ballot would also be required to submit separate petitions.

42. New Mexico’s candidate petition signature requirements—whether for a newly qualified minor party like NMFP that must comply with the “independent” requirement or for a minor party with enough members that it must comply with the “minor party” requirement, *see* § 1-8-2(B)(1)—impose grossly excessive burdens on minor parties and their candidates. Yet the candidate petitions are not needed to further any legitimate state interest at all. *See Maryland Green Party*, 832 A.2d at 231-33.

43. New Mexico also imposes undue restrictions on petitioning by minor parties and their candidates. NMFP’s candidates were required to submit their petitions on or before June 25, 2026, *see* § 1-8-2(B), but under New Mexico law the petition forms the candidates were required to use are not made available until March. *See* § 1-8-65. Furthermore, although the Secretary was permitted to make the petition forms available on March 1, 2026, the Secretary did not do so until on or about March 29, 2026. That would have given NMFP’s candidates less than three months

to circulate petitions to comply with their signature requirements. But NMFP's candidates could not start petitioning until NMFP completed its petition and the Secretary certified it as a qualified party, which did not occur until May 14, 2026. As a result, NMFP candidates had just 41 days to circulate their petitions.

44. The onerous signature requirements and short petitioning periods that New Mexico imposes on NMFP and its candidates stand in sharp contrast with the procedures it has adopted for major party candidates. Major party candidates may be designated for placement on the primary election ballot by a vote at convention. *See* § 1-8-21.1. Such candidates also may qualify by petition, but whereas NMFP's candidates for statewide office were required to meet a signature requirement of 14,200, candidates for statewide office seeking access to the Democratic Party or Republican Party primary ballot needed only 2,505 signatures, or 2,351 signatures, respectively. *See* New Mexico Secretary of State, *2026 Candidate Information Guide*, at 30, available at <https://www.sos.nm.gov/candidate-and-campaigns/how-to-become-a-candidate/2026-elections-candidate-information/> (accessed July 10, 2026). Plaintiffs Perls and Vigil, NMFP's two statewide candidates, exceeded these major party signature requirements.

45. Additionally, while major party candidates need only a fraction of the signatures required of NMFP's candidates, New Mexico law affords them nearly twice the time to obtain them. The petition forms major party candidates circulate must be made available in October of the year prior to the primary election for which they seek to qualify. *See* § 1-8-30(D). In 2026, the petitions were due on or before March 10, 2026. *See* § 1-8-30(D). Major party candidates are thus permitted to circulate their petitions for approximately 5-1/2 months, depending on when in October the Secretary makes the petition forms available. Unlike the petition form NMFP was required to use, which was unavailable until nearly the last day the Secretary was statutorily

permitted to post it, the Secretary posted the major party petition form on or about October 1, 2025—the first day the Secretary was permitted to make it available.

46. To its credit, New Mexico has implemented an electronic petitioning platform that enables voters to sign candidates' nomination petitions online. *See* New Mexico Secretary of State, *Sign A Petition*, available at <https://www.electronicpetitions.elections.sos.nm.gov/> (accessed July 10, 2026). Due to the shortness of time, NMFP and its candidates planned to rely on the platform to gather their signatures, by using social media, email and other communications to encourage their supporters to sign their petitions online. They were largely unable to do so, however, because the platform was not functional for NMFP candidates during the majority of their petitioning period—specifically, the Secretary deactivated the platform from May 5, 2026 – June 8, 2026—and it did not become functional for NMFP's candidates until up to two weeks after that. Even then, many voters were unable to use it due to technical errors that prevented them from signing NMFP's candidates' petitions.

47. NMFP and its candidates spent almost \$63,000 to promote candidates' petition drives. Of this, NMFP spent approximately \$11,000 hiring petition circulators and paying for the materials and supplies necessary to gather voters' wet signatures at public events. NMFP spent over \$44,500 promoting candidates' petitions in text message campaigns asking supporters to sign petitions through New Mexico's electronic petitioning platform. Additionally, individual candidates collectively spent approximately \$7,245 on their text messaging campaigns and field operations to gather signatures for their own petitions.

48. Plaintiff Perls is NMFP's candidate for United States Senate and was therefore required to submit a petition with 14,200 signatures. NMFP spent approximately \$19,900 of its text messaging budget and Perls spent another \$750 to fund his petition drive. More than 450,000

texts were sent to registered voters which produced over 11,300 “click-throughs” but less than 300 completed signatures.³ New Mexico’s electronic petitioning platform was not functional for Perls’s campaign until June 12, and thereafter, voters contacted Perls or NMFP to report that technical errors often prevented them from using it to sign his petition. Perls also sent two email blasts to approximately 5,000 of his own personal and political contacts, which produced only approximately 200 signatures through the platform. NMFP’s field operations budget also helped fund Perls’s petition drive through the paid petition circulators who gathered wet signatures on paper petitions at public events. Perls timely submitted approximately 2,700 signatures—approximately 2,100 on paper petitions and 600 more through the platform—and on June 30, 2026, the Secretary notified him that he did not qualify for New Mexico’s 2026 general election ballot. The Secretary’s notification erroneously stated that Perls was required to submit 7,100 signatures pursuant to § 1-8-2, when in fact he was required to submit 14,200.

49. Plaintiff Vigil is NMFP’s candidate for State Auditor and was therefore required to submit a petition with 14,200 signatures. NMFP spent approximately \$24,600 of its text messaging budget to fund Vigil’s petition drive. Close to 590,000 texts were sent to registered voters which produced almost 34,000 click-throughs but less than 1,500 completed signatures. New Mexico’s electronic petitioning platform was not functional for Vigil’s campaign until June 12, and thereafter, voters contacted Vigil or NMFP to report that technical errors often prevented them from using it to sign his petition. NMFP’s field operations budget also helped fund Vigil’s petition drive through the paid petition circulators who gathered wet signatures on paper petitions at public events. Vigil timely submitted approximately 4,400 signatures—approximately 2,700 on

³ A “click-through” is a tracked interaction recorded by the messaging platform when a text message recipient clicks or taps the petition link in the message. A click-through indicates the recipient followed the link to the Secretary of State’s electronic petition platform; it does not mean the voter successfully submitted an electronic signature.

paper petitions and 1,770 more through the platform—and on June 30, 2026, the Secretary notified him that he did not qualify for New Mexico’s 2026 general election ballot. The Secretary’s notification erroneously stated that Vigil was required to submit 7,100 signatures pursuant to § 1-8-2, when in fact he was required to submit 14,200.

50. Plaintiff Dingé is NMFP’s candidate for Public Education Commission District 3 and was therefore required to submit a petition with 1,014 signatures. NMFP’s field operations budget helped fund Dingé’s petition drive through the paid petition circulators who gathered wet signatures on paper petitions at public events. Dingé also personally spent approximately \$4,000 to fund his petition drive. These funds were dedicated to promoting his petition drive on social media and text message campaigns asking supporters to sign his petition through New Mexico’s electronic petitioning platform. That platform was not functional for Dingé’s campaign until June 15, and thereafter, voters contacted Dingé or NMFP to report that technical errors often prevented them from using it to sign his petition. More than 80,000 texts were sent to registered voters, generating nearly 8,300 click-throughs and about 200 completed signatures. Dingé timely submitted approximately 1,230 signatures—approximately 1,000 on paper petitions and over 220 through the platform—and on June 30, 2026, the Bernalillo County Clerk notified him that he qualified for New Mexico’s 2026 general election ballot.

51. Plaintiff Montoya is NMFP’s candidate for Santa Fe County Magistrate Judge and was therefore required to submit a petition with 928 signatures. Montoya personally spent approximately \$1,945 to fund his petition drive. Of these funds, \$300 was dedicated to promoting his petition through his own local field operations and over \$1,600 was spent on a text message campaign asking supporters to sign his petition through New Mexico’s electronic petitioning platform. That platform was not functional for Montoya’s campaign until June 22. Over 41,000

texts were sent to registered voters, generating almost 1,800 click-throughs and only about 30 completed signatures. Montoya timely submitted 984 signatures—almost all of which were on paper petitions because the platform was functional for only two days of his petitioning period—and on June 30, 2026, the Santa Fe County Clerk notified him that he qualified for New Mexico’s 2026 general election ballot.

52. Plaintiff Kava is NMFP’s candidate for Luna County Magistrate Judge and was therefore required to submit a petition with 59 signatures. Kava spent approximately \$550 on her petition drive, and primarily relied on herself and volunteers to collect signatures. Kava personally dedicated approximately 48 hours to the effort and her volunteers dedicated another 40 hours, collecting both wet and electronic signatures primarily through their own personal networks. Kava’s campaign expenses included \$200 spent on sending more than 3,500 texts to registered voters, generating almost 1,200 click-throughs but only about 15 completed signatures. Kava timely submitted 118 signatures—approximately 70 on paper petitions and about 50 electronic signatures even though the platform was not functional for Kava until June 13—and on June 30, 2026, the Luna County Clerk (Defendant DeLaney) notified her that she did not qualify for New Mexico’s 2026 general election ballot. Although Kava met the signature requirement, Defendant DeLaney stated that Kava was disqualified because she failed to register with NMFP on May 8, 2026, “which was the date the Secretary of State qualified the New Mexico Forward Party.” In fact, the Secretary qualified NMFP on or about May 14, 2026.

53. Pursuant to § 1-8-2(E)(1), both Plaintiff Montoya and Plaintiff Kava were required to register as a member of NMFP on or before May 8, 2026. Neither Montoya nor Kava did. Nevertheless, the Santa Fe County Clerk recognized Montoya as qualified to appear on the

county's general election ballot, but Defendant DeLaney notified Kava that she did not qualify because she failed to comply with § 1-8-2(E)(1).

54. NMFP and its candidates spent close to \$63,000 for a large, sophisticated field operation and digital outreach program intended to leverage New Mexico's online petitioning platform. Nearly 1.166 million text messages were sent out to more than 500,000 registered New Mexico voters, generating more than 56,000 click-throughs to NMFP candidates' electronic petitions—yet fewer than 2,700 total electronic signatures were completed through the online platform because it was not functional for the majority of the limited period during which New Mexico permitted NMFP's candidates to circulate petitions.

55. Despite these efforts and the funds and resources dedicated to them, NMFP was unable to qualify a single candidate for statewide office, and qualified just one candidate for Public Education Commission and one candidate for magistrate judge.

III. No Legitimate or Compelling State Interest Justifies New Mexico's Onerous Ballot Access Requirements.

54. In recent decades, New Mexico has never had an overcrowded ballot. It has never had any regulatory problems because too many candidates were able to qualify. The opposite is true.

55. Since 2000, in all races for each state and federal office except President, New Mexico has never had more than four candidates qualify to appear on its general election ballot. Only one race since 2000 had as many as four candidates qualify for the general election ballot. Every other race had three candidates or fewer. *See generally* New Mexico Secretary of State, *Election Results*, available at <https://www.sos.nm.gov/voting-and-elections/election-results/> (accessed July 6, 2026).

56. Presidential elections are an exception because New Mexico imposes no petitioning requirement on candidates for President and Vice President. Any qualified political party can place its presidential ticket on New Mexico's general election ballot just by nominating them at a convention and notifying the Secretary of State. *See* § 1-15-3.

57. Despite imposing no petitioning requirement on qualified parties' candidates for President and Vice President, New Mexico has not had an overcrowded ballot in presidential elections in recent decades. Counting the Democratic Party and Republican Party nominees, New Mexico's general election ballot in presidential elections has included the following number of tickets: in 2024, 7; in 2020, 6; in 2016, 8; in 2012, 6; in 2008, 6; in 2004, 6; in 2000, 7; and in 1996, 7. *See generally* New Mexico Secretary of State, *Election Results*, available at <https://www.sos.nm.gov/voting-and-elections/election-results/> (accessed July 6, 2026).

58. New Mexico regularly has elections with only one candidate running unopposed. That is true of a *majority* of state legislative races in almost every election cycle for the last two decades: only one candidate appeared on the ballot running unopposed.⁴

59. In presidential election years, when New Mexico has a total of 112 state legislative races (for State House and State Senate), at least 224 candidates would need to qualify for the ballot to ensure that every race provided voters with a choice between at least two candidates. That has not happened for more than 20 years.

60. In 2004, 67 state legislative candidates ran unopposed, meaning only one candidate qualified for the general election ballot in 59.82 percent of state legislative races.

61. In 2008, 70 state legislative candidates ran unopposed, meaning only one candidate qualified for the general election ballot in 62.50 percent of state legislative races.

⁴ The figures reported exclude write-in candidates. *See Anderson v. Celebrezze*, 460 U.S. 780, 799 n.26 (1983) (Write-in voting "is not an adequate substitute for having the candidate's name appear on the printed ballot.").

62. In 2012, 56 state legislative candidates ran unopposed, meaning only one candidate qualified for the general election ballot in 50 percent of state legislative races.

63. In 2016, 67 state legislative candidates ran unopposed, meaning only one candidate qualified for the general election ballot in 59.82 percent of state legislative races.

64. In 2020, 29 state legislative candidates ran unopposed, meaning only one candidate qualified for the general election ballot in 25.89 percent of state legislative races.

65. In 2024, 64 state legislative candidates ran unopposed, meaning only one candidate qualified for the general election ballot in 57.14 percent of state legislative races.

66. In midterm years, when New Mexico has a total of 70 state legislative races (for State House only), at least 140 candidates would need to qualify for the ballot to ensure that every race provided voters with a choice between at least two candidates. That has not happened for more than 20 years.

67. In 2002, 35 state legislative candidates ran unopposed, meaning only one candidate qualified for the general election ballot in 50 percent of state legislative races.

68. In 2006, 39 state legislative candidates ran unopposed, meaning only one candidate qualified for the general election ballot in 55.71 percent of state legislative races.

69. In 2010, 37 state legislative candidates ran unopposed, meaning only one candidate qualified for the general election ballot in 52.86 percent of state legislative races.

70. In 2014, 36 state legislative candidates ran unopposed, meaning only one candidate qualified for the general election ballot in 51.43 percent of state legislative races.

71. In 2018, 33 state legislative candidates ran unopposed, meaning only one candidate qualified for the general election ballot in 47.14 percent of state legislative races.

72. In 2022, 30 state legislative candidates ran unopposed, meaning only one candidate qualified for the general election ballot in 42.86 percent of state legislative races.

73. In all state legislative races from 2002–2024, there has never been more than three candidates on the ballot.

74. The Supreme Court has opined that ballots including “a dozen or more” candidates for a single office might be problematic. *See Lubin v. Panish*, 415 U.S. 709, 715-16 (1974). But “the presence of eight candidacies [for a single office] cannot be said, in light of experience, to carry a significant danger of voter confusion.” *Williams v. Rhodes*, 393 U.S. 23, 47 (1968) (Harlan, J., concurring) (“As both Ohio’s electoral history and the actions taken by the overwhelming majority of other States suggest, opening the ballot to this extent is perfectly consistent with the effective functioning of the electoral process.”).

75. Many states frequently accommodate more than 10 candidates on their primary election ballots. In 2020 alone, the Democratic Party’s presidential primary ballot included more than 10 candidates in 29 states: Alabama (14 candidates); Arizona (12 candidates); Arkansas (18 candidates); California (20 candidates); Colorado (13 candidates); Florida (16 candidates); Georgia (12 candidates); Idaho (17 candidates); Illinois (12 candidates); Louisiana (14 candidates); Maine (12 candidates); Maryland (14 candidates); Massachusetts (15 candidates); Michigan (15 candidates); Minnesota (15 candidates); Missouri (22 candidates); New Hampshire (33 candidates); New York (11 candidates); North Carolina (15 candidates); Oklahoma (14 candidates); South Carolina (12 candidates); Tennessee (15 candidates); Texas (17 candidates); Utah (15 candidates); Vermont (13 candidates); Virginia (14 candidates); Washington (13 candidates); West Virginia (12 candidates); and Wisconsin (12 candidates). *See Federal Election Commission, 2020 Presidential Primary Election Results*, available at

<https://www.fec.gov/resources/cms-content/documents/federalections2020.pdf> (accessed July 6, 2026).

76. In New Mexico, by contrast, in the last two decades fewer than two candidates, on average, qualified for the general election ballot in each state legislative race. The results are similar for New Mexico's elections for U.S. House and U.S. Senate. From 2002 to 2024, there have been 44 such races, in which a collective total of only 93 candidates ran. In almost all of these races, therefore, just two candidates qualified for the ballot. And in New Mexico's elections for statewide state offices, the pattern holds true: from 2002 to 2024, there were 65 such races in which a collective total of only 135 candidates qualified for the ballot. Once again, in almost all of these races, just two candidates qualified for the ballot.

IV. New Mexico's Statutory Scheme Is Unconstitutional Under Existing Supreme Court Precedent

77. New Mexico's undue restrictions on petitioning—it allows minor party candidates less than three months to circulate their nomination petitions—violate the First Amendment. *See Meyer v. Grant*, 486 U.S. 414, 422, 425 (1988). New Mexico's statutory scheme also operates as an exclusionary mechanism that denies voters, including Plaintiffs, the right to cast their votes for candidates of their choosing. *See American Party of Texas v. White*, 415 U.S. 767, 794 (1974). It severely burdens Plaintiffs' right to cast their votes effectively, to speak and associate for political purposes, and to the equal protection of law, and it is not reasonably tailored to further a sufficiently weighty state interest, given the availability of less burdensome alternatives. *See Anderson v. Celebrezze*, 460 U.S. 780, 789 (1983); *Burdick v. Takushi*, 504 U.S. 428, 434 (1992). As applied to Plaintiffs, New Mexico's statutory scheme is unconstitutional.

CAUSES OF ACTION

COUNT I

(Violation of Plaintiffs' Rights Guaranteed by the First and Fourteenth Amendments)

78. Plaintiffs reassert each preceding allegation as if set forth fully herein.

79. New Mexico prohibits minor party candidates from petitioning until March of the year in which they seek to qualify for the ballot. *See* §§ 1-8-65(A), (B), (D).

80. Sections 1-8-65(A), (B), and (D) are not merely a time-limitation on petitioning but a categorical prohibition on the exercise of First Amendment rights. The provisions prevent candidates from engaging in what the Supreme Court has recognized as “core political speech”—the circulation of nomination petitions to express support for a candidacy and to associate with like-minded voters. *Grant*, 486 U.S. at 421–22.

81. This prohibition is both content-based and speaker-based: it applies to speech in support of minor party candidacies, while New Mexico permits identical speech in support of major party candidacies for nearly twice the length of time. It is also viewpoint-discriminatory insofar as it suppresses speech advocating political alternatives to the two major parties during the critical months when those parties are actively soliciting voters' support in their primary elections.

82. As applied to Plaintiffs, §§ 1-8-65(A), (B), (D) prohibited them from circulating nomination petitions in support of their candidates except for the statutorily prescribed period that began on or about March 29, 2026 and ended June 25, 2026.

83. Sections 1-8-65(A), (B), (D), as applied separately and in conjunction with the other statutory provisions challenged herein, both cause injury to and violate rights guaranteed to Plaintiffs by the First and Fourteenth Amendments to the U.S. Constitution.

COUNT II

(Violation of Plaintiffs' Rights Guaranteed by the First and Fourteenth Amendments)

84. Plaintiffs reassert each preceding allegation as if set forth fully herein.

85. New Mexico imposes severely burdensome requirements and restrictions on minor parties and their candidates that seek access to its general election ballot.

86. Specifically, minor parties and their candidates must:

- (a) Submit a petition to become a qualified minor party containing signatures equal to one-half of one percent of the total vote for Governor in the preceding election, *see* § 1-7-2(A);
- (b) Recruit candidates to join the party before the party is qualified, and any candidates who do not are ineligible to be the party's nominee, *see* § 1-8-2(E);
- (c) After the minor party qualifies, each candidate must submit a separate petition to qualify for the general election ballot within 23 days of the primary election, *see* § 1-8-2(B);
- (d) If the minor party's membership is equal to at least 1 percent of the total vote for Governor statewide (for candidates for statewide office) or in the candidate's district (for other offices), then the candidate's petition must contain signatures equal to at least 1 percent of the total vote for Governor in the preceding election, *see* § 1-8-2(B)(1);
- (e) If the minor party's membership is equal to less than 1 percent of the total vote for Governor statewide (for candidates for statewide office) or in the candidate's district (for other offices), then the candidate's petition must contain signatures equal to at least 2 percent of the total vote for Governor in the preceding election, *see* § 1-8-2(B)(1); and
- (f) Minor party candidates may not begin circulating petitions to qualify for the general election ballot until the Secretary makes the petition forms available in March of the election year, *see* §§ 1-8-65(A), (B), (D).

87. The statutory provisions in the preceding paragraph, operating separately and in conjunction with one another, impose substantial or severe burdens on minor party candidates and on voters who support or may wish to support them, which are not justified by any legitimate or compelling state interest.

88. These provisions, as applied separately and in conjunction with one another, both cause injury to and violate rights guaranteed to Plaintiffs by the First and Fourteenth Amendments to the U.S. Constitution.

COUNT III

(Violation of Plaintiffs' Rights Guaranteed by the Equal Protection Clause)

89. Plaintiffs reassert each preceding allegation as if set forth fully herein.

90. New Mexico's ballot access requirements for minor party candidates, and specifically those statutory provisions enumerated in Count I and Count II of this Complaint, as applied separately and in conjunction with one another, both cause injury to and violate rights guaranteed to Plaintiffs by the Equal Protection Clause of the U.S. Constitution.

PRAYER FOR RELIEF

91. WHEREFORE, Plaintiffs respectfully request that the Court:

A. Enter a declaratory judgment holding that §§ 1-8-65(A), (B), (D), which prohibit minor party candidates from petitioning until March of the year in which they seek to qualify for the general election ballot, violate the First Amendment;

B. Enter a declaratory judgment holding that New Mexico's statutory scheme regulating ballot access for minor party candidates is unconstitutional as applied to Plaintiffs, and that the following statutory provisions are unconstitutional as applied separately and in conjunction with one another: §§ 1-7-2(A); 1-8-2(B); 1-8-2(B)(1); 1-8-2(E); and 1-8-65(A), (B), (D).

C. Enter an order enjoining the Secretary and County Clerk DeLaney from enforcing the challenged provisions as applied to Plaintiffs;

D. Award other and further relief as the Court deems proper, including such relief as may be necessary to ensure the placement of Plaintiff Perls, Plaintiff Vigil and Plaintiff Kava on New Mexico's 2026 general election ballot as Plaintiff NMFP's candidates for United States Senator, State Auditor and Luna County Magistrate Judge, respectively;

E. Award litigation costs and attorneys' fees pursuant to 42 U.S.C. § 1988; and

F. Retain jurisdiction of this action and grant the Plaintiffs any further relief which may in the discretion of the Court be necessary and proper.

Dated: July 14, 2026

Respectfully submitted,

WESTERN AGRICULTURE, RESOURCE
AND BUSINESS ADVOCATES, LLP

/s/ A. Blair Dunn

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CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

New Mexico Forward Party, Bob Perls, Michael Vigil,
Dennis Dingel, Harry Montoya and Frances Kava

(b) County of Residence of First Listed Plaintiff _____
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Please see attached.

DEFENDANTS

New Mexico Secretary of State Maggie Toulouse Oliver and
County Clerk of Luna County Barbara DeLaney

County of Residence of First Listed Defendant _____
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF
THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☐ 2 U.S. Government Defendant
- ☐ 3 Federal Question
(U.S. Government Not a Party)
- ☐ 4 Diversity
(Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | ☐ 1 | ☐ 1 | Incorporated or Principal Place of Business In This State | ☐ 4 | ☐ 4 |
| Citizen of Another State | ☐ 2 | ☐ 2 | Incorporated and Principal Place of Business In Another State | ☐ 5 | ☐ 5 |
| Citizen or Subject of a Foreign Country | ☐ 3 | ☐ 3 | Foreign Nation | ☐ 6 | ☐ 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: [Nature of Suit Code Descriptions.](#)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
☐ 110 Insurance ☐ 120 Marine ☐ 130 Miller Act ☐ 140 Negotiable Instrument ☐ 150 Recovery of Overpayment & Enforcement of Judgment ☐ 151 Medicare Act ☐ 152 Recovery of Defaulted Student Loans (Excludes Veterans) ☐ 153 Recovery of Overpayment of Veteran's Benefits ☐ 160 Stockholders' Suits ☐ 190 Other Contract ☐ 195 Contract Product Liability ☐ 196 Franchise	PERSONAL INJURY ☐ 310 Airplane ☐ 315 Airplane Product Liability ☐ 320 Assault, Libel & Slander ☐ 330 Federal Employers' Liability ☐ 340 Marine ☐ 345 Marine Product Liability ☐ 350 Motor Vehicle ☐ 355 Motor Vehicle Product Liability ☐ 360 Other Personal Injury ☐ 362 Personal Injury - Medical Malpractice PERSONAL INJURY ☐ 365 Personal Injury - Product Liability ☐ 367 Health Care/Pharmaceutical Personal Injury Product Liability ☐ 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY ☐ 370 Other Fraud ☐ 371 Truth in Lending ☐ 380 Other Personal Property Damage ☐ 385 Property Damage Product Liability	☐ 625 Drug Related Seizure of Property 21 USC 881 ☐ 690 Other LABOR ☐ 710 Fair Labor Standards Act ☐ 720 Labor/Management Relations ☐ 740 Railway Labor Act ☐ 751 Family and Medical Leave Act ☐ 790 Other Labor Litigation ☐ 791 Employee Retirement Income Security Act IMMIGRATION ☐ 462 Naturalization Application ☐ 465 Other Immigration Actions	☐ 422 Appeal 28 USC 158 ☐ 423 Withdrawal 28 USC 157 INTELLECTUAL PROPERTY RIGHTS ☐ 820 Copyrights ☐ 830 Patent ☐ 835 Patent - Abbreviated New Drug Application ☐ 840 Trademark ☐ 880 Defend Trade Secrets Act of 2016 SOCIAL SECURITY ☐ 861 HIA (1395ff) ☐ 862 Black Lung (923) ☐ 863 DIWC/DIWW (405(g)) ☐ 864 SSID Title XVI ☐ 865 RSI (405(g)) FEDERAL TAX SUITS ☐ 870 Taxes (U.S. Plaintiff or Defendant) ☐ 871 IRS—Third Party 26 USC 7609	☐ 375 False Claims Act ☐ 376 Qui Tam (31 USC 3729(a)) ☐ 400 State Reapportionment ☐ 410 Antitrust ☐ 430 Banks and Banking ☐ 450 Commerce ☐ 460 Deportation ☐ 470 Racketeer Influenced and Corrupt Organizations ☐ 480 Consumer Credit (15 USC 1681 or 1692) ☐ 485 Telephone Consumer Protection Act ☐ 490 Cable/Sat TV ☐ 850 Securities/Commodities/Exchange ☐ 890 Other Statutory Actions ☐ 891 Agricultural Acts ☐ 893 Environmental Matters ☐ 895 Freedom of Information Act ☐ 896 Arbitration ☐ 899 Administrative Procedure Act/Review or Appeal of Agency Decision ☐ 950 Constitutionality of State Statutes
REAL PROPERTY ☐ 210 Land Condemnation ☐ 220 Foreclosure ☐ 230 Rent Lease & Ejectment ☐ 240 Torts to Land ☐ 245 Tort Product Liability ☐ 290 All Other Real Property	CIVIL RIGHTS ☐ 440 Other Civil Rights ☐ 441 Voting ☐ 442 Employment ☐ 443 Housing/Accommodations ☐ 445 Amer. w/Disabilities - Employment ☐ 446 Amer. w/Disabilities - Other ☐ 448 Education PRISONER PETITIONS Habeas Corpus: ☐ 463 Alien Detainee ☐ 510 Motions to Vacate Sentence ☐ 530 General ☐ 535 Death Penalty Other: ☐ 540 Mandamus & Other ☐ 550 Civil Rights ☐ 555 Prison Condition ☐ 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN (Place an "X" in One Box Only)

- ☐ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from Another District (specify)
- ☐ 6 Multidistrict Litigation - Transfer
- ☐ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
42 U.S.C. § 1983

Brief description of cause:

An action to challenge the constitutionality of New Mexico's unique two-tier ballot access scheme for minor political parties

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$ _____

CHECK YES only if demanded in complaint:
JURY DEMAND: ☐ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE _____ DOCKET NUMBER _____

DATE

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

CIVIL COVER SHEET ATTACHMENT

Plaintiffs' Counsel

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**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.

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.

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

PLAINTIFFS' EMERGENCY MOTION FOR PRELIMINARY INJUNCTION

Pursuant to Federal Rule of Civil Procedure 65, Plaintiffs New Mexico Forward Party (“NMFP”), Bob Perls, Michael Vigil, Dennis Dingo, Harry Montoya and Frances Kava (collectively, Plaintiffs) respectfully move for a preliminary injunction in this time-sensitive election law case to enjoin Defendants Maggie Toulouse Oliver, the Secretary of State of New Mexico (“the Secretary”), and Barbara DeLaney, the County Clerk of Luna County, New Mexico (together, “Defendants”) from enforcing New Mexico Statutes §§ 1-8-2-B and 1-8-2(E) as applied to Plaintiffs in the 2026 election cycle.

To the best of Plaintiffs’ knowledge and belief, pursuant to the Uniformed Overseas Citizens Absentee Voting Act, *see* 52 U.S.C. §§ 20301–20311, Defendants must print New Mexico’s general election ballots on or about September 15, 2026. Plaintiffs therefore respectfully request that the Court rule on this Motion, which seeks injunctive relief as necessary to ensure the

placement of Plaintiffs Perls, Vigil and Kava as candidates on New Mexico's November 3, 2026 general election, prior to the date on which Defendants print New Mexico's general election ballots.

Pursuant to Local Civil Rule 7.1(a), Plaintiffs state that they have been unable to make a good-faith request for Defendants' concurrence to the relief requested herein because Defendants have not yet entered an appearance. However, contemporaneous with this filing, Plaintiffs have served it upon Peter Auh, an attorney in Defendant Toulouse-Oliver's office, by email to peter.auh@sos.nm.gov, and upon Charles Kretek, an attorney in Defendant DeLaney's office, by email to charles_kretek@lunacountynm.us.

Dated: July 27, 2026

Respectfully submitted,

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Attorneys for Plaintiffs

**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.

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.

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

**PLAINTIFFS' MEMORANDUM IN SUPPORT OF PLAINTIFFS' EMERGENCY
MOTION FOR PRELIMINARY INJUNCTION**

Plaintiffs are the New Mexico state affiliate and candidates of the Forward Party, a nascent but growing national political party. Plaintiff NMFP successfully qualified as a minor political party in 2026, but could not place a single nominee for statewide office on the general election ballot due to New Mexico's unnecessary requirement that each nominee submit a separate petition to qualify. No other state imposes such a requirement. Additionally, no other state requires as many signatures for a minor party to qualify its slate of candidates for statewide office as New Mexico, and no other state is even close. Yet New Mexico also strictly—and unnecessarily—limits the period during which a minor party's nominees are permitted to circulate their petitions. Accordingly, Plaintiffs respectfully request injunctive relief from New Mexico's unconstitutional

signature requirements, as necessary to place NMFP’s nominees on New Mexico’s 2026 general election ballot.

Introduction and a final round

1. New Mexico’s Unique Statutory Scheme.

To be recognized as a qualified “minor political party” under New Mexico law, Plaintiff NMFP was required to submit petitions signed by registered voters equal in number to 0.5 percent of the total vote in the preceding election for Governor. *See* New Mexico Statutes § 1-7-2(A).¹ This requirement is not unusual: a majority of states—38—similarly require that new parties submit petitions or some other indication of voter support to become ballot-qualified. Declaration of Richard Winger (“Winger Decl.”) 15. New Mexico’s 0.5 percent petition requirement places it squarely within the median of these states. *Id.* 16. But what makes New Mexico’s statutory scheme unusual—unique, in fact—is that a new party that successfully qualifies pursuant to § 1-7-2(A) is not permitted to place its nominees on the general election ballot (except its nominees for President and Vice President). *Id.* 17. Instead, to qualify for placement on the general election ballot, each nominee (except for President and Vice President) must submit a separate and additional petition. *See* §§ 1-8-1(B); 1-8-2.

The only other state that imposed such a double petition requirement on minor parties is Maryland, but its statutory scheme was struck down more than 20 years ago. *See Maryland Green Party v. Maryland Bd. of Elections*, 832 A.2d 214, 231 (Md. 2003) (holding that Maryland’s “two-tiered petitioning requirement for minor parties discriminates against minor political parties in violation of the equal protection component of Article 24 of the Maryland Declaration of Rights.”). A major party nominee, the Court reasoned, “does not have to show any personal ‘modicum of

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

support’ to be on the general election ballot; the ‘modicum of support’ is the prior support of the party itself.” *Id.* at 232-33. By contrast, for a minor party nominee, “the requisite 1% showing of support is in addition to the initial showing of support which the minor political party has already demonstrated upon submitting its party-forming petition.” *Id.* at 233 (emphasis original). The Court therefore concluded that requiring minor party nominees to submit individual petitions did not further any state interest. *See id.* at 235-36.

NMFP and its supporters now face the same unconstitutional burden that minor parties faced in Maryland before its double petition requirement was struck down. The additional petitioning requirement that New Mexico imposes on NMFP’s nominees erects a drastic barrier against its ability to participate in the political process as a qualified minor party, and it is wholly unnecessary to further any state interest. Worse, New Mexico penalizes new parties with relatively few members, like NMFP, by requiring their nominees to submit petitions with twice the number of signatures as nominees of an established minor party that has reached a certain threshold of members. *See* §§ 1-8-2(B)(1), (2).

2. New Mexico’s Unnecessary Petition Requirements for Minor Party Nominees.

Minor parties select their nominees by convention. *See* § 1-8-2(A). But unlike nominees of a major political party, *see infra* at 6, who are placed on the general election ballot automatically once they are selected by primary election, the nominees of a minor party each must submit their own separate petition to qualify for the general election ballot. *See* §§ 1-8-2(B)(1), (2). Under §§ 1-8-2(B)(1) and (2), if a minor party’s membership statewide (for candidates for statewide office) or in a district (for candidates for district office) amounts to more than 1 percent of the total vote for Governor in that jurisdiction in the preceding election, then the minor party’s nominees must submit petitions signed by voters equal to 1 percent of the total vote for Governor in that

jurisdiction in the previous election. *See id.* But if a newly-qualified party like NMFP has not had time to grow its membership to the requisite threshold, then the signature requirement for its nominees is doubled to 2 percent of the total vote for Governor in the jurisdiction in the preceding election. *See id.*; *see also* § 1-8-51 (prescribing the signature requirements for Independent candidates, with which minor party nominees must comply if the minor party’s membership does not meet the threshold required by §§ 1-8-2(B)(1) and (2)). This arbitrary and punitive requirement also serves no state interest.

As calculated by the Secretary for purposes of the 2026 general election, 1 percent of the total vote for Governor in the preceding election equals 7,100, and 2 percent equals 14,200. *See* 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, available at <https://www.sos.nm.gov/wp-content/uploads/2026/04/2026-Nominating-Petition-Calculations-for-Minor-Parties-and-Independent.pdf> (accessed July 23, 2026). In 2026, therefore, if a qualified minor party has more than 7,100 registered members statewide, then its nominees for statewide office must submit petitions containing 7,100 signatures. If a minor party has fewer than 7,100 registered members statewide, however, its nominees for statewide office must submit petitions containing 14,200 signatures. *See* §§ 1-8-2(B)(1), (2). For NMFP, it was a virtual certainty that its nominees would be subject to the higher 2 percent requirement imposed by §§ 1-8-2(B)(1) and (2), because its party petition was due no later than 23 days after New Mexico’s June 2, 2026 primary election, *see* § 1-7-4(A); *see also* § 1-8-11 (the primary election is held on the first Tuesday after the first Monday in June), and its nominees’ petitions were due the same day—June 25, 2026. *See* §§ 1-8-2(A), (B). Although NMFP submitted its party petition early, on May 8, 2026, Complaint (ECF No. 1) (“Compl.”) 32, and it was certified as a qualified party on May 14, 2026,

Compl. 35, that still gave NMFP just 41 days to register 7,100 members before its nominees were required to submit their petitions.

Because NMFP did not have 7,100 members by the June 25, 2026 filing deadline, its nominees were subject to the higher 2 percent requirement imposed by §§ 1-8-2(B)(1) and (2). Compl. 36. NMFP's nominees for statewide office were therefore required to submit petitions meeting the following signature requirements:

United States Senate:	14,200
Governor:	14,200
Lieutenant Governor:	14,200
Secretary of State:	14,200
Attorney General:	14,200
State Auditor:	14,200
State Treasurer:	14,200
Commissioner of Public Lands:	14,200
Court of Appeals Judge:	14,200

Compl. 39; *see* § 1-8-2(B)(1). That is a total of 127,800 signatures required just for NMFP to qualify its nominees for statewide offices. Together with the new party petition NMFP itself was required to submit with 3,561 signatures, Compl. 30, NMFP needed to submit 10 separate petitions with 131,361 total signatures to qualify its slate of nominees for statewide offices. But even if NMFP complied with those requirements, it still would not be permitted to run any nominees for the hundreds more offices for state legislature, judicial office, public education commissioner and county office, each of which requires its own separate and additional petition. *See* Petition Calculations, *supra*, at 2-11.

3. New Mexico’s Additional Requirements and Restrictions on Petition Circulation.

Candidates seeking to run as NMFP’s nominees were also required to change their voter registration to NMFP no later than the date on which the party filed its petition pursuant to § 1-7-2(A). *See* § 1-8-2(E)(1). That meant the candidates had to change their registration before they knew whether NMFP would be a qualified minor party. This significantly limited NMFP’s ability to recruit candidates, Declaration of Bob Perls (“Perls Decl.”) 7-8, and it is yet another statutory requirement that serves no state interest.

Additionally, New Mexico places severe limitations on minor party nominees’ right to circulate petitions. Under New Mexico law, minor party nominees are required to submit petitions “on forms prescribed by law,” *see* § 1-8-65(B), but the Secretary is not required to make that form available to them until March of the year in which they seek to qualify for the general election ballot. *See* § 1-8-65(D). In 2026, the Secretary did not do so until on or about March 29. Compl.

43. At most, that would have permitted NMFP’s nominees to circulate petitions for less than three months. But NMFP’s nominees could not start petitioning until the Secretary certified it as a qualified party on May 14, 2026. Compl. 43; Perls Decl. 5. As a result, NMFP’s nominees had just 41 days to circulate their petitions.

4. Major Party Candidates and Nominees Face No Such Obstacles.

The nominees of a “major political party”—parties that had a candidate who received votes equal to at least 5 percent of the total votes cast for Governor or President in the preceding election, and whose membership totals at least one-third of one percent of statewide registered voters, *see* § 1-7-7(A)—do not face any of these obstacles. Major party nominees are selected by primary election. *See* § 1-8-1(A). Once they win their party’s nomination they are automatically placed

on the general election ballot. Thus, unlike minor party nominees, major party nominees need not make any individual showing of support to qualify for placement on the general election ballot.

Additionally, major party candidates are not even required to petition for placement on the primary election ballot. Instead, they may be designated for placement on the primary election ballot by vote at the party's convention. *See* § 1-8-21.1. Each candidate who receives at least 20 percent of that vote qualifies. *See id.*

Major party candidates can also qualify for the primary election ballot by submitting petitions, *see* §§ 1-8-21(A), (B), but their signature requirements are significantly lower than those that apply to minor party nominees seeking access to the general election ballot. Major party candidates must obtain signatures from party members equal to 3 percent of the total vote in the party's preceding primary election for Governor. *See* § 1-8-33(C). That requirement, as calculated by the Secretary for candidates for statewide office, translated to 2,505 signatures for Democrats and 2,351 signatures for Republicans. Compl. 44. Major party candidates are also permitted to circulate petitions for nearly twice as long as minor party nominees. The petition form that major party candidates circulate must be made available in October of the year before their primary election, *see* § 1-8-30(D), and the petitions must be filed on the second Tuesday of March in the year of the primary election. *See* § 1-8-26(B). For the 2026 election cycle, the Secretary posted the petitions on or about October 1, 2025. Compl. 45. That gave major party candidates approximately 5-1/2 months to circulate their petitions for placement on the primary ballot. Compl. 45.

5. Plaintiffs' Efforts to Qualify for New Mexico's 2026 General Election Ballot.

Five NMFP nominees were selected at the party's convention and attempted to qualify for New Mexico's 2026 general election ballot—Plaintiffs Perls, Vigil, Ding, Montoya and Kava.

Due to the obstacles these nominees faced—the excessive signature requirements and short time for meeting them—Plaintiffs planned to focus their ballot access efforts on leveraging New Mexico’s online petitioning platform, which allows voters to sign petitions online. *See* New Mexico Secretary of State, *Sign A Petition*, available at <https://www.electronicpetitions.elections.sos.nm.gov/> (accessed July 23, 2026). Their strategy was to execute a field operation and digital outreach campaign that would drive their supporters to sign NMFP candidates’ petitions online, while also circulating petitions in person. Collectively, Plaintiffs spent nearly \$63,000 on these efforts. Compl. 47; Perls Decl. 14. The majority of those funds—more than \$44,500—was dedicated to Plaintiffs’ digital outreach campaign, Compl. 47; Perls Decl. 14, which generated nearly 1.166 million text messages sent to more than 500,000 registered voters. Compl. 54. More than 56,000 of these voters attempted to access the NMFP candidates’ petitions online, but the platform ultimately yielded fewer than 2,700 signatures in total. Compl. 54. The reason: the Secretary deactivated the online petitioning platform for almost the entirety of the NMFP candidates’ petitioning period. Perls Decl. 15. And when it was finally activated, the platform erroneously blocked many voters from using it to sign petitions. Perls Decl. 16.

Ultimately, NMFP was able to qualify only two of its nominees for the general election ballot: Plaintiff Dingo, who is running for Public Education Commission and was required to submit 1,014 signatures, and Plaintiff Montoya, who is running for Santa Fe County Magistrate Judge and was required to submit 928 signatures. Compl. 50-51; Declaration of Dennis C. Dingo (“Dingo Decl.”) 6, 12; Declaration of Harry Montoya (“Montoya Decl.”) 5, 8. Plaintiffs Perls and Vigil, NMFP’s nominees for statewide offices, exceeded the signature requirements applicable to major party candidates, but did not meet the requirements imposed by

§ 1-8-2(B)(1). Compl. 44, 48-49; Perls Decl. 17; Declaration of Michael J. Vigil (“Vigil Decl.”) 12. Plaintiff Kava, NMFP’s nominee for Luna County Magistrate Judge, exceeded the 79-signature requirement to qualify for her office, but Defendant DeLaney determined that she did not qualify because she had not registered with FNMP on the date the party became qualified as required by § 1-8-2(E)(1). Compl. 52; Declaration of Frances Kava (“Kava Decl.”) 6, 8, 9. That was also true of Montoya, but he was placed on the general election ballot anyway, Compl. 53, demonstrating the needlessness of the requirement. Montoya Decl. 8.

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A party seeking a preliminary injunction must demonstrate: (1) that the movant “is substantially likely to succeed on the merits; (2) the movant will suffer irreparable injury if the injunction is denied; (3) the movant’s 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.” *Fish v. Kobach*, 840 F.3d 710, 723 (10th Cir. 2016) (citation and internal brackets omitted). Plaintiffs satisfy each element here.

I Plaintiffs Are Substantially Likely to Succeed on the Merits

A New Mexico’s Statutory Scheme Cannot Withstand Constitutional Scrutiny Under the *Anderson/Burdick* Framework

Defendants’ enforcement of §§ 1-7-2(A), 1-8-2(B), 1-8-2(E) and 1-8-65(A), (B) and (D) in the 2026 election cycle cannot withstand scrutiny under the Supreme Court’s *Anderson/Burdick* framework. *Anderson/Burdick* requires courts to weigh “the character and magnitude of the asserted injury” to Plaintiffs’ First and Fourteenth Amendment rights against “the precise interests put forward by the State as justifications” *Anderson v. Celebrezze*, 460 U.S. 780, 789 (1983). The severity of the burden dictates the appropriate level of scrutiny. *See Burdick v. Takushi*, 504 U.S. 428, 434 (1992). Where, as here, the evidence establishes a severe burden, “strict scrutiny

applies,” *Fish v. Schwab*, 957 F.3d 1105, 1125 (10th Cir. 2020) (citation omitted), and Defendants must show that the challenged provisions are “narrowly drawn to advance a state interest of compelling importance.” *Burdick*, 504 U.S. at 434 (citation and quotation marks omitted). Defendants cannot do so because the evidence demonstrates §§ 1-7-2(A), 1-8-2(B), 1-8-2(E) and 1-8-65(A), (B) and (D) are unconstitutional under well-settled Supreme Court precedent.

1. Defendants’ Enforcement of §§ 1-7-2(A), 1-8-2(B), 1-8-2(E) and 1-8-65(A), (B) and (D) Severely Burdens Plaintiffs’ First and Fourteenth Amendment Rights.

The Supreme Court has never established a “litmus test for measuring the severity of a burden that a state law imposes,” *Crawford v. Marion Cnty. Election Bd.*, 553 U.S. 181, 191 (2008), but it has recognized several indicia or standards that are sufficient to demonstrate a “severe” burden. One relevant comparison is whether a state’s requirements are more restrictive than those of other states. *See Williams v. Rhodes*, 393 U.S. 23, 47 n.10 (1968) (Harlan, J., concurring). By that metric, New Mexico’s signature requirements are undoubtedly severe.

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) (minor parties qualify to place nominees on general election ballot by submitting petition with signatures equal in number to 1 percent of total vote for Governor in preceding election). 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. Courts frequently rely on such comparisons to support the finding that a state’s ballot access requirements are severely burdensome. *See, e.g., Lee v. Keith*, 463 F.3d 763, 766, 768-69 (7th Cir. 2006) (finding Illinois’ signature requirement severely burdensome in part because it was higher than any other state’s); *Graveline v. Benson*, 992 F.3d 524, 540 (6th Cir. 2021) (finding Michigan’s signature requirement severely burdensome in part because it was higher than all but five other states’).

The heavy burden imposed by New Mexico’s excessive signature requirements is exacerbated by the severe restrictions New Mexico places on minor party nominees’ petition circulation. New Mexico requires such nominees to use an official form produced by the Secretary, but that form is not made available to the nominees until March of the year in which they seek to qualify. *See* §§ 1-8-65(A), (B), (D). Yet the nominees must file the petitions by the 23rd day after the primary election—here, June 25, 2026. *See* § 1-8-2(B). And if the minor party is newly qualifying, like NMFP, then its nominees cannot start petitioning until the date on which the Secretary certifies the party as qualified. For NMFP, that date was May 14, 2026, which gave its nominees just 41 days to circulate petitions. Compl. 35, 41; Perls Decl. 5.

State 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” can 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). Applying these standards, lower courts routinely strike down ballot access schemes when evidence shows candidates historically fail to qualify. *See, e.g., Graveline*, 992 F.3d at 539 (finding statutory scheme severely burdensome where no candidate had complied in more than 30 years); *Lee*, 463 F.3d at 769 (finding statutory scheme severely burdensome where no candidate had complied in 25 years); *Green Party of Ga. v. Kemp*, 171 F. Supp. 3d 1340 (N.D. Ga. 2016) (finding statutory scheme severely burdensome where no candidate had complied in more than 15 years), *aff'd*, 674 F. App'x 974 (11th Cir. 2017); *Nader v. Brewer*, 531 F.3d 1028, 1038 (9th Cir. 2008) (finding statutory scheme severely burdensome where no candidate had complied in 15 years); *Delaney v. Bartlett*, 370 F. Supp. 2d 373, 378 (M.D.N.C. 2004) (finding statutory scheme severely burdensome where only one candidate had complied in 20 years).

Here, evidence 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

² Presidential 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.

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).

Finally, courts have recognized that the cost of complying with ballot access requirements “inherently burdens [the] electioneering activity” of the candidates and parties subject to them. *Constitution Party of Pa. v. Aichele*, 757 F.3d 347, 364-65 (3d Cir. 2014) (citations omitted). As the Seventh Circuit observed in holding an Illinois statute unconstitutional, “[t]he uncontested record indicates that [the plaintiffs’] ballot access took a lot of time, money and people, which cannot be characterized as minimally burdensome.” *Krislov v. Rednour*, 226 F.3d 851, 860 (7th Cir. 2000). Courts thus frequently rely on the cost of complying with ballot access requirements to support a finding of a severe burden. *See Graveline v. Benson*, 430 F. Supp. 3d 297, 309, 311 (E.D. Mich. 2019) (relying on cost of complying with signature requirement to support finding of severe burden), *aff’d*, 992 F.3d 524, 540 (6th Cir. 2021); *Green Party of Ga.*, 171 F. Supp. 3d at 1350-51, 1363 (same), *aff’d*, 674 F. App’x 974 (11th Cir. 2017) (unpublished); *Constitution Party of Pa. v. Cortes*, 116 F. Supp. 3d 486, 502-06 (E.D. Pa. 2015) (same), *aff’d*, 824 F.3d 386 (3d Cir. 2016). In *Graveline*, the candidate spent \$38,000 on his petition drive, and the Court found that figure sufficient to support a finding of a severe burden. *See Graveline*, 430 F. Supp. 3d at 309, 311. In *Green Party of Ga.*, the Court found evidence showing a petition drive costing anywhere from \$70,000 to \$350,000 sufficient to support a finding of a severe burden. *See Green Party of Ga.*, 171 F. Supp. 3d at 1350-51. Here too, Plaintiffs spent \$63,000 on their ballot access efforts—more than the candidate in *Graveline*—and were not able to qualify a single candidate for statewide office. That further supports a finding that the challenged provisions are severely burdensome.

In sum, whether measured in comparison to other states, by the stifling impact they have had on minor party candidacies, or the cost of complying with them, the burdens imposed by New Mexico’s ballot access requirements fall on the “severe” end of the scale.

2. Enforcement of §§ 1-7-2(A), 1-8-2(B), 1-8-2(E) and 1-8-65(A), (B) and (D) Against Plaintiffs Is Not Reasonably Tailored to Further Any State Interest.

The severe burdens New Mexico’s statutory scheme imposes here cannot be justified by “generalized and hypothetical interests identified in other cases.” *See Libertarian Party of Ohio v. Blackwell*, 462 F.3d 579, 593 (6th Cir. 2006); *see also Anderson*, 460 U.S. at 793; *Libertarian Party of Ark. v. Thurston*, 962 F.3d 390, 403 (8th Cir. 2020); *Reform Party of Allegheny Cty. v. Allegheny Cty. Dep’t of Elections*, 174 F.3d 305, 315 (3d Cir. 1999). Further, while states have legitimate interests in preventing voter confusion and limiting ballot access to candidates with demonstrated support, a ballot access regulation is not narrowly tailored when a state could serve the same interest through less restrictive means. *See Norman v. Reed*, 502 U.S. 279, 289 (1992); *Buckley v. Am. Const. L. Found., Inc.*, 525 U.S. 182, 204 (1999). New Mexico’s statutory scheme fails this test.

“[T]he presence of eight candidacies cannot be said, in light of experience, to carry a significant danger of voter confusion.” *Williams*, 393 U.S. at 47 (Harlan, J., concurring). New Mexico has never exceeded this benchmark, or even approached it, in any election for the last 20 years. *See supra* Part I.A.1. Further, New Mexico never has an overcrowded ballot in presidential elections, despite imposing no petition requirement whatsoever on candidates of qualified parties. Compl. 57 (citing official elections results). Empirical evidence also shows that, with two exceptions, no state with a signature requirement greater than 5,000 has ever had more than eight candidates on the ballot for statewide office. Winger Decl. ; 9. The 10 petitions and 131,361 signatures New Mexico requires of a minor party and its statewide nominees is more restrictive,

by several orders of magnitude, than necessary to prevent ballot overcrowding.

Additionally, several of the challenged provisions serve no state interest at all. That is true of the petition requirement that New Mexico imposes on minor party nominees pursuant to § 1-8-2(B)(1) and (2). *See Green Party*, 832 A.2d at 235-36. 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. *See id.* at 232-33. Indeed, in New Mexico's 2026 primary elections, a single candidate ran unopposed in 125 out of 142 races for State House, as did the candidates in both major party primary elections for Attorney General, Auditor, Treasurer, and State Court of Appeals (except that no Republican ran for State Court of Appeals). Winger Decl. 22. "[A]n unopposed Democratic or Republican primary nominee may not necessarily have the support of a significant number of voters merely because his or her party has chosen that particular candidate to run in his or her party's primary." *Green Party*, 832 A.2d at 233. Yet New Mexico automatically places such candidates on the general election ballot.

New Mexico also has no legitimate interest in *doubling* the signature requirement imposed on a minor party's nominees if the minor party's membership totals less than 1 percent of the total vote for Governor in the preceding election. *See* §§ 1-8-2(B)(1), (2). This punitive and arbitrary requirement is especially pernicious as applied to a newly qualified minor party like NMFP, because it almost certainly will not have time to grow its membership to the requisite threshold before its nominees must submit their petitions pursuant to § 1-8-2(B).

Finally, New Mexico has no legitimate interest in requiring candidates to change their registration to a newly qualifying party no later than the date on which the party filed its petition pursuant to § 1-7-2(A). *See* § 1-8-2(E)(1). This requirement forces such candidates to change their registration before they know if the minor party will actually qualify. It is also clearly

unconstitutional. *See Tashjian v. Republican Party of Conn.*, 479 U.S. 208, 215 (1986) (“Were the State to provide that only Party members might be selected as the Party’s chosen nominees for public office, such a prohibition of potential association with nonmembers would clearly infringe upon the rights of the Party’s members under the First Amendment to organize with like-minded citizens in support of common political goals.”).

New Mexico’s ban on Petitioning Minor Party Nominees until March of the Year in which they Seek to Qualify Violates the First Amendment

New Mexico’s prohibition against minor party nominees petitioning until March of the year in which they seek to qualify for the ballot violates the First Amendment. *See* §§ 1-8-65(A), (B), (D). The circulation of a petition “involves both the expression of a desire for political change and a discussion of the merits of the proposed change.” *Meyer v. Grant*, 486 U.S. 414, 421 (1988). That is no less true here than in *Grant*. Like the petition circulators in *Grant*, NMFP and its supporters must engage with voters and convince them to support Plaintiffs’ effort to qualify for the ballot. *See id.* at 421 and n.4. “Thus, the circulation of a petition involves the type of interactive communication concerning political change that is appropriately described as ‘core political speech.’” *Id.* at 421-22 (footnote omitted).

In *Grant*, the Court struck down a Colorado law that prohibited the payment of petition circulators who sought to qualify an initiative for the ballot. *See id.* at 422-23. The Court found the prohibition restricts political expression in two ways: first, it limits the number of speakers in support of a petition and the hours they can speak, thus limiting the size of the audience they can reach; and second, it makes it less likely the petitioners will succeed in qualifying for the ballot, thus limiting their ability to make the initiative a focus of statewide discussion. *See id.* at 422-23. The Court therefore concluded that Colorado’s prohibition “trenches upon an area in which the importance of First Amendment protections is ‘at its zenith,’” and that Colorado’s burden to justify

its law was “well-nigh insurmountable.” *Id.* at 425.

Applying strict scrutiny, the Court disposed of Colorado’s asserted justifications for its law, rejecting the assertion that the prohibition on paying petition circulators was necessary to ensure the initiative had sufficient support to justify placing it on the ballot and to protect the integrity of the initiative process. *See id.* at 425-28. In so doing, the Court observed that “legislative restrictions on advocacy of the election or defeat of political candidates are wholly at odds with the guarantees of the First Amendment.” *Id.* at 428 (quoting *Buckley v. Valeo*, 424 U.S. 1, 50 (1976)). The Court found that principle equally applicable to “the discussion of political policy generally or advocacy of the passage or defeat of legislation” involved in the circulation of initiative petitions. *Id.* (quoting *Buckley*, 424 U.S. at 48).

New Mexico’s ban on petitioning by minor party nominees until March of the election year in which they seek to qualify is more restrictive than Colorado’s ban on paying petition circulators. Sections 1-8-65(A), (B) and (D) impose an absolute prohibition on petition circulation outside a narrow statutory window—not merely a restriction on paying circulators. The provisions thus restrict the “advocacy of the election or defeat of political candidates” and consequently are “wholly at odds with the guarantees of the First Amendment.” *Id.* (quoting *Buckley*, 424 U.S. at 50). They also restrict core political speech in the same ways Colorado’s law did: they limit the time circulators have to petition and the audience they can reach, and make it less likely minor party nominees will qualify for the ballot, limiting their ability to make their candidacies the focus of statewide discussion. *See Grant*, 486 U.S. at 422-23.

Because §§ 1-8-65(A), (B) and (D) directly restrict core political speech just as the Colorado law did, they are subject to the same “exacting scrutiny” the Court applied in *Grant*. *See Grant*, 486 U.S. at 420 (citing *Buckley*, 424 U.S. at 45). Sections 1-8-65(A), (B) and (D) must be

“closely scrutinized and narrowly construed,” *id.* at 423 (citation omitted), and New Mexico must “demonstrate that it is necessary to burden [Plaintiffs’] ability to communicate their message in order to meet its concerns.” *Id.* at 426. Here, as in *Grant*, the burden New Mexico must overcome “is well-nigh insurmountable.” *Id.* at 425.

New Mexico cannot carry that burden. As a preliminary matter, New Mexico permits major party candidates to start petitioning for access to the primary election ballot in October of the year before that election. *See* § 1-8-30(D). No state interest justifies New Mexico in prohibiting minor party nominees from engaging in the same First Amendment protected conduct at the same time. Although major party candidates’ petitions are due in March, *see* § 1-8-26(B), whereas minor party nominees’ petitions are due in June, *see* §§ 1-8-2(A), (B), the major party candidates’ earlier filing deadline does not justify any restriction on minor party nominees’ petitioning before March. Furthermore, as applied here, New Mexico’s statutory petitioning period for major party candidates lasted approximately 5-1/2 months—nearly twice the duration of minor party nominees’ petitioning period—even though major party candidates need only a fraction of the signatures required of minor party nominees. Compl. 45. The Supreme Court has squarely held that such disparate treatment exceeds states’ power to regulate the time, place and manner of holding elections as applied to federal candidates like Plaintiff Perls. *See Cook v. Graelike*, 531 U.S. 510, 524 (2001). “[T]he Framers understood the Elections Clause as a grant of authority to issue procedural regulations, and not as a source of power to dictate electoral outcomes, to favor or disfavor a class of candidates, or to evade important constitutional restraints.” *Id.* (quoting *U.S. Term Limits, Inc. v. Thornton*, 514 U.S. 779, 833-34 (1995)).

New Mexico’s restriction on minor party nominees’ petitioning also is not narrowly tailored: §§ 1-8-65(A), (B) and (D) prohibit Plaintiffs from engaging in core political speech except

within a small window from March until June, while major party candidates are afforded nearly twice that time—161 days in this election cycle. Compl. 45. If New Mexico can accommodate petitioning by major party candidates for nearly six months, it can accommodate petitioning by minor party candidates for at least the same length of time. There is no legitimate justification for New Mexico to provide major party candidates such preferential treatment.

Sections 1-8-65(A), (B) and (D) are also constitutionally infirm because they are viewpoint discriminatory. The Supreme Court has long recognized that “the First Amendment’s hostility to content-based regulation extends not only to a restriction on a particular viewpoint, but also to a prohibition of public discussion of an entire topic.” *Burson v. Freeman*, 504 U.S. 191, 197 (1992) (citations omitted). Sections 1-8-65(A), (B) and (D) run afoul of this precedent. They impose an outright prohibition on minor party candidates’ core political speech of circulating nomination petitions outside the statutorily prescribed window, *see Grant*, 486 U.S. at 421-22, even though New Mexico allows major party candidates to engage in such speech for nearly twice as long. “As a facially content-based restriction on political speech in a public forum,” Sections 1-8-65(A), (B) and (D) therefore “must be subjected to exacting scrutiny: The State must show that the regulation is necessary to serve a compelling state interest and that it is narrowly drawn to achieve that end.” *Burson*, 504 U.S. at 198 (citations and quotation marks omitted). New Mexico cannot do so here.

In sum, Sections 1-8-65(A), (B) and (D) do not further any legitimate regulatory interests New Mexico may have, such as protecting the right to vote or ensuring the integrity of elections. Instead, they impose an outright ban on the core political speech of identifiable groups—and only those groups—without serving any compelling state interest. The ban applies year-round except for the narrow petitioning period prescribed by statute, and it is not narrowly tailored. Because Sections 1-8-65(A), (B) and (D) cannot survive the strict scrutiny applicable under both *Grant* and

Burson, there is a substantial likelihood Plaintiffs will prevail on their challenge to those provisions.

II The Remaining Preliminary Injunction Factors in Plaintiffs' Favor A Plaintiffs Will Suffer Irreparable Harm Absent the Requested Relief

It is well settled that “[t]he loss of First Amendment freedoms, for even minimal periods of time, constitutes irreparable injury.” *Elrod v. Burns*, 427 U.S. 347, 373 (1976). Further, “[w]hen an alleged deprivation of a constitutional right is involved, most courts hold that no further showing of irreparable injury is necessary.” *Fish*, 840 F.3d at 752 (quoting 11A Charles Alan Wright, Arthur R. Miller & Mary Kay Kane, *Federal Practice and Procedure* § 2948.1 (2d ed. 1995)). Here, Plaintiffs’ irreparable harm is severe and imminent. Absent 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. *See Williams*, 393 U.S. at 31. Accordingly, while the Court must engage in the “traditional equitable inquiry as to the presence of irreparable harm—the violation of a constitutional right must weigh heavily in that analysis.” *Fish*, 840 F.3d at 752 (citation omitted).

The Equities Favor Plaintiffs

Defendants cannot credibly articulate any harm if they are enjoined from enforcing the challenged provisions against Plaintiffs. 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. *See Green Party*, 832 A.2d at 232-33. Nor is New Mexico’s interest served by unconstitutionally excluding Plaintiff Kava from the ballot simply because she was not a registered member of NMFP when the party submitted its petitions to become qualified. *See Tashjian*, 479 U.S. at 215. By contrast, Plaintiffs

will be deprived of their “most precious [First Amendment] freedoms.” *Williams*, 393 U.S. at 30. The balance of equities tips decisively in Plaintiffs’ favor. *See Fish*, 840 F.3d at 754-55.

C Plaintiffs’ Requested Relief Is in the Public Interest

The requested injunction will serve the public interest by protecting the right of all New Mexicans to cast their votes effectively. *See id.* at 756 (recognizing that Congress has determined “the public interest in the widespread exercise of the franchise”). If Plaintiff Perls is not on the ballot for United States Senate, that race will feature a Democratic candidate running unopposed (with a Republican candidate running as a write-in). *See* New Mexico Secretary of State, *Official Results, June 2, 2026 Primary*, available at https://electionresults.sos.nm.gov/resultsSW.aspx?type=FED_map_CTY (accessed July 27, 2026). Similarly, if Plaintiff Vigil is not on the ballot for State Auditor, that race will feature a Democratic candidate running unopposed (with a Republican candidate running as a write-in). *See* New Mexico Secretary of State, *Official Results, June 2, 2026 Primary*, available at https://electionresults.sos.nm.gov/resultsSW.aspx?type=SW_map_CTY (accessed July 27, 2026). And if Plaintiff Kava is not on the ballot for Luna County Magistrate Judge, that race too will feature a single candidate—the Republican—running unopposed without even a write-in candidate to challenge him. New Mexico Secretary of State, *Official Results, June 2, 2026 Primary*, available at https://electionresults.sos.nm.gov/resultsSW.aspx?type=MGX_map_CTY (accessed July 27, 2026). The requested relief will therefore not only vindicate Plaintiffs’ rights, but the voting rights of all New Mexicans.

“[I]t is always in the public interest to prevent the violation of a party’s constitutional rights.” *Awad v. Ziriax*, 670 F.3d 1111 (10th Cir. 2012); *see also id.* (noting “[t]he strong public interest in protecting First Amendment values”) (citation omitted). By contrast, because New

Mexico “does not have an interest in enforcing a law that is likely constitutionally infirm the public interest will perforce be served by enjoining the enforcement of the invalid provisions of state law.” *Chamber of Commerce of US v. Edmondson*, 594 F.3d 742, 771 (10th Cir. 2010). The public interest is further served because the relief sought imposes no meaningful burden on the administration of New Mexico’s elections. Enjoining the challenged provisions will not alter voting procedures or disrupt important election deadlines.

CONCL SION

New Mexico’s Election Code provisions discussed herein violate Plaintiffs’ rights under the First and Fourteenth Amendments. Without intervention from this Court, Plaintiffs will suffer irreparable harm and NMFP’s duly chosen nominees will be kept off the ballot. That would be a manifest injustice and cannot stand. For the foregoing reasons, Plaintiffs respectfully request that this Court enter a preliminary injunction enjoining Defendants from enforcing New Mexico Statutes §§ 1-8-2-B and 1-8-2(E) as applied to Plaintiffs in the 2026 election cycle.

Dated: July 27, 2026

Respectfully submitted,

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Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on July 27, 2026, I caused the foregoing document to be filed using the Court's CM/ECF system, which effect service upon all counsel of record. I further certify that on July 27, 2026, the foregoing document and its attachments were served upon Peter Auh, an attorney in Defendant Toulouse-Oliver's office, by email to peter.auh@sos.nm.gov, and upon Charles Kretek, an attorney in Defendant DeLaney's office, by email to charles.kretek@lunacountynm.us.

/s/Oliver B. Hall

Oliver B. Hall

Attorney for Plaintiffs

IN THE NITE STATES ISTRIC CO RT
OR THE ISTRIC O NE ME ICO

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

Plaintiffs,

V.

No.: _____

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.

DECLARATION OF RICHARD IN ERIN'S SUPPORT OF PLAINTIFFS'
MOTION FOR PRELIMINARY INJUNCTION

Pursuant to S C

I, Richard Winger, hereby declare as follows:

1. I am over the age of 18 and reside in San Francisco, California.
2. I have personal knowledge about the matters to which I attest herein. If called to testify, I could and would competently testify to these statements.

A a round

3. I am editor of Ballot Access News, a 41-year-old print publication that covers changes in the ballot access laws that affect minor political parties and independent candidates, and a researcher for that publication, assessing the ballot access laws of all fifty states from 1888 to the present. I have been on the Editorial Board for the *Election Law Journal* since 2001.
4. I have been an expert witness in cases in ten different states concerning ballot access

for minor parties and independent candidates, and I have been a fact witness in dozens of others. At least 20 courts have cited my testimony or evidence in their opinions.¹

5. I am the author of several chapters of books including *America Votes A Guide to Modern Election Law and Voting Rights*, published by the American Bar Association's Section of State and Local Government Law, and "Early Ballot Access Laws for New and Minor Parties" in *Others, Vol. 2, Third Parties During the Populist Period*. I also authored a peer-reviewed law review article that includes a compilation of every state's ballot access signature requirement for each presidential election from 1892 to the present, as well as the state's deadline for filing nomination petitions. See Richard Winger, *How Many Parties Ought to Be on the Ballot*, Election Law Journal, Vol. 5, No. 2 (2006). My articles have also been published in the Wall Street Journal, American Review of Politics, the University of Arkansas Little Rock Law Review, and the University of Massachusetts Law Review, among other publications. I have been featured as an expert on ballot access for minor parties and independents on NBC, ABC, CNN, and MSNBC, and other news outlets.

6. I received my BA in political science from University of California, Berkeley in 1966 and did graduate study in political science at UCLA in 1967.

allot A ess Nation ide

7. By collecting election returns from all fifty states for all statewide general elections since the beginning of government-printed ballots and by studying the history of each state's ballot access laws since their initiation, I have determined the number of signatures required for Non-Primary Parties and Independent candidates for statewide office at all regularly scheduled even-year elections. The results of my research are catalogued in the table attached as Exhibit B. This

¹ See Exhibit A (attaching my curriculum vitae).

research has been published and peer reviewed.²

8. The table attached as Exhibit B lists all the instances since the beginning of government-printed ballots in which states imposed a requirement of more than 5,000 signatures on independent candidates or previously unqualified parties. The table also shows how many signatures such states required in each year and how many presidential candidates appeared on the state's ballot that year. This data demonstrates that in the history of American elections, no such state has ever had more than eight candidates on the general election ballot for president, with the exception of New York, which had nine in 1980 and nine in 1996.

9. I have also compiled and analyzed state signature requirements and historical election results since the beginning of government-printed ballots for elections for U.S. Senate and Governor. *See* Richard Winger, BALLOT ACCESS NEWS, *Most Crowded General Election Ballot for U.S. Senate*, Vol. 37, No. 7 (December 2021), available at <https://ballot-access.org/2021/12/29/december-2021-ballot-access-news-print-edition/> (accessed June 15, 2026); Richard Winger, *Most Crowded General Election Ballot for Governor*, BALLOT ACCESS NEWS, Vol. 37, No. 9 (February 2022), available at <https://ballot-access.org/2022/03/05/February-2022-ballot-access-news-print-edition/> (accessed June 15, 2026). Similar results hold true for both U.S. Senate and gubernatorial races: no state that required more than 5,000 signatures for either office has ever had more than eight candidates on the general election ballot, except that in 1998 New York had ten candidates for governor.

10. U.S. Supreme Court Justice John Harlan, in his concurrence in *Williams v. Rhodes*, said “the presence of eight candidacies cannot be said, in light of experience, to carry a significant

² Richard Winger, *How Many Parties Ought to Be on the Ballot*, Election Law Journal, Vol. 5, No. 2 (2006) (a peer-reviewed article setting forth each state's signature requirement for each election cycle since 1892); *see also* “History of U.S. Ballot Access Laws for New and Minor Parties” in Immanuel Ness, *Encyclopedia of Third Parties in America* (Routledge 2006).

danger of voter confusion.”³ My research corroborates that conclusion.

11. Many states routinely hold primary elections with more than eight candidates on the ballot for a single office.

12. In 2016, the Republican Party’s presidential primary ballot included more than 10 candidates in 23 states: Alabama (13 candidates); Arizona (14 candidates); Arkansas (13 candidates); Florida (13 candidates); Georgia (13 candidates); Idaho (13 candidates); Illinois (11 candidates); Louisiana (14 candidates); Maryland (11 candidates); Massachusetts (14 candidates); Michigan (14 candidates); Mississippi (13 candidates); Missouri (13 candidates); New Hampshire (30 candidates); North Carolina (13 candidates); Ohio (10 candidates); Oklahoma (12 candidates); Tennessee (15 candidates); Texas (14 candidates); Vermont (10 candidates); Virginia (13 candidates); West Virginia (11 candidates); and Wisconsin (14 candidates). *See* Federal Election Commission, *Official Primary Election Results for United States President*, available at <https://www.fec.gov/resources/cms-content/documents/federaelections2016.pdf> (accessed June 15, 2026).

13. In 2020, the Democratic Party’s presidential primary ballot included more than 10 candidates in 29 states: Alabama (14 candidates); Arizona (12 candidates); Arkansas (18 candidates); California (20 candidates); Colorado (13 candidates); Florida (16 candidates); Georgia (candidates); Idaho (17 candidates); Illinois (12 candidates); Louisiana (14 candidates); Maine (12 candidates); Maryland (14 candidates); Massachusetts (15 candidates); Michigan (15 candidates); Minnesota (15 candidates); Missouri (22 candidates); New Hampshire (33 candidates); New York (11 candidates); North Carolina (15 candidates); Oklahoma (14 candidates); South Carolina (12 candidates); Tennessee (15 candidates); Texas (17 candidates);

³ *Williams v. Rhodes*, 393 U.S. 23, 47 (1968) (Concurrence).

Utah (15 candidates); Vermont (13 candidates); Virginia (14 candidates); Washington (13 candidates); West Virginia (12 candidates); and Wisconsin (12 candidates). *See* Federal Election Commission, *2020 Presidential Primary Election Results*, available at <https://www.fec.gov/resources/cms-content/documents/federaelections2020.pdf> (accessed June 15, 2026).

14. I closely monitor ballot access issues in all 50 states and the District of Columbia and report on them daily in *Ballot Access News*. *See* Ballot Access News, available at www.ballot-access.org. I am not aware of any of the foregoing states reporting any difficulty arising from overcrowded ballots in their 2016 Republican Party presidential primary elections or their 2020 Democratic presidential primary elections.

C ballot A ss in Ne Me i o

15. New Mexico, like the majority of states—38 in total—allows a new political party to become ballot-qualified by submitting a petition or some other indication of voter support.

16. The petition required to qualify a minor political party in New Mexico must be signed by voters equal in number to 0.5 percent of the total vote for Governor in the preceding election. *See* N.M.S. § 1-7-2(A). This petition requirement places New Mexico in the median of all states that allow new parties to qualify by submitting a petition.

17. Based on my decades-long research of the ballot access laws in all 50 states, I have firsthand knowledge that New Mexico is the only state that requires the nominees of a qualified minor party to submit petitions to qualify for placement on the general election ballot. In every other state, once a candidate is nominated by a qualified party, the candidate is entitled to be placed on the general election ballot (although in some states such candidates may be required to pay a filing fee as well).

18. For example, in Utah, a single petition signed by 2,000 voters qualifies a new party and entitles it to place all of its nominees on the general election ballot.

19. Similarly, in Colorado a new party can become qualified and place all its candidates on the general election ballot by submitting a single petition signed by 10,000 voters. The party can also qualify in Colorado and place all its nominees on the general election ballot by registering 10,000 voters.

20. No state in the nation—including New Mexico—requires the nominees of major political parties (the Republicans and Democrats) to petition for placement on the general election ballot. Instead, such nominees are entitled to be placed on the general election ballot automatically by virtue of their being nominated by the party.

21. The 131,361 petition signatures that New Mexico requires of a new minor party to become qualified and place its slate of candidates for statewide office on the general election ballot is more, by far, than any other state requires for a full slate of statewide candidates. The next closest state is Texas, which in 2026 required a petition containing 81,030 signatures.

22. I have reviewed the official election results published on the New Mexico Secretary of State's website. Those results confirm that in the 2026 primary elections, 125 out of 142 total races for state legislature had only one candidate on the ballot running unopposed. That is also true of the candidates in both major party primary elections for Attorney General, Auditor, Treasurer, and State Court of Appeals (except that no Republican ran for State Court of Appeals).

23. Additionally, in New Mexico's general elections from 2002 – 2024, there have been no federal or state office races (other than President) with more than three candidates on the ballot. In almost every one of those races, just two candidates or one candidate qualified for the ballot.

24. The same is true of New Mexico's elections for statewide state offices in the same

period—just two candidates or only one candidate qualified for the ballot.

25. From 2002 – 2024, in all New Mexico elections for state and federal office (except President), the average number of candidates in each race was less than two.

26. I hereby declare under penalty of perjury that the foregoing is true and correct.

Executed on: July 26, 2026

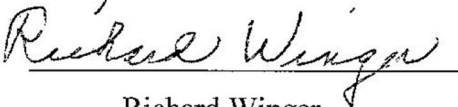

Richard Winger

EXHIBIT A

CURRICULUM VITAE OF RICHARD WINGER

EDUCATION

BA, Political Science, University of California, Berkeley, 1966

Graduate study, Political Science, UCLA, 1966-67

EMPLOYMENT

Ballot Access News, Editor 1985-Present

Editor of newsletter covering legal, legislative and political developments of interest to minor parties and independent candidates. Researcher of ballot access laws of all 50 states from years 1888-present; well versed in how ballot access laws of each state work historically and how they compare to each other. Responsible for reading all statutes, regulations, legal opinions, and state attorney general opinions on rights of political parties and the publications of minor parties.

Election Law Journal, member of the Editorial Board 2001-Present

PUBLICATIONS AND PRESENTATIONS

Book Chapters

“The Nomination of Presidential Candidates by Minor Parties” in *The Best Candidate The Law of Presidential Nomination in Polarized Times* to be published by the Cambridge University Press, 2020, editors Eugene D. Mazo and Michael R. Dimino.

“Significant Ballot Access Issues” in *America Votes A Guide to Modern Election Law and Voting Rights*, 2nd edition, 2012, published by the American Bar Association’s Section of State and Local Government Law, editor Benjamin E. Griffith.

“Early Ballot Access Laws for New and Minor Parties” in *Others, Vol. 2, Third Parties During The Populist Period*, by Darcy G. Richardson (2007: iUniverse, Inc., New York).

“More Choice Please! Why U.S. Ballot Access Laws Are Discriminatory and How Independent Parties and Candidates Challenge Them” in *Democracy’s Moment* edited by Ronald Hayduk and Kevin Mattson (2002: Rowman & Littlefield, Lanham, Md.)

“History of U.S. Ballot Access Law for New and Minor Parties” in *The Encyclopedia of Third Parties in America* edited by Immanuel Ness and James Ciment (2000: M.E. Sharpe, Inc., Armonk, N.Y.)

“Institutional Obstacles to a Multi-Party System” in *Multiparty Politics in America* edited by Paul S. Herrnson (1997: Rowman & Littlefield, Lanham, Md.)

“The Importance of Ballot Access to Our Political System” in *The New Populist Reader* edited by Karl Trautman (1997: Praeger, Westport, Ct.)

Articles:

Richard Winger, *The Minor Party Blockade*, CALIFORNIA JOURNAL (July 1977)

Richard Winger, *Major Parties Find Three’s a Crowd*, WALL STREET JOURNAL (October 26, 1984)

Richard Winger, *Why Voters’ Options Seem So Few*, WALL STREET JOURNAL (November 2, 1988)

Richard Winger, *The Importance of Ballot Access to Our Political System*, THE LONG TERM VIEW, Vol. 2, No. 2 (Spring 1994)

Richard Winger, *The Impotent American Voter*, CHRONICLES MAGAZINE (November 1994)

Richard Winger, *Debate Would We Be Better Off with a Third Party*, PRICE COSTCO CONNECTION (December 1995)

Richard Winger, *How Ballot Access Laws Affect the U.S. Party System*, AM. REV. OF POLITICS, Vol. 16 (Winter 1995)

Richard Winger, *Ballot Format Must Candidates Be Treated Equally*, CLEVELAND STATE L. REV., Vol. 45, No. 1 (1997)

Richard Winger, *Oklahoma Law Tough on Minor Party and Independent Presidential Candidates*, OKLAHOMA POLITICS, Vol. 8 (October 1999)

Richard Winger, *The Supreme Court and the Burial of Ballot Access A Critical Review of Jenness v. Fortson*, ELECTION L. J., Vol. 1, No. 2 (2002)

Richard Winger, *Are Third Party Alternatives Needed in This Year’s Presidential Election*, C. Q. RESEARCHER Vol. 14, No. 16 (April 30, 2004)

Richard Winger, *An Analysis of the 200 Nader Federal Ballot Access Cases*, FORDHAM URBAN L. J., Vol. 32, No. 3 (May 2005)

Richard Winger, *How Many Parties Ought to Be on the Ballot An Analysis of Nader v. Keith*, ELECTION L. J., Vol. 5, No. 2 (2006)

Richard Winger, *Can United States Voters Still Recruit Someone to Run for President as an Independent After the Identities of the Major Party Presidential Candidates Are Known*, U. OF ARK. LITTLE ROCK L. REV., Vol. 29, No. 4 (Summer 2007)

Richard Winger, *Are U.S. Election Laws Becoming Better for Voters Who Support Alternatives to the Two Big Parties*, HARVARD LAW RECORD, (April 25, 2016)

Richard Winger, *Does the Constitution Provide More Ballot Access Protection for Presidential Elections Than for U.S. House Elections*, FORDHAM L. REV., Vol. 85, No. 3 (December 2016)

Also, I wrote “Election Law Decisions” in all issues of the bi-annual newsletter of the American Political Science Association’s Section on Representation and Electoral Systems, 2005-2014.

I wrote articles for “Voice for Democracy”, the newsletter of Californians for Electoral Reform, in these issues: Spring 2012, February 2014, August 2014, November 2014, and February 2015.

National Interviews

NBC

ABC

CNN

C SPAN

National Public Radio

Pacifica Radio

MSNBC

Speaking Engagements

Panel of New York City Bar Association, 1994. Ballot access.

Amer. Political Science Assn., nat. conventions of August 1995 and August 1996. Papers.

Capital University School, law school class, Columbus, Ohio, 1996. Guest lecturer.

Cal. State U., course in political science, Hayward, 1993 and 1996. Guest lecturer.

San Francisco City College, course in political science, 1996 and 1997. Guest lecturer.

Providence College, R.I., Oct. 1997, seminar on ballot access.

Harvard U., JFK School of Gov't, Oct. 18, 1995, guest lecturer, ballot access.

Voting Integrity Project national conference, Apr. 1, 2000, speaker on ballot access.

Center for Voting & Democracy nat. conference, Nov. 30, 2003, speaker on ballot access.

Robert Dole Institute of Politics, U. of Kansas, one of 5 panel members, Oct. 25, 2007.

TESTIMONIAL EXPERIENCE

Cases in the Last Six Years

Green Party of Georgia v. Kemp, 171 F. Supp. 3d 1340 (N.D. Ga.), *aff'd*, 674 F. App'x 974 (11th Cir.) (deposition)

Green Party of Tennessee v. Argett, 3:11-cv-00692 (M.D. Tenn.) (trial)
Libertarian Party of Illinois v. Scholz, 164 F. Supp. 3d 1023 (N.D. Ill.), *aff'd* 872 F.3d 518 (7th Cir.) (deposition)
De La Fuente v Padilla, 930 F.3d 1101 (9th Cir.) (deposition California)
Kennedy v. Cascos, 214 F. Supp. 3d 559 (W.D. Tex.) (court hearing Texas)
Libertarian Party of South Dakota v. Krebs, 290 F. Supp. 3d 902 (D. S.D., S. Div.) (trial)
Libertarian Party of Georgia v. Raffensperger, No. 1:17-cv-4660-LMM (N.D. Ga.) (deposition)
Montana Green Party v. Stapleton, 401 Mont. 390 (Sup. Ct. Mont.) (deposition)
Sweeney v. Crigler, No. 2:19-cv-46 (E.D. Ky.) (deposition)

QUALIFIED EXPERT WITNESS

Fishbeck v. Echler, 85 F.3d 162 (4th Cir.)
Council of Alternative Political Parties v. Hooks, 999 F. Supp. 607 (D.N.J.)
Citizens to Establish Reform Party v. Priest, 970 F. Supp. 690 (E.D. Ark.)
Atherton v. Ward, 22 F. Supp. 2d 1265 (W.D. Okla.)
California Democratic Party v. Jones, 530 U.S. 567 (Supreme Court)
Swanson v. Bennett, 02-T-664-N (M.D. Ala.)
Clingman v. Beaver, 544 U.S. 581 (Supreme Court)
Green Pty v. N. . Bd. Elec., 267 F. Supp. 2d 342 (E.D.N.Y.), 389 F.3d 411 (2d Cir.)
Lawrence v. Blackwell, 430 F.3d 368 (6th Cir.)
all v. Merrill, 212 F. Supp. 3d 1148 (N.D. Ala.)
Graveline v. Johnson, 336 F. Supp. 3d 801 (E.D. Mi. 2018), *aff'd* 747 F. App'x 408 (6th Cir.)
Green Party of Tennessee v. Argett, 3:11-cv-00692 (M.D. Tenn.)
De La Fuente v. Padilla, 930 F.3d 1101 (9th Cir.)
De La Fuente v. State of Arizona, No. 2:16-cv-2419 (D. Ariz.)

TESTIFIED OR SUBMITTED AN AFFIDAVIT (political party or candidate prevailing, or case pending)

U.S. Supreme Court:

California Democratic Party v. Jones, 530 U.S. 567

Alabama:

all v. Bennett, U.S. Dist. Ct., 212 F. Supp. 3d 1148 (M.D. Ala.)

Alaska:

Libertarian Party v. Coghill, 3AN-92-08181, (A.K. Sup. Ct. 3d)

Arizona:

Campbell v. ull, 73 F. Supp. 2d 1081 (D. Ariz.)
Az. Libertarian Party v ull, 96-13996, (Az. Sup. Ct. Maricopa Cty.)
Nader v Brewer, 531 F.3d 1028 (9th Cir.)
De La Fuente v obbs, 19-16868 (9th Cir.)

Arkansas:

Citizens to Establish a Reform Party v. Priest, 970 F. Supp. 690 (E.D. Ark.)
Green Party of Ark. v. Priest, 159 F. Supp. 2d (E.D. Ark.)
Green Party of Ark. v. Daniels, U.S. District Court, 448 F. Supp. 2d 1056 (E.D. Ark.)
Moore v. Martin, 854 F.3d 1021 (8th Cir.)
Libertarian Party of Arkansas v. Thurston, No. 4:19-cv-214 (E.D. Ark.)

California:

California Justice Committee v. Bowen, 2012 WL 5057625 (C.D. Cal.)

Colorado:

Ptak v. Meyer, 94-N-2250, (D. Co.)

Florida:

Libertarian Party of Fla. v. Mortham, No. 4:96-cv-258-RH, (N.D. Fla.)
Reform Party v. Black, 885 So. 2d 303 (Fla.)

Georgia:

Bergland v. Harris, 767 F.2d 1551 (11th Cir.)
Green Party of Georgia v. Kemp, 171 F. Supp. 3d 1340 (N.D. Ga.), *aff'd*, 674 F. App'x 974 (11th Cir.)
Libertarian Party of Georgia v. Raffensperger, 1:17-Cv-4660-LMM (N.D. Ga.)

Hawaii:

Libertarian Party of Hawaii v. Waihee, No. 86-CV-439 (D. Hi.)

Illinois:

Nader v. Ill. State Bd. of Elections, No. 00-cv-4401 (D.N.D.)
Lee v. Ill. State Bd. of Elections, 463 F.3d 763 (7th Cir.)
Jones v. McGuffage, 921 F. Supp. 2d 888 (N.D. Ill.)
Libertarian Party of Illinois v. Scholz, 164 F. Supp. 3d 1023 (N.D. Ill.), *aff'd* 872 F.3d 518 (7th Cir.)
Gill v. Scholz, No. 16-cv-3221 (C.D. Ill.)
Jones v. McGuffage, No. 1:12cv-9997 (N.D. Ill.)

Iowa:

Oviatt v. Baxter, 4:92-10513, (D. Iowa)

Kansas:

Merritt v. Graves, 87-4264-R, (D. Kan.)

Kentucky:

Libertarian Party of Ky. v. Ehrler, 776 F. Supp. 1200 (E.D. Ky.)
Sweeney v. Crigler, No. 2:19-cv-46 (E.D. Ky.)

Maine:

Libertarian Party of Me. v. Dunlap, No. 2:16-cv-2 (D. Maine)

Maryland:

Dixon v. Md. State Adm. Bd. of Elec. Laws, 878 F.2d 776 (4th Cir.)

Green Party v Bd. of Elections, 832 A.2d 214 (Md. App.)

Michigan:

Graveline v. Johnson, 336 F. Supp. 3d 801 (E.D. Mich.), *aff'd*, 747 F. App'x 408 (6th Cir.).

Montana:

Kelly v. Johnson, No. 08-25 (D. Mont.)

Breck v. Stapleton, 259 F. Supp. 3d 1126 (D. Mont.)

Montana Green Party v. Stapleton, 401 Mont. 390 (Sup. Ct. Mont.)

Nebraska:

Bernbeck v. Gale, 829 F.3d 643 (8th Cir.)

Nevada:

Libertarian Pty. of Nev. v. Swackhamer, 638 F. Supp. 565 (D. Nev.)

Fulani v. Lau, No. No. 92-cv-535 (D. Nev.)

New Jersey:

Council of Alternative Political Parties v. ooks, 999 F. Supp. 607 (D.N.J.)

Council of Alternative Political Parties v. State Div. of Elections, 781 A.2d 1041 (N.J. Super. Ct. App. Div.)

New York:

Molinari v. Powers, 82 F. Supp. 57 (E.D.N.Y.)

Schulz v. Williams, 44 F.3d 48 (2d Cir.)

Green Party of N. . v N. . State Bd. of Elections, 389 F.3d 411 (2d Cir.)

North Carolina:

Obie v. N.C. Bd. of Elections, 762 F. Supp. 119 (E.D.N.C.)

DeLaney v. Bartlett, 370 F. Supp. 2d 373 (M.D.N.C.)

Edwards v Berger, No. 18-cvs-9749 (N.C. Sup. Ct. Wake Cnty.)

Ohio:

Libertarian Party of Ohio v. Blackwell, 462 F.3d 579 (6th Cir.)

Libertarian Party of Ohio v. usted, No. 2:13-cv-935 (M.D. Ohio)

Oklahoma:

Atherton v. Ward, 22 F. Supp. 2d 1265 (W.D. Ok.)

De La Fuente v. Ziri ax, No. 17-6010 (10th Cir.)

Pennsylvania:

Patriot Party of Pa. v. Mitchell, 826 F. Supp. 926 (E.D. Pa.)

South Dakota:

Nader v. azeltine, 110 F. Supp. 2d 1201 (D.S.D.)

Libertarian Party of South Dakota v. Krebs, 290 F. Supp. 3d 902 (D.S.D.)

Tennessee:

Libertarian Party v. Goins, 793 F. Supp. 1064 (M.D. Tenn.)

Green Party of Tennessee v. argett, 3:11-cv-00692 (M.D. Tenn.)

Texas:

Pilcher v. Rains, 853 F.2d 334 (5th Cir.)

Virginia:

Libertarian Party of Va. V. uinn, 3:01-cv-468, (E.D. Va.)

West Virginia:

State ex. rel. Browne v. echler, 476 SE 2d 559 (Supreme Court).

Nader v. echler, 112 F. Supp. 2d 575 (S.D. W.Va.).

McClure v. Manchin, 301 F. Supp. 2d 564 (N.D. W.Va.)

TESTIFIED OR SUBMITTED AN AFFIDAVIT (political party or candidate not prevailing)

Alabama:

Swanson v. Bennett, 490 F.3d 894 (11th Cir.)

Stein v. Chapman, 774 F.3d 689 (11th Cir.)

De La Fuente v Merrill, (M.D. Ala.)

Arizona:

Independent Amer. Party v. ull, No. 96-cv-1240 (D. Az.)

Browne v. Bayless, 46 P 3d 416 (D. Az.)

Arizona Libertarian Party v. obbs, 925 F.3d 1085 (D. Az.)

Arkansas:

Langguth v. McKuen, No. LR-C-92-466 (E.D. Ark.)

Christian Populist Party v. Sec. of State, 650 F. Supp. 1205 (E.D. Ark.)

Green Party of Ark. v. Martin, 649 F.3d 675 (8th Cir.)

California:

Socialist Workers Party v. Eu, 591 F. 2d 1252 (9th Cir.)

Independent Party v. Padilla, 184 F. Supp. 3d 791 (E.D. Cal.)

De La Fuente v Padilla, 930 F.3d 1101 (9th Cir.)

D.C.:

Libertarian Party v. D.C. Bd. of Elections, 682 F.3d 72 (D.C. Cir.)

Florida:

Fulani v. Smith, No. 92-4629 (Leon Co. Circuit Court)

Libertarian Party of Fla. v State of Fla., 710 F.2d 790 (11th Cir.)

U.S. Taxpayers Party v. Smith, 871 F. Supp. 426 (N.D. Fla.)

Georgia:

Libertarian Party of Ga. V. Cleland, No. 1:94-cv-1503-CC (N.D. Ga.)

Amendola v. Miller, No. 1:96-cv-2103 (N.D. Ga.)

Esco v. Secretary of State, No. E-53493 (Fulton Co. Superior Court)

Cartwright v. Barnes, 304 F. 3d 1138 (11th Cir.)

Coffield v. Kemp, 599 F.3d 1276 (11th Cir.)

Idaho:

Nader v. Cenarrusa, No. 00-cv-503, (D. Idaho)

Illinois:

Libertarian Party v. Rednour, 108 F 3d 768 (7th Cir)

Nader v. Keith, 385 F.3d 729 (7th Cir.)

Summers v. Smart, 65 F. Supp. 3d 556 (N.D. Ill.)

Kansas:

agelin for President Committee v. Graves, 804 F. Supp. 1377 (10th Cir.)

Maryland:

Ahmad v. Raynor, R-88-869 (D. Md.)

Creager v. State Adm. Bd. of Election Laws, No. AW-96-2612 (D. Md.)

Missouri:

Manifold v. Blunt, 863 F.2d 1368 (8th Cir.)

New Hampshire:

Werme v. Gov. of N. ., 84 F 3d 479 (1st Cir.)

New Mexico:

Parker v. Duran, 180 F. Supp. 3d 851 (D.N.M.)

North Carolina:

Nader v. Bartlett, No. 00-2040 (4th Cir.)

North Dakota:

Libertarian Party of N.D. v. Jaeger, 659 F. 3d 689 (8th Cir.)

Ohio:

Schrader v. Blackwell, 241 F. 2d 783 (6th Cir.)
State ex. rel. Fockler v. [redacted], (Ohio Sup. Ct.)
Libertarian Party of Ohio v. Ohio Sec. of State, No. 16APE-07-496 (6th Cir.),

Oklahoma:

Rainbow Coalition v. Okla. State Elec. Bd., 844 F. 2d 740 (10th Cir.)
Nader v. Ward, No. 00-1340 (D. Okla.)

Oregon:

Libertarian Party v. Roberts, 737 P. 2d 137 (Ore. Ct. of App.)

Tennessee:

Green Party of Tennessee v. [redacted], 3:11-cv-00692 (M.D. Tenn.)

Texas:

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Nat'l Comm. of U.S. Taxpayers Party v. Garza, 924 F. Supp 71 (W.D. Tex.)
Kennedy v. Cascos, 214 F. Supp. 3d 559 (W.D. Tex.)

Virginia:

Wood v. Meadows, 207 F.3d 708 (4th Cir.)

Washington:

Wash. State Rep. Party v. Wash. State Grange, 676 F.3d 784 (9th Cir.)

West Virginia:

Fishbeck v. [redacted], 85 F.3d 162 (4th Cir.)

Wyoming:

Spiegel v. State of Wy., No. 96-cv-1028 (D. Wy.)

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[redacted] v. Merrill, 212 F. Supp. 3d 1148, n. 10 (M.D. Ala. 2016).
Citizens to Establish a Reform Party in Ark. v. Priest, 970 F. Supp. 690, 695 (E.D. 1996).
Green Party of Ark. v. Priest, 159 F. Supp. 2d 1140, 1143 (E.D. 2001).
Green Party of Ark. v. Daniels, 445 F. Supp. 2d 1056, 1059 (E.D. 2006).
Libertarian Party of Ark. v. Thurston, 4:19cv-214 (E.D. 2019).
Cal. Justice Comm. v. Bowen, 2012 WL 5057625 (C.D. Cal. Oct. 18, 2012).
Green Party of Ga. v. Kemp, 171 F. Supp. 3d 1340 (N.D. 2016), *aff'd*, 674 F. Appx 974 (11th Cir. 2017).
Gill v. Scholz, No. 16-cv-3221 (N.D. Ill. 2018).
Jones v. McGuffage, 921 F. Supp. 2d 888, 893 (N.D. Ill. 2017).

Lee v. Keith, 463 F.3d 763, 766 (7th Cir. 2006).

Libertarian Party of Illinois v. Illinois State Bd. of Elections, 164 F.Supp.3d 1023, n. 4 (N.D. Ill. 2016).

Graveline v. Johnson, 336 F. Supp. 3d 801, *aff'd* 747 F. App'x 408 (6th Cir. 2018).

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Green Party of N. . v. N. . State Board of Elections, 389 F.3d 411, 421 (2004).

Libertarian Party of Ohio v. Blackwell, 462 F.3d 579, 589 (6th Cir. 2006).

Libertarian Party of Ohio v. .usted, 2014 WL 11515569 (S.D. Ohio. 2014).

Libertarian Party of South Dakota v. Krebs, 290 F. Supp. 3d 902 (D. S.D., S. Div. 2018).

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Green Party of Tennessee v. .argett, 953 F.Supp.2d 816 (M.D. Tenn. 2013).

Green Party of Tennessee v. .argett, 882 F.Supp.2d 959 (M.D. Tenn. 2013).

EXHIBIT B**BALLOT QUALIFICATION OF PRESIDENTIAL CANDIDATES IN STATES THAT
IMPOSED REQUIREMENTS OF MORE THAN , SIGNATURES**

STATE	YEAR	NO. OF SIGNATURES	NO. OF PRES. CANDIDATES
Alaska	1964	5,836	2
Ariz.	1976	5,523	5
Ariz.	1980	5,386	5
Ariz.	1984	7,264	3
Ariz.	1988	8,670	4
Ariz.	1992	10,555	7
Ariz.	1996	15,062	4
Ariz.	2000	5,386	6
Ariz.	2004	14,694	3
Ariz.	2008	20,449	5
Ariz.	2012	23,041	4
Ariz.	2016	20,119	4
Ariz.	2020	31,686	3
Ark.	1972	42,644	2
Ark.	1976	38,219	2
Cal.	1892	12,115	4
Cal.	1896	8,537	6
Cal.	1900	8,612	4
Cal.	1904	9,131	4
Cal.	1908	9,358	5
Cal.	1912	11,570	4
Cal.	1916	27,800	4
Cal.	1920	20,651	4
Cal.	1924	28,962	4
Cal.	1928	12,125	3
Cal.	1932	14,449	5
Cal.	1936	23,610	5
Cal.	1940	26,960	4
Cal.	1944	22,643	3
Cal.	1948	27,597	4
Cal.	1952	38,458	4
Cal.	1956	41,017	3
Cal.	1960	53,661	3
Cal.	1964	59,297	2
Cal.	1968	66,059	4
Cal.	1972	66,334	4
Cal.	1976	99,284	7
Cal.	1980	101,297	7
Cal.	1984	115,591	5
Cal.	1988	65,000	5

Cal.	1992	134,781	6
Cal.	1996	89,007	8
Cal.	2000	149,692	7
Cal.	2004	153,035	6
Cal.	2008	158,372	6
Cal.	2012	172,859	6
Cal.	2016	178,039	5
Cal.	2020	196,964	6
Ct.	1932	5,532	5
Ct.	1936	5,942	6
Ct.	1944	7,816	4
Ct.	1956	5,485	2
Ct.	1960	5,586	2
Ct.	1964	6,115	2
Ct.	1968	6,093	3
Ct.	1972	12,563	3
Ct.	1976	14,093	4
Ct.	1980	14,085	5
Ct.	1984	14,235	4
Ct.	1988	14,910	4
Ct.	1992	14,620	5
Ct.	1996	7,500	7
Ct.	2000	7,500	6
Ct.	2004	7,500	6
Ct.	2008	7,500	3
Ct.	2012	7,500	4
Ct.	2016	7,500	4
Ct.	2020	5,250	4
Fla.	1932	28,767	2
Fla.	1936	39,534	2
Fla.	1940	34,690	2
Fla.	1944	34,486	2
Fla.	1952	7,500	2
Fla.	1956	7,500	2
Fla.	1960	7,500	2
Fla.	1964	7,500	2
Fla.	1968	18,479	3
Fla.	1972	27,970	2
Fla.	1976	36,213	3
Fla.	1980	42,172	4
Fla.	1984	48,657	2
Fla.	1988	56,318	4
Fla.	1992	60,312	4
Fla.	1996	65,596	4
Ga.	1944	27,500	2
Ga.	1960	65,530	2

Ga.	1964	65,107	2
Ga.	1968	83,339	3
Ga.	1972	98,022	2
Ga.	1976	108,395	2
Ga.	1980	57,540	4
Ga.	1984	61,670	2
Ga.	1988	25,759	4
Ga.	1992	26,955	4
Ga.	1996	30,036	4
Ga.	2000	39,094	4
Ga.	2004	37,153	3
Ga.	2008	42,489	3
Ga.	2012	50,334	3
Ga.	2016	7,500	3
Ga.	2020	5,250	3
Id.	1980	10,323	5
Id.	1984	13,123	4
Id.	2004	5,017	4
Id.	2008	5,984	5
Ill.	1932	25,000	6
Ill.	1936	25,000	6
Ill.	1940	25,000	4
Ill.	1944	25,000	4
Ill.	1948	25,000	5
Ill.	1952	25,000	3
Ill.	1956	25,000	3
Ill.	1960	25,000	3
Ill.	1964	25,000	2
Ill.	1968	25,000	4
Ill.	1972	25,000	4
Ill.	1976	25,000	8
Ill.	1980	25,000	8
Ill.	1984	25,000	8
Ill.	1988	25,000	5
Ill.	1992	25,000	8
Ill.	1996	25,000	6
Ill.	2000	25,000	6
Ill.	2004	25,000	3
Ill.	2008	25,000	7
Ill.	2012	25,000	4
Ill.	2016	25,000	4
Ind.	1936	7,213	5
Ind.	1940	7,798	4
Ind.	1944	6,446	4
Ind.	1948	6,642	6
Ind.	1952	7,912	5

Ind.	1956	7,950	4
Ind.	1960	8,549	4
Ind.	1964	8,863	4
Ind.	1968	8,320	5
Ind.	1972	8,466	5
Ind.	1976	8,406	4
Ind.	1980	6,982	7
Ind.	1984	35,040	2
Ind.	1988	31,077	4
Ind.	1992	29,909	4
Ind.	1996	29,822	4
Ind.	2000	30,717	4
Ind.	2004	29,553	3
Ind.	2008	32,742	3
Ind.	2012	34,195	3
Ind.	2016	26,700	3
Ind.	2020	44,935	3
Ks.	1972	22,356	4
Me.	1976	10,920	4
Md.	1968	45,548	3
Md.	1972	10,000	3
Md.	1976	10,000	2
Md.	1980	10,000	4
Md.	1984	10,000	6
Md.	1988	10,000	4
Md.	1992	10,000	5
Md.	1996	10,000	6
Md.	2000	10,000	6
Md.	2004	10,000	6
Md.	2008	10,000	6
Md.	2012	10,000	4
Md.	2016	10,000	4
Ma.	1940	52,977	6
Ma.	1944	42,052	4
Ma.	1948	50,504	5
Ma.	1952	57,306	5
Ma.	1956	57,114	4
Ma.	1960	56,974	4
Ma.	1964	63,273	4
Ma.	1968	61,236	5
Ma.	1972	56,038	3
Ma.	1976	37,096	6
Ma.	1980	39,246	5
Ma.	1984	41,006	3
Ma.	1988	33,682	4
Ma.	1992	10,000	8

Ma.	1996	10,000	6
Ma.	2000	10,000	6
Ma.	2004	10,000	4
Ma.	2008	10,000	6
Ma.	2012	10,000	4
Ma.	2016	10,000	4
Ma.	2020	10,000	4
Mi.	1940	7,757	6
Mi.	1944	6,256	6
Mi.	1948	9,880	7
Mi.	1952	9,867	6
Mi.	1956	10,874	3
Mi.	1960	12,708	7
Mi.	1964	14,896	4
Mi.	1968	13,371	6
Mi.	1972	14,239	6
Mi.	1976	17,674	8
Mi.	1992	25,646	7
Mi.	1996	30,891	7
Mi.	2000	30,000	6
Mi.	2004	30,000	7
Mi.	2008	30,000	6
Mi.	2012	30,000	5
Mi.	2016	30,000	6
Mi.	2020	12,000	6
Mo.	1956	18,710	2
Mo.	1960	18,084	2
Mo.	1964	18,874	2
Mo.	1968	17,896	3
Mo.	1972	17,518	2
Mo.	1976	18,657	3
Mo.	1980	19,336	5
Mo.	1984	20,881	2
Mo.	1988	21,083	3
Mo.	1992	20,860	4
Mo.	1996	10,000	6
Mo.	2000	10,000	7
Mo.	2004	10,000	4
Mo.	2008	10,000	5
Mo.	2012	10,000	4
Mo.	2016	10,000	5
Mo.	2020	10,000	5
Mt.	1972	6,942	3
Mt.	1976	9,199	3
Mt.	1980	9,771	4
Mt.	1984	9,979	3

Mt.	1988	13,329	4
Mt.	1992	9,531	5
Mt.	1996	10,471	5
Nv.	1968	6,393	3
Nv.	1972	6,883	2
Nv.	1976	8,399	4
Nv.	1980	9,533	4
Nv.	1984	11,704	3
Nv.	1988	7,717	4
Nv.	1992	9,392	8
Nv.	2004	5,019	6
Nv.	2008	5,746	6
Nv.	2012	7,013	4
Nv.	2016	5,431	5
Nv.	2020	9,608	4
N.Y.	1896	6,000	5
N.Y.	1900	6,000	5
N.Y.	1904	6,000	6
N.Y.	1908	6,000	6
N.Y.	1912	6,000	6
N.Y.	1916	6,000	5
N.Y.	1920	12,000	6
N.Y.	1924	12,000	5
N.Y.	1928	12,000	5
N.Y.	1932	12,000	5
N.Y.	1936	12,000	4
N.Y.	1940	12,000	4
N.Y.	1944	12,000	4
N.Y.	1948	12,000	6
N.Y.	1952	12,000	6
N.Y.	1956	12,000	2
N.Y.	1960	12,000	3
N.Y.	1964	12,000	4
N.Y.	1968	12,000	6
N.Y.	1972	20,000	5
N.Y.	1976	20,000	6
N.Y.	1980	20,000	9
N.Y.	1984	20,000	6
N.Y.	1988	20,000	7
N.Y.	1992	15,000	7
N.Y.	1996	15,000	9
N.Y.	2000	15,000	8
N.Y.	2004	15,000	5
N.Y.	2008	15,000	7
N.Y.	2012	15,000	6
N.Y.	2016	15,000	4

N.Y.	2020	30,000	5
No.C.	1932	10,000	3
No.C.	1936	10,000	2
No.C.	1940	10,000	2
No.C.	1944	10,000	2
No.C.	1948	10,000	4
No.C.	1952	10,000	2
No.C.	1956	10,000	2
No.C.	1960	10,000	2
No.C.	1964	10,000	2
No.C.	1968	10,000	3
No.C.	1972	10,000	3
No.C.	1976	10,000	4
No.C.	1980	10,000	6
No.C.	1984	36,949	4
No.C.	1988	44,535	3
No.C.	1992	43,601	4
No.C.	1996	51,904	5
No.C.	2000	51,324	4
No.C.	2004	58,842	3
No.C.	2008	69,734	3
No.C.	2012	85,379	3
No.C.	2016	89,366	3
No.C.	2020	11,778	5
Ohio	1892	7,957	4
Ohio	1896	8,375	6
Ohio	1900	9,082	7
Ohio	1904	8,664	6
Ohio	1908	7,924	7
Ohio	1912	9,245	6
Ohio	1916	11,293	4
Ohio	1920	9,609	4
Ohio	1924	16,258	5
Ohio	1928	13,963	6
Ohio	1932	19,568	6
Ohio	1936	21,871	4
Ohio	1940	24,129	2
Ohio	1944	17,966	2
Ohio	1948	23,038	3
Ohio	1952	433,923	2
Ohio	1956	389,669	2
Ohio	1960	492,621	2
Ohio	1964	467,507	2
Ok.	1916	7,901	5
Ok.	1920	8,180	3
Ok.	1976	40,243	3

Ok.	1980	32,768	4
Ok.	1988	37,671	4
Ok.	1992	35,132	4
Ok.	1996	41,711	4
Ok.	2000	36,202	4
Ok.	2004	37,027	2
Ok.	2008	43,913	2
Ok.	2012	43,890	2
Ok.	2016	24,745	3
Ore.	1964	23,264	2
Ore.	1968	23,590	3
Ore.	1972	24,510	3
Ore.	1976	27,839	3
Ore.	1980	30,897	5
Ore.	1984	35,398	2
Ore.	1988	36,695	4
Ore.	1992	35,932	5
Ore.	1996	14,601	8
Ore.	2000	13,755	7
Ore.	2004	15,306	5
Ore.	2008	18,356	6
Ore.	2012	18,279	6
Ore.	2016	17,893	4
Ore.	2020	20,014	5
Pa.	1924	5,608	8
Pa.	1928	5,515	6
Pa.	1932	9,143	5
Pa.	1936	8,401	7
Pa.	1940	8,502	5
Pa.	1944	6,516	5
Pa.	1948	7,975	7
Pa.	1952	7,846	7
Pa.	1956	9,982	4
Pa.	1960	9,118	4
Pa.	1964	9,647	4
Pa.	1968	10,552	6
Pa.	1972	35,624	5
Pa.	1976	30,584	7
Pa.	1980	48,134	7
Pa.	1984	49,933	6
Pa.	1988	25,568	7
Pa.	1992	37,216	5
Pa.	1996	24,425	6
Pa.	2000	21,739	6
Pa.	2004	25,697	5
Pa.	2008	24,666	4

Pa.	2012	20,601	4
So.C.	1952	10,000	2
So.C.	1956	10,000	3
So.C.	1960	10,000	2
So.C.	1964	10,000	2
So.C.	1968	10,000	3
So.C.	1972	10,000	3
So.C.	1976	10,000	4
So.C.	1980	10,000	4
So.C.	1984	10,000	3
So.C.	1988	10,000	4
So.C.	1992	10,000	6
So.C.	1996	10,000	6
So.C.	2000	10,000	7
So.C.	2004	10,000	7
So.C.	2008	10,000	6
So.C.	2012	10,000	5
So.C.	2016	10,000	7
So.C.	2020	10,000	5
So.D.	1936	5,878	3
So.D.	1940	5,537	2
So.D.	1952	5,067	2
So.D.	1960	5,166	2
So.D.	1964	5,122	2
Tenn.	1964	52,590	2
Tenn.	1968	57,203	3
Tenn.	1972	62,431	3
Texas	1968	14,259	3
Texas	1972	22,355	3
Texas	1976	16,548	4
Texas	1980	23,697	4
Texas	1984	31,909	3
Texas	1988	34,424	4
Texas	1992	38,900	4
Texas	1996	43,963	6
Texas	2000	37,381	5
Texas	2004	45,540	3
Texas	2008	43,991	3
Texas	2012	49,729	4
Texas	2016	47,086	4
Texas	2020	79,939	4
Va.	1972	9,106	4
Va.	1976	9,007	6
Va.	1980	10,003	6
Va.	1984	11,428	3
Va.	1988	12,963	4

Va.	1992	13,920	6
Va.	1996	15,168	6
Va.	2000	10,000	6
Va.	2004	10,000	4
Va.	2008	10,000	6
Va.	2012	10,000	5
Va.	2016	5,000	5
W.V.	1916	11,768	3
W.V.	1932	6,428	5
W.V.	1936	7,438	4
W.V.	1940	8,300	2
W.V.	1944	8,681	2
W.V.	1948	7,156	3
W.V.	1952	7,488	2
W.V.	1956	8,736	2
W.V.	1960	8,309	2
W.V.	1964	8,378	2
W.V.	1968	7,921	3
W.V.	1972	7,543	2
W.V.	1976	7,624	2
W.V.	1980	7,507	4
W.V.	1984	7,378	5
W.V.	1988	7,358	3
W.V.	1992	6,534	4
W.V.	1996	6,837	4
W.V.	2000	6,365	6
W.V.	2004	12,963	4
W.V.	2008	15,118	5
W.V.	2012	7,135	5
W.V.	2016	6,705	5
W.V.	2020	7,145	4
Wyo.	1964	5,824	2
Wyo.	1968	5,972	3
Wyo.	1972	5,816	2
Wyo.	1976	6,347	2
Wyo.	1980	6,469	4
Wyo.	1988	7,990	4
Wyo.	1992	7,903	4
Wyo.	1996	8,000	5

The foregoing table lists all instances when a state required more than 5,000 signatures for an independent presidential candidate, or the presidential nominee of a new or previously unqualified party, to get on the ballot. However the table only lists those instances when **all** procedures for that purpose were above 5,000 signatures.

**IN THE NITE STATES ISTRICT CO RT
OR THE ISTRICT O NE ME ICO**

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

Plaintiffs,

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.

No.: 1:26-cv-02286

**DECLARATION OF MICHAEL VIGIL IN SUPPORT OF PLAINTIFFS'
MOTION OR PRELIMINARY INJUNCTION**

Pursuant to S C

I, Michael J. Vigil, hereby declare as follows:

1. I am over the age of 18 and reside in Albuquerque, Bernalillo County, New Mexico.
2. I have personal knowledge about the matters to which I attest herein. If called to testify, I could and would competently testify to these statements.
3. I intend to run for office as the nominee of the New Mexico Forward Party ("NMFP") in the 2026 general election and in future elections. I also want to campaign and vote for NMFP candidates in the 2026 election and in future elections. Their exclusion from New Mexico's general election ballot harms me as a voter and member of NMFP.
4. I was a registered Democrat until May 8, 2026 when I registered with NMFP at the Secretary of State's office. NMFP submitted its petitions to become a minor party under the New

Mexico state statutes on the same day. The Secretary of State's office certified NMFP as a qualified minor party on or about May 14, 2026.

5. NMFP nominated me as its candidate for State Auditor.

6. Even though I won NMFP's nomination, and NMFP is a qualified minor party under New Mexico law, I was still required to submit a petition to qualify for New Mexico's general election ballot. *See* N.M.S. § 1-8-2(B). Because NMFP was newly formed and its membership totaled less than 1 percent of the previous vote for Governor in the last election, my petition was required to be signed by voters equal in number to 2 percent of that vote, or 14,200 signatures. *See id.*; *see also* New Mexico Office of the Secretary of State, *2026 Nominating Petition for Minor Parties and Decline to State (Independent) Candidates Calculations*, at 2, available at <https://www.sos.nm.gov/wp-content/uploads/2026/04/2026-Nominating-Petition-Calculations-for-Minor-Parties-and-Independent.pdf> (accessed July 26, 2026).

7. The Secretary of State's office advised NMFP that its online petitioning platform would be available for NMFP's nominees to collect electronic signatures once NMFP was certified as a qualified minor party.

8. I have worked for public charter schools and public school districts for the past 36 years. In that capacity, I have built a network which I can call to help support efforts I support. Because my networks are mainly based at schools, it was important that I get the link to the online petitioning platform before the end of the school year at the end of May. Once schools are released for the summer break, contact through my networks to all the many schools' staff, school boards and families is greatly reduced. In order to meet the petition requirements, I knew that timeliness with a working online platform was critical. There would be no way possible to get the number of petition signatures without it.

9. The online petitioning platform was not available until after June 12, 2026.

10. We had already planned to focus our ballot access efforts around a field operation and digital outreach campaign that would drive our supporters to the online petitioning platform. NMFP spent approximately \$24,600 of its ballot access budget to fund our petition drive. Close to 590,000 texts were sent to registered voters which produced almost 34,000 click-throughs but less than 1,700 completed signatures. In addition, my campaign volunteers, family and friends used social media to put the link out to the public and used their personal networks to get the link out. I was notified by friends and family that many of the attempts to log into the online platform to sign the petition were met with a non-working platform. Eligible voters wishing to sign my petition were not able to do so.

11. My campaign volunteers and I attended various functions to obtain as many “wet” signatures as possible. However, having a short time line produced approximately 2,700 signatures.

12. I timely submitted petitions with approximately 4,400 petition signatures. Our petitioning efforts were significantly hindered by the unexpected unavailability of the online platform. For example, had we known that the platform would be dysfunctional for almost the entire statutory petitioning period, we would not have spent nearly \$25,000 on a digital outreach campaign asking voters to sign petitions online. Instead, we could have used that money to hire paid petition circulators. Given the shortness of time, it proved impossible to gather enough signatures on paper petitions. These factors greatly impacted our ability to meet the statutory requirements.

13. I hereby declare under penalty of perjury that the foregoing is true and correct.

Executed on: July 26, 2026



Michael Vigil

**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.

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.

No.: 1:26-cv-02286

**DECLARATION OF BOB PERLS IN SUPPORT OF PLAINTIFFS'
MOTION FOR PRELIMINARY INJUNCTION**

Pursuant to 28 U.S.C.

I, Bob Perls, hereby declare as follows:

1. I am over the age of 18 and reside in Sandoval County, New Mexico.
2. I have personal knowledge about the matters to which I attest herein. If called to testify, I could and would competently testify to these statements.
3. I am Chair of the New Mexico Forward Party ("NMFP").
4. I intend to run for office as the nominee of NMFP in the 2026 general election and in future elections. I also want to campaign and vote for NMFP candidates in the 2026 election and in future elections. Their exclusion from New Mexico's general election ballot harms me as a voter and member of NMFP.
5. On May 8, 2026, NMFP submitted its petitions to become a qualified minor party.

The petitions contained approximately 5,500 signatures and we were required to submit 3,561. The Secretary of State notified us that NMFP was qualified on or about May 14, 2026.

6. I also changed my voter registration to NMFP on May 8, 2026 so I would be eligible to seek NMFP's nomination for U.S. Senate.

7. As NMFP Chair, it was practically impossible to recruit candidates before NMFP was certified as a qualified minor party. People who are qualified and interested in running for public office do not want to commit their time and reputation to a party that is not yet recognized as a party. But under New Mexico law, candidates could not run as NMFP's nominees unless they registered with the party on or before the day the party submitted its petitions to become qualified. That meant they had to register with the party before we knew whether the party would be qualified. This was a major deterrent to our recruitment efforts. We lost approximately 12 credible potential candidates as a result of this dilemma.

8. Recruiting candidates was also difficult because we had to let them know that even if NMFP became a qualified party and nominated them, they would still have to submit petitions with signatures equal in number to the signatures required of independent candidates. Under N.M.S. § 1-8-2(B), if a party's membership is greater than 1 percent of the vote for Governor in the preceding election, then the party's candidates must submit petitions with signatures equal to 1 percent of that vote. But if the party's membership is less than 1 percent of that vote, then the party's candidates must submit petitions with signatures equal to 2 percent of that vote.

9. For NMFP or any other newly formed party, it was a practical certainty that our candidates would have to comply with the 2 percent requirement, because we would not have time to register enough voters to meet the threshold required by § 1-8-2(B).

10. NMFP nominated me as its candidate for United States Senate.

11. We were only able to recruit four other candidates to run as NMFP's nominees: Michael Vigil for State Auditor, Dennis Dingo for Public Education Commission, Henry Montoya for Santa Fe Magistrate Judge and Frances Kava for Luna County Magistrate Judge.

12. Even though I won NMFP's nomination, and NMFP is a qualified minor party under New Mexico law, I was still required to submit a petition to qualify for New Mexico's general election ballot. *See* N.M.S. § 1-8-2(B). Because NMFP was newly formed and its membership totaled less than 1 percent of the previous vote for Governor in the last election, my petition was required to be signed by voters equal in number to 2 percent of that vote in my district, or 14,200 signatures. *See id.*; *see also* New Mexico Office of the Secretary of State, *2026 Nominating Petition for Minor Parties and Decline to State (Independent) Candidates Calculations*, at 2, available at <https://www.sos.nm.gov/wp-content/uploads/2026/04/2026-Nominating-Petition-Calculations-for-Minor-Parties-and-Independent.pdf> (accessed July 26, 2026).

13. When we submitted our petitions to qualify NMFP as a minor party, the Secretary of State's office advised us that once NMFP was certified, the Secretary of State's online petitioning platform would be available for our nominees to use to gather signatures they were required to submit to qualify for placement on the general election ballot.

14. NMFP therefore planned to focus our ballot access efforts on a field operations and digital outreach campaign intended to drive our supporters to sign NMFP nominees' petitions online. In total, NMFP and its candidates spent almost \$63,000 to promote candidates' petition drives. Of this, NMFP spent approximately \$11,000 hiring petition circulators and paying for the materials and supplies necessary to gather voters' wet signatures at public events. NMFP spent over \$44,500 promoting candidates' petitions in text message campaigns asking supporters to sign

petitions through New Mexico's electronic petitioning platform. Additionally, individual candidates collectively spent approximately \$7,245 on their text messaging campaigns and field operations to gather signatures for their own petitions.

15. Much of this time, money and effort was wasted, however, because the Secretary of State took the online petitioning platform offline from May 5, 2026 until June 8, 2026. The Secretary of State's office advised us this was necessary for some reason relating to voter registration. The online petitioning platform was not functional until June 12, 2026 for our statewide candidates and until June 22, 2026 for our two local candidates.

16. NMFP spent approximately \$19,900 of its text messaging budget on my petition drive. More than 450,000 texts were sent to registered voters which produced over 11,300 "click-throughs" but less than 300 completed signatures. The online petitioning platform was not functional for my campaign until June 12, 2026 and thereafter, many voters contacted me or NMFP to report that technical errors often prevented them from using it to sign his petition. Examples of such messages are attached hereto as Exhibit A. I also sent two email blasts to approximately 5,000 of my own personal and political contacts, which produced only approximately 200 signatures through the online petitioning platform. NMFP's field operations budget also helped fund my petition drive through the paid petition circulators who gathered wet signatures on paper petitions at public events.

17. I timely submitted approximately 2,700 signatures—approximately 2,100 on paper petitions and 600 more through the platform. On June 30, 2026, the Secretary notified me that I did not qualify for New Mexico's 2026 general election ballot.

18. I hereby declare under penalty of perjury that the foregoing is true and correct.

Executed on: July 26, 2026



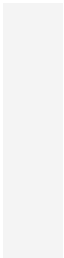
Bob Perls

EXHIBIT A

melanie@nmforwardparty.org

From: Bob Perls <bob@nmforwardparty.org>
Sent: Tuesday, June 30, 2026 7:34 PM
To: Melanie Greenham
Subject: Fwd: Nominating Petition Signatures

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melanie@nmforwardparty.org

From: Bob Perls <bob@nmforwardparty.org>
Sent: Thursday, June 25, 2026 1:20 PM
To: Melanie Greenham
Subject: Fwd: please try petition on a different device

melanie@nmforwardparty.org

From: Bob Perls <bob@nmforwardparty.org>
Sent: Friday, June 26, 2026 10:17 AM
To: Melanie Greenham
Subject: Fwd: Get a Charter School Advocate on the Ballot

Flag Status: Flagged

From:
Date:
To:
Subject: Fwd: Get a Charter School Advocate on the Ballot

lindsey evans _____



From: Bob Perls <perlsbob@gmail.com>
Sent: Wednesday, June 24, 2026 8:33 AM
To: Randy Hancock <randy2508@comcast.net>
Cc: Melanie Greenham <melanie.b.jhg@gmail.com>
Subject: Re: Get a Charter School Advocate on the Ballot

Bob Perls
Forward Party of NM State Chair
Former NM State Representative
505-259-2377
<https://www.nmforwardparty.org>

melanie.b.jhg@gmail.com

From: Bob Perls <perlsbob@gmail.com>
Sent: Wednesday, June 17, 2026 12:44 PM
To: jemezglen@gmail.com
Cc: Melanie Greenham
Subject: Re: Nominating Petition Signatures

Bob Perls
Forward Party of NM State Chair
Former NM State Representative
505-259-2377
<https://www.nmforwardparty.org>



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IN THE NITE STATES ISTRIC CO RT
OR THE ISTRIC O NE ME ICO

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

Plaintiffs,

V.

No.: 1:26-cv-02286

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.

DECLARATION OF HARRIS MONTOMALINS PROPORTION OF PLAINTIFFS'
MOTION FOR PRELIMINARY INJUNCTION

Pursuant to S C

I, Harry B. Montoya, hereby declare as follows:

1. I am over the age of 18 and reside in Santa Fe County, New Mexico.
2. I have personal knowledge about the matters to which I attest herein. If called to testify, I could and would competently testify to these statements.
3. I intend to run for office as the nominee of the New Mexico Forward Party (“NMFP”) in the 2026 general election and in future elections. I also want to campaign and vote for NMFP candidates in the 2026 election and in future elections. Their exclusion from New Mexico’s general election ballot harms me as a voter and member of NMFP.
4. I am the New Mexico Forward Party (“NMFP”) nominee for Santa Fe County Magistrate Judge.

5. Even though I won NMFP's nomination, and NMFP is a qualified minor party under New Mexico law, I was still required to submit a petition to qualify for New Mexico's general election ballot. *See* N.M.S. § 1-8-2(B). Because NMFP was newly formed and its membership totaled less than 1 percent of the previous vote for Governor in the last election, my petition was required to be signed by voters equal in number to 2/3 of 2 percent of that vote in my district, or 928 signatures. *See id.*; *see also* New Mexico Office of the Secretary of State, 2026 *Nominating Petition for Minor Parties and Decline to State (Independent) Candidates Calculations*, at 10, available at <https://www.sos.nm.gov/wp-content/uploads/2026/04/2026-Nominating-Petition-Calculations-for-Minor-Parties-and-Independent.pdf> (accessed July 26, 2026).

6. I was granted access to the electronic petitioning platform by the New Mexico Secretary of State's office on June 22, 2026. Because the deadline for filing my petitions was June 25, 2026, I had to gather the majority of my signatures on paper petitions. I timely submitted petitions with 984 signatures, and only approximately 250 came from the online petitioning platform.

7. I spent approximately \$1,945 to fund my petition drive. Approximately \$1,700 of that was spent on a texting program that sent more than 41,000 messages to registered voters in my district. That effort generated approximately 1,800 click-throughs to the online petitioning platform, but because the platform was not functional for most of my statutory petitioning period, it ultimately garnered only about 30 signatures. In addition to my own efforts on the petition drive, my wife and 25 volunteers worked to gather the necessary signatures.

8. On June 30, 2026, County Clerk of Santa Fe County notified me that I qualified for placement on New Mexico's general election ballot.

9. I hereby declare under penalty of perjury that the foregoing is true and correct.

Executed on: July 26, 2026



Harry Montoya

**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.

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.

No.: 1:26-cv-02286

**DECLARATION OF FRANCES KAVA IN SUPPORT OF PLAINTIFFS'
MOTION OR PRELIMINARY INJUNCTION**

Pursuant to 28 U.S.C.

I, Frances Kava, hereby declare as follows:

1. I am over the age of 18 and reside in Luna County, New Mexico.
2. I have personal knowledge about the matters to which I attest herein. If called to testify, I could and would competently testify to these statements.
3. I am the Chair of the Forward Party of Luna County New Mexico.
4. I intend to run for office as the nominee of the New Mexico Forward Party ("NMFP") in the 2026 general election and in future elections. I also want to campaign and vote for NMFP candidates in the 2026 election and in future elections. Their exclusion from New Mexico's general election ballot harms me as a voter and member of NMFP.
5. NMFP nominated me as its candidate for Luna County Magistrate Judge.

6. Even though I won NMFP's nomination, and NMFP is a qualified minor party under New Mexico law, I was still required to submit a petition to qualify for New Mexico's general election ballot. *See* N.M.S. § 1-8-2(B). Because NMFP was newly formed and its membership totaled less than 1 percent of the previous vote for Governor in the last election, my petition was required to be signed by voters equal in number to 2/3 of 2 percent of that vote in my district, or 79 signatures. *See id.*; *see also* New Mexico Office of the Secretary of State, 2026 *Nominating Petition for Minor Parties and Decline to State (Independent) Candidates Calculations*, at 8, available at <https://www.sos.nm.gov/wp-content/uploads/2026/04/2026-Nominating-Petition-Calculations-for-Minor-Parties-and-Independent.pdf> (accessed July 26, 2026).

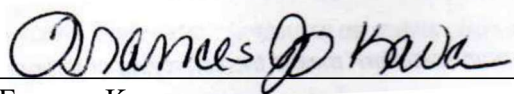
7. The Secretary of State's online petitioning platform was not functional for most of my statutory petitioning period. It was not functional until June 13, 2026.

8. I timely submitted petitions containing 118 signatures to the County Clerk of Luna County. Approximately 70 signatures were signed on paper nomination petitions and approximately 50 were signed through the online petitioning platform.

9. On June 29, 2026, the County Clerk of Luna County, Barbara DeLaney, notified me that I was disqualified as a candidate pursuant to NMSA 1978, Section 1-8-2(E)(1), because I registered with NMFP after the date on which the Secretary of State certified NMFP as a qualified minor party.

10. I hereby declare under penalty of perjury that the foregoing is true and correct.

Executed on: July 26, 2026



Frances Kava

**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.

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.

No.: 1:26-cv-02286

DECLARATION OF DENNIS C. DINGE IN SUPPORT OF PLAINTIFFS
MOTION FOR PRELIMINARY INJUNCTION

(Pursuant to U.S.C.)

I, Dennis C. Dingo, hereby declare as follows:

1. I am over the age of 18 and reside in Albuquerque, Bernalillo County, New Mexico.
2. I have personal knowledge about the matters to which I attest herein. If called to testify, I could and would competently testify to these statements.
3. I intend to run for office as the nominee of the New Mexico Forward Party (“NMFP”) in future elections. I also want to campaign and vote for NMFP candidates in the 2026 election and in future elections. Their exclusion from New Mexico’s general election ballot harms me as a voter and member of NMFP.
4. I was a registered Declined to State until May 8, 2026 when I joined NMFP by changing my voter registration at the Secretary of State’s office. NMFP submitted its petitions to

become a qualified minor party on the same day, and the Secretary of State's office notified us that NMFP was a qualified minor party on or about May 14, 2026.

5. NMFP nominated me as the party's candidate for Public Education Commission District 3 at its convention.

6. Even though I won NMFP's nomination, and NMFP is a qualified minor party under New Mexico law, I was still required to submit a petition to qualify for New Mexico's general election ballot. *See* N.M.S. § 1-8-2(B). Because NMFP was newly formed and its membership totaled less than 1 percent of the previous vote for Governor in the last election, my petition was required to be signed by voters equal in number to 2/3 of 2 percent of that vote in my district, or 1,014 signatures. *See id.*; *see also* New Mexico Office of the Secretary of State, 2026 Nominating Petition for Minor Parties and Decline to State (Independent) Candidates Calculations, at 5, available at <https://www.sos.nm.gov/wp-content/uploads/2026/04/2026-Nominating-Petition-Calculations-for-Minor-Parties-and-Independent.pdf> (visited July 26, 2026).

7. The Secretary of State's office told us that once NMFP was certified as a qualified minor party, its nominees would be able to use the Secretary of State's online petitioning platform to solicit electronic signatures for the petitions we had to submit to pursuant to § 1-8-2(B). I knew a working portal would be vital because circulating petitions in person is expensive and time consuming, and our petitions were due on June 25, 2026.

8. The Secretary of State's online petitioning platform was not functional until June 12, 2026. The Secretary of State's office advised us that it had to be taken offline for some reason relating to voter registration during the primary election season.

9. We had already planned to focus our ballot access efforts around a field operation and digital outreach campaign that would drive our supporters to the online petitioning platform.

As part of that strategy, more than 80,000 text messages were sent to registered voters in my district. In addition, my campaign supporters, family and friends sent email to their personal networks to get the link out. This effort generated more than 8,250 click-throughs to the online petitioning platform but only about 230 petition signatures. I was notified by a neighbor and I've seen an email to the Forward Party saying that the portal was informing them that they had already signed for a candidate in my race even though they said they had not.

10. Because the online petitioning platform was unexpectedly offline for most of my statutory petitioning period, and thereafter remained dysfunctional for many voters, we had to scramble to hire paid canvassers and recruit volunteers to obtain as many “wet” signatures as possible. We collected over 1000 wet signatures.

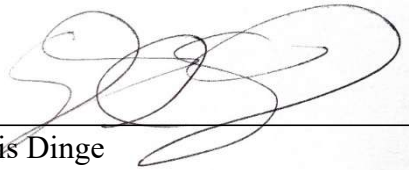
11. NMFP’s field operations budget helped fund my campaign’s petition drive, and I personally loaned my campaign approximately \$4,000 to fund the effort.

12. Together with the approximately 230 signatures that voters signed through the online petitioning platform, I timely submitted petitions containing approximately 1,230 signatures. The Bernalillo County Clerk notified me that I qualified for placement on the 2026 general election ballot on June 30, 2026.

13. Our ballot access efforts were severely hampered by the unexpected availability of the online petitioning platform during most of the statutory petitioning period. The effort was significantly more expensive and laborious than it would have been if the platform were functional. Even so, we barely succeeded in complying with the signature requirement.

14. I hereby declare under penalty of perjury that the foregoing is true and correct.

Executed on: July 26, 2026



Dennis Ding

**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-SCY

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.

**THE SECRETARY OF STATE'S RESPONSE IN OPPOSITION TO
PLAINTIFF'S EMERGENT MOTION FOR PRELIMINARY INJUNCTION**

Defendant Maggie Toulouse Oliver, as Secretary of State of New Mexico (the Secretary), respectfully submits this response opposing plaintiffs' motion, which asks the Court to preliminarily enjoin parts of New Mexico's Election Code that apply to minor political parties. For the reasons that follow, plaintiffs' arguments do not justify a preliminary injunction, and the motion should be denied.

INTRODUCTION

Article I, Section 4 of the United States Constitution imparts on every state the power to regulate elections. New Mexico has done so through its Election Code, N.M. Stat. Ann. §§ 1-1-1 to 1-26-6, and the Secretary is responsible for implementing those laws. N.M. State. Ann. § 1-2-2 (2011). Like many states, New Mexico has chosen to statutorily sort political parties into two categories: major political parties and minor political parties. The difference is in the percentage support the party can garner in comparison to the total votes for governor or president in the

previous general election. *See* N.M. Stat. Ann. § 1-7-7 (2011). Once qualified, each party then has additional steps they must take to have their candidates listed on the ballot. For minor political parties, the candidates must be nominated by their party and then obtain signatures from a certain percentage of registered voters to qualify to appear on the ballot. N.M. Stat. Ann. § 1-8-2(B) (2011).

Distinguishing between major political parties and minor political parties is not unique to New Mexico. Many states employ a similar framework, and do so to ensure that candidates appearing on a ballot have some modicum of support. Declaration of Mandy Vigil, August 14, 2026, attached as **Exhibit A**, ¶¶ 10–11. This framework has been tested for decades in litigation and has been upheld by the United States Supreme Court, Tenth Circuit, the New Mexico Supreme Court, and this Court, all of which accept that, on balance, the state’s interest in conducting an orderly election outweighs the minimal burdens imposed on candidates to collect signatures to appear on the ballot.

Plaintiffs are five candidates of a newly formed political party and the party itself, the New Mexico Forward Party (NMFP), all of whom seek to enjoin parts of New Mexico’s election framework that require petition signatures for minor political party candidates and the party. N.M. Stat. Ann. §§ 1-8-2(B) and 1-8-2(E). Even though three out of the party’s five candidates were successful in their efforts to appear on this November’s ballot for the general election,¹ they all complain that New Mexico’s requirement to obtain signatures separately from their party is a

¹ Plaintiffs concede that Dennis Dingee and Harry Montoya qualified for the ballot. Doc. 8 at 8. Since filing the complaint, plaintiff Frances Kava has also been qualified by the Luna County Clerk for the ballot, consistent with the Secretary’s decision to qualify Montoya. Vigil Decl., ¶ 19. Similarly, plaintiff New Mexico Forward Party succeeded in qualifying as a minor political party. Dingee, Montoya, Kava, and the NMFP have not been harmed by the laws they challenge, so it is unclear how they have Article III standing to sue. *See Rio Grande Found. v. Oliver*, 57 F.4th 1147, 1162 (10th Cir. 2023) (political organization lacked standing to assert First Amendment claim concerning a disclaimer in electioneering materials “because there is no evidence suggesting the disclaimer requirement ever affected Appellants’ speech or conceivably would affect their speech.”).

“severe burden” that “freezes the political status quo.” Mot. for Prelim. Inj., Doc. 8, at 9, 12. However, to the contrary, New Mexico’s statutory framework reflects a careful balance between ballot access and avoiding a demonstrated history of overcrowding and frivolous candidates on the ballot. And this framework has, both historically and recently, permitted minor parties to appear on the ballot (including plaintiffs themselves), even resulting in minor political parties becoming major political parties under the Election Code. Vigil Decl., ¶ 12.

Plaintiffs’ misapprehensions about the difficulties minor parties face getting on the ballot are not all that counsel against accepting their challenge. The requirement that minor party candidates obtain additional signatures beyond the party itself, a two-step framework, has already been scrutinized and upheld. This Court previously accepted that New Mexico’s interest in ensuring candidates have a modicum of support—in addition to their party—is sufficient to outweigh the burden on candidates to petition for signatures separately. *See Libertarian Party of N.M. v. Vigil-Giron*, CIV-06-0615 MV/ACT, 2006 WL 8443845, at *11 (D.N.M. Sept. 18, 2006) (affirmed in *Libertarian Party of N.M. v. Herrera*, 506 F.3d 1303 (10th Cir. 2007)). The Third Circuit Court of Appeals has also evaluated the same challenge plaintiffs make here against a similar two-step framework in Pennsylvania and upheld the law. *Rogers v. Corbett*, 468 F.3d 188 (3d Cir. 2006). And the Supreme Court has recognized significant petition requirements much harsher than New Mexico’s are not unduly burdensome—even candidates needing to obtain 325,000 signatures in 24 days was not “impractical.” *Storer v. Brown*, 514 U.S. 724, 740 (1974). In contrast, the two plaintiffs here who did not qualify for the ballot, Bob Perls and Michael Vigil, had 41 days to obtain 14,200 signatures each. If NMFP had not waited until after the primaries to qualify as a party, its candidates would have had up to 115 days. *See Vigil Decl.*, ¶ 8.

When the facts and case law are considered, it becomes apparent that New Mexico's interest in having candidates show a level of support to prevent overcrowded ballots of frivolous candidates outweighs the burden on these plaintiffs to obtain a relatively modest number of signatures. These plaintiffs are unlikely to succeed on the merits of their constitutional challenge and should not be granted a preliminary injunction. Doing so would permit them to avoid the petition requirement, making these plaintiffs unlike any other candidate on New Mexico's ballot. The remedy sought by plaintiffs would undermine the policy decisions New Mexico's Legislature has made in crafting the Election Code and put the Court in the position of deciding who is on the ballot. The motion should be denied.

ARGUMENT

The Secretary agrees with plaintiffs that to be entitled to a preliminary injunction they must show (1) a substantial likelihood of success on the merits, (2) the threat of irreparable injury, (3) that threat outweighs New Mexico's interests, and (4) the injunction would not be adverse to the public interest. *See Fish v. Kobach*, 840 F.3d 710, 723 (10th Cir. 2016). The Secretary disagrees that plaintiffs can meet each of those elements. Moreover, plaintiffs in this case have a heightened burden because the injunction they seek is disfavored.

Disfavored injunctions are those that alter the status quo, mandate action, or afford all relief the movant would seek at trial. *See id.*; *Schrier v. Univ. of Colo.*, 427 F.3d 1253, 1259 (10th Cir. 2005). Here, plaintiffs' requested injunction would alter the status quo by changing the law applicable to all minor party candidates in New Mexico to permit them to avoid their signature petition obligations, it would mandate the Secretary accept ballots with the two plaintiffs who did not qualify under the law, and it would award the ultimate relief plaintiffs desire—to appear on the general election ballot in November. *See* Doc. 8 at 22 (requesting relief). Plaintiffs' injunction is

disfavored on all fronts, and so it must be “closely scrutinized to assure that the exigencies of the case support the granting of a remedy that is extraordinary even in the normal course.” *Schrier*, 427 F.3d at 1261 (internal citation omitted). Plaintiffs certainly cannot meet that higher burden.

I
PLAINTIFFS ARE UNLIKELY TO SUCCEED ON THE MERITS

Plaintiffs assert that New Mexico’s Election Code as applied to them unduly burdens their First Amendment rights related to ballot access and political speech, and violates the Fourteenth Amendment’s equal protection clause by treating them differently than major party candidates. *See* Doc. 8 at 9. This is so, according to plaintiffs, because the two-step framework to qualify as a minor party candidate—first requiring a political organization to qualify as a party, then for an individual candidate to petition for signatures to get on the ballot—imposes too high of a burden and is unlike any other state’s requirements. *Id.* at 10–14; N.M. Stat. Ann. § 1-7-2(A) (2011); N.M. Stat. Ann. § 1-8-2. Plaintiffs also attack N.M. Stat. Ann. § 1-8-65 (2014), which requires minor party candidates to collect signatures on a petition form that becomes available in March of even-numbered years. They argue this is impermissible viewpoint discrimination instead of a reasonable time, place, and manner regulation on petitioning. Doc. 8 at 16.

For any political party to be recognized under New Mexico law it must obtain signatures “of at least one-half of one percent of the total votes cast for the office of governor at the preceding general election” from registered voters expressing a desire to have the party qualify. N.M. Stat. Ann. § 1-7-2(A). This can happen “at any time,” whether there is an upcoming election or not. *Id.* Then in advance of an election, the Secretary promulgates petition forms for individual candidates to solicit signatures from voters wanting the candidate to qualify for the ballot. This occurs in October of odd number years for major parties, and March of even number years for minor parties. N.M. Stat. Ann. §§ 1-8-2(B), 1-8-33(B). Courts have already reviewed challenges to this two-step

framework, and others like it, and found arguments against its constitutionality wanting. Plaintiffs cannot show that this framework—which is not unique across the country—is likely to be found unconstitutional; plaintiffs’ arguments to the contrary rely on court opinions that do not apply here and facts leading to their alleged “severe burden” that are self-imposed or slight in comparison to other states.

A. Plaintiffs’ Claims are Subject to Close Scrutiny as Facial Challenges

On the surface, plaintiffs say that their challenge is only as the Election Code applies to them; a closer look at the arguments, however, shows they mount a facial challenge. “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.” *United States v. Carel*, 668 F.3d 1211, 1217 (10th Cir. 2011) (alteration in original). Here, even though only two of their candidates failed to qualify, and those two candidates only needed to obtain 14,200 signatures each, plaintiffs largely attack the Election Code by claiming that NMFP is required to “submit 10 separate petitions with 131,361 signatures.” Doc. 8 at 5. This is only so if NMFP had candidates for every statewide-elected office—not the two offices plaintiffs failed to qualify for. Moreover, plaintiffs contend that the two-step signature framework impermissibly burdens every minor party and minor party candidate, regardless of any circumstance unique to the NMFP or its nominees. If the framework is unconstitutional simply because plaintiffs are minor party candidates (as they assert), there is no remaining constitutional application of the statutes (which only affect minor parties). The same goes for plaintiffs’ argument that the window for gathering signatures is unconstitutional, because none of these plaintiffs sought to gather signatures before the petition was available under N.M. Stat. Ann. § 1-8-65. The earliest any plaintiff allegedly began gathering signatures was in May, *see* Doc. 8 at 4, but the petition was available on March 2, 2026. Vigil Decl., ¶ 16.

Plaintiffs’ arguments for “[i]nvalidating the statutes for recognized minor parties would strip the statutes of each and every application they have.” *Green Party of Tenn. v. Hargett*, 791 F.3d 684, 692 (6th Cir. 2015). “By challenging the statutes as applied to recognized minor parties, the plaintiffs have in effect asserted a facial challenge.” *See id.* (applying a heightened facial challenge standard to claims that election statutes “imposed a severe burden” on minor political parties). Because plaintiffs’ challenge is to facial validity, they have the heightened burden of showing that no application of the statutes is constitutional. If despite their own arguments plaintiffs insist that their challenge is truly as applied, they must “concede[] that the statute may be constitutional in many of its applications,” and this Court should make no holding about the framework in other applications. *See Carel*, 668 F.3d at 1217.

B. New Mexico’s Two-Step Qualification Framework is Constitutional

As an initial matter, New Mexico’s statutes requiring a party and its candidates to petition for signatures are not automatically subjected to strict scrutiny, as plaintiffs suggest. *See* Doc. 8 at 9–10. The Tenth Circuit has recognized that, in ballot cases, the analysis does not consistently demand “a compelling state interest nor . . . that the state demonstrate it has achieved this end by the least restrictive means available.” *See Rainbow Coal. v. Okla. State Election Bd.*, 844 F.2d 740, 743 (10th Cir. 1988). This is because, as the Supreme Court has held, “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 v. Takushi*, 504 U.S. 428, 433 (1992). Such regulations may justifiably include limits on “the field of candidates from which voters might choose,” and that alone “does not of itself compel close scrutiny.” *Bullock v. Carter*, 405 U.S. 134, 143 (1972). Differences between how major and minor political parties are regulated, for example, “are not *per se* unconstitutional.” *Rogers*, 468 F.3d at 196.

The Court must instead engage in a balancing between the severity of the burden on ballot access against New Mexico’s “justifications for the burden imposed by its rule,” taking into consideration “the extent to which those interests make it necessary to burden the plaintiffs’ rights.” *Anderson v. Celebrezze*, 460 U.S. 780, 789 (1983); *see also Libertarian Party of N.M. v. Herrera*, 506 F.3d 1303, 1309 (10th Cir. 2007). When the regulation on ballot access imposes “reasonable, nondiscriminatory restrictions,” then “the State’s important regulatory interest are generally sufficient to justify” the regulation. *Anderson*, 460 U.S. at 788.

1. The Burden on Plaintiffs is not Severe

The burden claimed by plaintiffs amounts to a complaint about the number of signatures minor party candidates must obtain—that major parties are treated more favorably, no other state has similarly high requirements, and that the requirements operate to “freeze” the status quo on political parties. *See* Doc. 8 at 10–13. Section 1-8-2 requires minor political party candidates to obtain a different number of signatures depending on the position sought and size of the party, ranging from 1% or 2% of the number of votes for governor in the previous election. *See* N.M. Stat. Ann. 1-8-51 (2023). Even taking as true plaintiffs’ assertion that their two candidates who failed to qualify had 41 days to obtain 14,200 signatures from any voter,² *see* Doc. 8 at 8, compared to signature requirements analyzed by other courts, this is not a significant burden.

In *Jenness v. Fortson*, 403 U.S. 431, 438 (1971), the Supreme Court addressed a Georgia law requiring candidates who failed to enter or win a party primary to obtain signatures from 5% of voters eligible to vote in the previous election. Voters could sign multiple petitions, made no

² The number of days plaintiffs had to collect signatures was a result of NMFP’s late certification in New Mexico. The party could have formed at any time, *see* § 1-7-2, but chose an election year to do so. Even then, the party announced its organization on April 10, 2026, yet waited until May 8, 2026, to actually submit its filings to qualify as a political party. *See* Doc. 8 at 4; Joshua Bowling, Former presidential candidate Andrew Yang launches NM Forward Party, Source NM (April 10, 2026), <https://sourcenm.com/briefs/former-presidential-candidate-andrew-yang-launches-nm-forward-party/>. These delays truncated the available time for NMFP candidates to obtain signatures. Had NMFP formed earlier, it could have obtained petitions as early as March 2, 2026, and had 115 days to collect signatures.

commitment to vote for the candidate, and did not need to be a member of the candidate's party. *Id.* at 439. This scheme imposed “no suffocating restrictions” and the Court found nothing about it abridged “the rights of free speech and associated secured by the First and Fourteenth Amendments.” *Id.* Similarly, in *American Party of Texas v. White*, 415 U.S. 767 (1974), the Court considered a Texas law requiring candidates of minor political parties to demonstrate support from at least 1% of the total vote for governor in the previous election. This amounted to approximately 22,000 signatures in 55 days, which the court found was not “impossible or impracticable” to obtain. *Id.* at 783. Higher still, the Supreme Court has held that even a law mandating 325,000 signatures in 24 days in California “would not appear to be an impossible burden.” *Storer*, 415 U.S. at 740. The lesson from these cases is obvious: “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).

The burden New Mexico's Election Code places on plaintiffs here is slight in comparison. The three candidates who qualified for the ballot, Dennis Dinger, Harry Montoya, and Frances Kava, did so with 1,014, 928, and 118 signatures respectively. Doc. 8 at 8–9. The two who failed to qualify, Bob Perls and Michael Vigil, needed only 14,200 signatures each. Doc. 8 at 5. This is significantly fewer signatures than those required by other states and upheld by the Supreme Court. The 5% of *eligible* voters in *Jenness* is far more than the 1% or 2% of *votes cast* New Mexico requires. 403 U.S. at 433. New Mexico also made the minor party candidate petition available on March 2, 2026. Vigil Decl., ¶ 16. This provided candidates with 115 days to collect 14,200 signatures by June 25—from any voter, regardless of party. *See* N.M. Stat. Ann. § 1-8-2(B) (requiring petitions to be filed within 23 days of the June 2 primary). That amounts to about 123

signatures per day. This is a far cry from the 1,466 signatures per day found acceptable in *American Party* or the 13,542 signatures per day in *Storer*. The burden is even less as a practical matter, because the candidates in those cases ran in the 1970s, when they had no option but to physically canvas voters. *See Storer*, 415 U.S. at 740 (“1,000 canvassers could [collect sufficient signatures] if each gather 14 signers per day.”). Here, plaintiffs by their own admission took advantage of digital communications to send “nearly 1.166 million text messages” to “more than 500,000 registered voters.” Doc. 8 at 8. If far more signatures were required of candidates with far less sophisticated tools, plaintiffs suffer practically no burden at all collecting the required signatures here.³ “[A] minor party is not impermissibly burdened by ballot access restrictions when ‘a reasonably diligent independent candidate’ could be expected to satisfy the ballot access requirement.” *Vigil-Giron*, 2006 WL 8443845, at *8 n.6 (quoting *Storer*, 415 U.S. at 742).

Nor are plaintiffs burdened by New Mexico’s two-step framework, requiring the political party to qualify and then the individual candidate to obtain signatures. The Third Circuit Court of Appeals already addressed this framework when rejecting a challenge to Pennsylvania’s election laws, which has the same two-step system as New Mexico. In *Rogers v. Corbett*, the Court recognized that the two-step system serves a useful purpose: to show the candidate has a “modicum of support” separate from the party, which voters may have different reasons for supporting. 468 F.3d at 197 (“Permitting the ‘modicum’ to be perpetual” based only on party qualification “may result in ballot clutter.”). The two-step system for minor parties in Pennsylvania, as in New

³ Bob Perls and Michael Vigil assert in their declarations that these communications were not fruitful because the Secretary’s online petition platform was not functional “until June 12.” Doc. 8-2, ¶ 9; Doc.8-3, ¶ 16. This is not apparent from the emails Perls attaches, which appear as scrambled text. More importantly, the Secretary’s online platform was functional from March 18 onward. Vigil Decl., ¶ 16. Plaintiffs were unable to utilize the platform, however, because they were not yet registered with NMFP. *Id.* ¶ 17. This was due to plaintiffs attempting to change their voter registration during a statutory pause in registration processing between May 5 and June 8. *Id.* Plaintiffs were informed of this, and had NMFP formed earlier, plaintiffs could have fully utilized the online platform. *Id.* Regardless, the point stands plaintiffs were free to obtain signatures through other means because the petition was available on March 2, and were encouraged to do so. *Id.* ¶ 18.

Mexico, was found to be consistent with requirements imposed on major political parties. *Id.* at 196. Like minor parties, major parties not only must be qualified, they must then nominate candidates, and then those candidates must obtain signatures from party members and then ultimately face a vote in their party’s primary. *See id.* This is like major party candidates in New Mexico. N.M. Stat. Ann. § 1-8-33(B) (2023) (“Candidates who seek preprimary convention designation shall file nominating petitions . . . signed by a number of voters equal to at least 2% of the total vote of the candidate’s party . . .”). The fact major and minor parties in Pennsylvania had similar requirements undermined the *Rogers* plaintiffs’ assertion of a severe burden on ballot access. *Rogers*, 468 F.3d at 197. That Pennsylvania and New Mexico have this two-step framework⁴ while other states may not, an argument the *Rogers* plaintiffs and the plaintiffs here both make, “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.* (collecting cases). All in all, the Third Circuit held that Pennsylvania’s two-step qualification framework—the same as New Mexico’s—was not “an unacceptable burden.” *Id.* at 196. There is no reason the Court here should not similarly conclude, as the *Rogers* court did, that the two-step framework in New Mexico’s Election Code does not unduly burden plaintiffs.

The only case plaintiffs cite where a court struck down a two-step qualification system is *Maryland Green Party v. Maryland Bd. of Elections*, 832 A.2d 214 (Md. 2003). Doc. 8 at 2. But that case is distinguishable on numerous fronts. First, the case centered entirely on the Maryland constitution, a violation of which the court made clear “is not necessarily a violation” of the Federal

⁴ Since *Rogers*, the Third Circuit invalidated part of this framework because it allowed members of the public to object to nomination papers submitted for minor party candidates. *Constitution Party of Pennsylvania v. Cortes*, 924 F.3d 386 (3d Cir. 2016). The objection would result in a hearing, potentially voiding the petition and awarding costs. *Id.* at 390–91. That additional hurdle was a bridge too far for the Court, as applied to the specific plaintiffs. *Id.* at 395 n.14.

Constitution. *Id.* at 158 (internal quotation and citation omitted). There are also significant factual differences between New Mexico’s system and Maryland’s. The *Maryland Green Party* court took issue with minor political parties having a signature requirement while major political parties could rely on candidate performance in previous elections to automatically qualify different candidates in future elections. *Id.* at 159–60. New Mexico, on the other hand, requires *both* major and minor parties to submit signatures to qualify for the ballot. *See* N.M. Stat. Ann. §§ 1-8-2, 1-8-33. Major parties in New Mexico even have a more limited signer pool, because their candidates may only collect signatures from voters registered *with* the party, whereas minor party candidates may collect signatures from any voter, regardless of party affiliation. *See* N.M. Stat. Ann. § 1-8-33(B). Even if there are differing burdens, for regulations on major and minor political parties “there are obvious differences in kind between the needs and potentials of a political party with historically established broad support, on the one hand, and a new or small political organization on the other.” *Jenness*, 403 U.S. at 441.

The *Maryland Green Party* court also found that the individual candidate’s signature requirement added nothing to the party’s signature requirement, because the candidate had to collect far fewer signatures than the party. 832 A.2d at 164. New Mexico, as shown by plaintiffs themselves, would require more signatures of individual candidates than their party. *Compare* N.M. Stat. Ann. § 1-7-2(A) (requiring 0.5% of total vote) *with* N.M. Stat. Ann. § 1-8-2(B) (requiring up to 2% of the total vote). And even if New Mexico had not, a signature in support of a party forming is certainly different in kind from a signature in support of a candidate running for office. *Maryland Green Party*, 832 A.2d at 167 (Harrell, J., concurring) (“Voters who sign the party-recognition petition neither are pledging their loyalty to the party nor promising to support

a particular candidate in a future election.”). *Maryland Green Party* simply offers no persuasive application to this case.

To the extent plaintiffs complain about the timing of forming a party and qualifying candidates, this Court has already rejected that argument in the past. “[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.” *Vigil-Giron*, 2006 WL 8443845, at *10. As explained above, NMFP could have formed earlier; the burden on its candidates to gather signatures in a short timeframe is self-inflicted due to its late certification as a political party.

Finally, although plaintiffs argue that the burden imposed by New Mexico’s Election Code is so severe that it effectively freezes the status quo, Doc. 8 at 12–13, the fact that three of NMFP’s own candidates—60% of the individual plaintiffs—qualified for this year’s ballot defeats the argument. 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. *See Vigil Decl.*, ¶ 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.* 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. Plaintiffs are simply incorrect that the New Mexico’s Election Code imposes such a massive burden on minor political candidates that they have no access to the ballot.

2. The Public Interest in New Mexico Demonstrably Outweighs the Burden on Plaintiffs

Plaintiffs claim that New Mexico has no interest whatsoever in imposing its signature requirements on minor political party candidates. Doc. 8 at 14. But the interests are apparent, have been recognized by court after court, and 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). In order 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). They may thus constitutionally impose requirements that candidates show “a significant modicum of support” *Jenness*, 403 U.S. at 442.

New Mexico’s interests are served by its two-step framework. A political party can form at any time, and doing so does not require a signatory to have any intent to support the party’s candidates in the future. N.M. Stat. Ann. § 1-7-2. A minor political party may have very few members as well, lending more credence to the need for an individual candidate to demonstrate some modicum of support to appear on the ballot. NMFP is a prime example—at the time of briefing, it only has 227 registered members. Vigil Decl., ¶ 13. New Mexico is serving the interests of its populace by requiring such a party to have its candidates show additional support before appearing on a general election ballot. “The fact that a minor political party has earlier shown a modicum of support by meeting a separate goal, which entails a separate distinction, does not render the burden [on an individual candidate] an improper one.” *Rogers*, 468 F.3d at 196; *see also*

Libertarian Party of Maine v. Diamond, 992 F.2d 365, 371 (1st Cir. 1993) (even though a party may have demonstrated support by the performance of candidate in an earlier election, resulting in the party qualifying by riding that candidate's coattails, "the State retained a legitimate interest in ensuring that the Party in fact possessed a minimal level of support among the electorate, as a prerequisite to listing the appellant candidates on the primary and general election ballots."). Major parties in New Mexico have similar requirements they must meet. N.M. Stat. Ann. § 1-8-33. That plaintiffs complain of the magnitude of signatures required does not undermine New Mexico's interests in regulating its elections. "To hold otherwise risks infringing on an area traditionally allocated to the states." *Rogers*, 468 F.3d at 197.

The burden on plaintiffs is not so severe as to require the Secretary to put forth specific facts supporting the challenged statutes, as plaintiffs demand. Doc. 8 at 14–15. Indeed, as this Court has recognized, "The 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 v. Duran*, 180 F. Supp. 3d 851, 861 (D.N.M. 2015) (quoting *Munro*, 479 U.S. at 194–95). Even if there was a need, New Mexico has a history of revising its Election Code to address specific occasions where its interests were being undermined. For instance, in 1992's general election six third-party and independent candidates for President appeared on the ballot in New Mexico, and received 0.1% of the vote or less. *Vigil-Giron*, 2006 WL 8443845, at *6) (citing 41st Legislature, First Session 1993, House Memorial #56). New Mexico's Legislature found that, absent requirements that would demonstrate a candidate's modicum of support, there was an ever-increasing number of third-party and independent candidates that caused issues with preparing the ballot for voting machines. *Id.* It

requested that the Secretary of State review the Election Code and offer recommendations, resulting in some of the ballot access requirements in the Election Code today. *Id.*

Going further back, the New Mexico Supreme Court reckoned with ballot access restrictions in the Election Code in *Dillon v. King*, 1974-NMSC-096, 87 N.M. 79. There, three candidates wanted to run in the Democratic primary for United States Senate, failed to qualify, and challenged petition requirements. *Id.* ¶¶ 7, 16–17. In recognizing New Mexico’s interest in regulating its ballots, the Court noted the “real and present danger in New Mexico” of overcrowding and frivolous candidates. *Id.* ¶ 12. In the 1972 Democratic primary for Senate in New Mexico, “twenty-eight candidates filed of whom twenty-five” appeared on the ballot. *Id.* The most successful candidate received 45,648 votes, while the least successful candidate—Santa Fe’s legendary street artist Tommy Macaione, also known as El Diferente—received only 252. *Id.*

This history forms the backdrop of New Mexico’s present Election Code. Regardless of party status (major, minor, or independent), each party nominee must show some modicum of support by soliciting signatures from voters—the very electorate who would vote in the election itself—to avoid known frivolous candidacies. N.M. Stat. Ann. §§ 1-8-2, 1-8-33, 1-8-51. Indeed, even if every voter who is currently registered as a member of NMFP voted for its own candidates, plaintiffs would still only receive 227 votes. Vigil Decl., ¶ 13. This is fewer than the candidate who received 252 in *Dillon* that the court used as an exemplar of frivolous candidacies. 1974-NMSC-096, ¶ 12. Given New Mexico’s history and recognized interests, the challenged statutes are reasonable. They are also nondiscriminatory. *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).

On balance, the slight burden on plaintiffs to obtain signatures in an amount far fewer than numbers approved by the Supreme Court does not outweigh New Mexico’s interest in preventing ballot overcrowding, voter confusion, and frivolous candidacies. *See Diamond*, 992 F.2d at 371 (requiring support for individual candidates “is meant to safeguard the integrity of elections by avoiding overloaded ballots and frivolous candidacies, which diminish victory margins, contribute to the cost of conducting elections, confuse and frustrate voters, increase the need for burdensome runoffs, and may ultimately discourage voter participation in the electoral process.”) (citing *Illinois State Board of Elections v. Socialist Workers Party*, 440 U.S. 173, 183–84 (1979) and *Bullock*, 405 U.S. at 145). For their own benefit, plaintiffs ask the Court to disrupt the framework the Legislature has developed to protect such interests. “The extraordinary remedy that the moving plaintiffs seek—ballot access for their candidates without any showing of support—would eliminate the state’s ability to protect these important interests and would result in the discriminatory treatment of other minor parties.” *Libertarian Party of Connecticut v. Merrill*, 470 F. Supp. 3d 169, 189 (D. Conn. 2020). Plaintiffs cannot show that the signature requirements imposed by the Election Code are unconstitutional.

**C. New Mexico’s Restriction on When Candidates May
Petition to Appear on the Ballot does not Violate the First Amendment**

In addition to the signature requirements, plaintiffs attack the time which New Mexico permits minor political party candidates to collect signatures. Doc. 8 at 16–17. According to plaintiffs, the restriction impinges on speech protected by the First Amendment, discriminates based on viewpoint, and is thus subject to strict scrutiny. *See id.* As support, they rely on *Meyer v. Grant*, 486 U.S. 414 (1988). But *Grant* is not instructive here. Although the Supreme Court struck down a restriction on who may solicit signatures for ballot initiatives, *id.* at 426, New Mexico has no similar restriction—anyone can petition for signatures to support candidates and may hire

anyone else to do so. Moreover, the law at issue in *Grant* had a similar restriction to one present in New Mexico that the Court did not find problematic. The petition scheme in *Grant* included a window of time to secure signatures, six months, just as New Mexico makes its official petition form available for a specific period of time. *Id.* at 416. Finally, the *Grant* court’s concerns stem largely from restrictions on “the power of the people to initiate legislation,” but plaintiffs’ challenge here is to a candidate’s ability to appear on a ballot. *Id.* at 423. Court after court has recognized a state’s ability to put limits on candidates seeking ballot access. *See supra*, at 8–15.

The parties agree § 1-8-65 puts a limit on the time a party may solicit petitions by restricting the petition to a form promulgated by the Secretary. But the Secretary does not agree that § 1-8-65 discriminates based on viewpoint—or subject matter—at all, and thus is not subject to strict scrutiny. Rather, it is a content-neutral and reasonable time, place, and manner restriction.

“A regulation that serves purposes unrelated to the content of expression is deemed neutral, even if it has an incidental effect on some speakers or messages but not others.” *Christian Legal Soc. Chapter of Univ. of Cal., Hastings Coll. of the Law v. Martinez*, 561 U.S. 661, 695 (2010). In *Christian Legal Society*, for example, the Supreme Court addressed a university’s policy limiting recognition of student groups to those who agree to open eligibility of all students. *Id.* at 667. The Christian Legal Society challenged the policy by arguing, in part, that it “burdens most heavily those groups whose viewpoints are out of favor with the campus mainstream.” *Id.* at 695. The Court disagreed, because the policy was “justified without reference to the content or viewpoint of the regulated speech.” *Id.* at 696 (internal citation and brackets omitted). Rather than the content of the school group’s speech, the policy targeted “the *act* of rejecting would-be group members without reference to the reasons motivating that behavior.” *Id.*

Here, § 1-8-65 is targeted at a specific act: gathering signatures for candidacy. It places no restriction whatsoever on a candidate's ability to speak about their platform, policies, or party. A party could at any time send a digital communication blast throughout the state asking residents to support its preferred candidate, similar to what NMFP did here, and build support leading up to the time when petitions are available to sign. And § 1-8-65 is plainly neutral on what platform or candidate a given minor political party may choose to support. The petition requirement does not, for example, restrict candidates from petitioning on a platform that supports funding education, libraries, infrastructure, or any other viewpoint. Any allusion from plaintiffs to suggest that § 1-8-65 somehow favors the viewpoints of Democrats or Republicans, *see* Doc. 8 at 19, is soundly undermined by the statute itself. § 1-8-65 applies to “minor political parties,” and a separate petition requirement and time frame exists for “major political parties” in § 1-8-33. The statutes are neutral on what party qualifies as either category under the law, and indeed which existing party meets those categories is subject to change. Vigil Decl., ¶ 12. § 1-8-65, therefore, is content neutral, neither restricting what a candidate can say or the viewpoint they express.

Instead, § 1-8-65 is a reasonable time, place, and manner restriction that serves New Mexico's significant interest in avoiding voter confusion and frustration. “Expression, whether oral or written or symbolized by conduct, is subject to reasonable time, place, or manner restrictions.” *Clark v. Community for Creative Non-Violence*, 468 U.S. 288, 293 (1984). “Thus, the essence of time, place, or manner regulation lies in the recognition that various methods of speech, regardless of their content, may frustrate legitimate governmental goals. No matter what its message, a roving sound truck that blares at 2 a. m. disturbs neighborhood tranquility.” *Consol. Edison Co. of N.Y., Inc. v. Pub. Serv. Comm. of N.Y.*, 447 U.S. 530, 536 (1980). The Supreme Court has thus permitted restrictions, for example, on when or where a person can organize a parade,

hold a demonstration, or screen adult films. *See Cox v. New Hampshire*, 312 U.S. 569 (1941); *Grayned v. City of Rockford*, 408 U.S. 104 (1972); *City of Renton v. Playtime Theatres, Inc.*, 475 U.S. 41 (1986).

Section 1-8-65 does not restrict the content of speech, but the act of gathering signatures for a candidate, and when that may occur. As a matter of practice, a candidate could gather support at any time, but the form on which the Secretary will accept signatures is not available until October, for major party candidates to get on the primary election ballot, and March, for minor party candidates to get on the general. This limitation serves two functions. First, it prevents candidates from confusing voters by limiting their soliciting to the relevant election. If a candidate could solicit signatures at any time, a voter may not know when the candidate will actually run. And as a practical matter, the Secretary would not know when the signature was obtained and if it was valid for the specific election. Staggering the timeline for major and minor parties also serves this interest, because it prevents confusion between which candidates are gathering preprimary support—the major party candidates—and those that do not run in primaries—minor party candidates. *See* N.M. Stat. Ann. § 1-8-33. That the State may treat the two categories of parties differently is supported by the cases. *See Rogers*, 468 F.3d at 193.

Second, the limit on when the petition is available for candidates eases voter fatigue. As demonstrated by NMFP, voters in the state are already susceptible to mass, unsolicited communications from candidates during the petition period. The NMFP alone sent 1.166 million texts to New Mexicans within its 41-day petition period. All parties and candidates are of course free to espouse their platforms at any time and to anyone, but § 1-8-65 serves as a reasonable restriction on the time period for which the State will accept the results of those solicitations for purposes of entry on the ballot. *Anderson*, 460 U.S. at 788 (“[N]ot all restrictions imposed by the

States on candidates’ eligibility for the ballot impose constitutionally-suspect burdens on voters rights to associate or to choose among candidates.”). Thus, § 1-8-65, while not actually prohibiting any speech or viewpoint, serves to protect voters from frustrating or confusing solicitations that are unclear about when a candidate will run or how to support them.

Because § 1-8-65 is a content-neutral and reasonable time, place, and manner restriction, plaintiffs cannot show that it violates their First Amendment rights.

II

ABSENT A DEPRIVATION OF CONSTITUTIONAL RIGHTS, PLAINTIFFS FACE NO IRREPARABLE HARM

The Court need not consider the remaining requirements for a preliminary injunction absent a likelihood of success on the merits. *See, e.g., Merrill*, 470 F. Supp. 3d, at 189. Even if it does, the plaintiffs will not suffer irreparable harm if this Court refuses to issue a preliminary injunction. The plaintiffs’ only basis for arguing irreparable harm is that, absent an injunction, the two candidates who failed to qualify will be excluded from the 2026 general election. Doc. 8, at 20. But plaintiffs do not have an unqualified right to appear on a ballot; as explained above, New Mexico may place appropriate requirements on would-be candidates to show they have sufficient support. The presence of irreparable injury to plaintiffs’ rights “turns on whether the plaintiff has shown a clear likelihood of success on the merits,” and they have not. *See SAM Party of New York v. Kosinski*, 987 F.3d 267, 278 (2d Cir. 2021).

III

AN INJUNCTION FORCING NEW MEXICO TO PUT PLAINTIFFS ON THE BALLOT IS CONTRARY TO THE PUBLIC INTEREST

Plaintiffs assert that the equities favor them rather than the State, and that their requested relief—being placed on the ballot—would be in the public interest. These inquiries are one and the same in suits against the government. *Id.* (“In a suit against the government, balancing of the

equities merges into our consideration of the public interest.”). Moreover, the balancing is addressed already between plaintiffs’ asserted burden to obtain a position on the ballot and the State’s interest in well-regulated elections. Under that balancing the State’s interest outweighs the plaintiffs’. *See supra*, at 8–15. As the Supreme Court has recognized, “[t]he means of testing the seriousness of a given candidacy may be open to debate; the fundamental importance of ballots of reasonable size limited to serious candidates with some prospects of public support is not.” *Lubin v. Panish*, 415 U.S. 709, 715 (1974). 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).

Although plaintiffs complain that the remaining candidates on the ballot will be major party candidates if they are not permitted to appear, Doc. 8 at 21, that alone is not sufficient. “[W]hile some voters would surely like to see” NMFP on the ballot, “the interest of those voters does not outweigh the broader public interest in administrable elections,” and ensuring candidates “enjoy a modicum of electoral support,” beyond that of the party itself. *See Kosinski*, 987 F.3d at 278; *Vigil-Giron*, 2006 WL 8443845, at *10.

Finally, 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. The two NMFP nominees who failed to qualify under the Election Code would be placed above all other minor party candidates, even their fellow NMFP party members, and given special access to the ballot based on a preliminary assessment by the Court of their claims. Doing so also risks interference with the Secretary’s election preparation. Time is of the essence in elections; preparing ballots must meet strict statutory deadlines, ballots must be tested to ensure they are compatible with tabulation machines, and they

must be proofed by the county clerks. *See, e.g.*, N.M. Stat. Ann. § 1-10-4(B) (2023) (requiring each county to certify its ballot “not less than sixty-seven days before the election”); Vigil Decl., ¶ 15. Changing the ballot is not simple, and when done partway through the Secretary’s proofing process it can lead to errors, undermining the State’s ability to accurately count all votes. Vigil Decl., ¶ 15.

“The extraordinary remedy that the moving plaintiffs seek—ballot access for their candidates without any showing of support—would eliminate the state’s ability to protect these important interests and would result in the discriminatory treatment of other minor parties.” *Merrill*, 470 F. Supp. 3d at 189. The Secretary certainly agrees in principle that a democratic government is served by third-party access to the ballot—provided the party and the candidate merit it. But that interest is already protected by the Election Code and manifested by the third parties that have qualified year over year. Vigil Decl., ¶ 11. The public’s interest is better served by leaving the Election Code intact rather than forcing the public to accept candidates who failed to demonstrate the reasonable level of support to qualify for the ballot.

CONCLUSION

For all the reasons explained above, plaintiffs cannot establish that §§ 1-7-2(A), 1-8-2(B), 1-8-2(E), or 1-8-65 violate the First and Fourteenth Amendments, and so imposing a preliminary injunction to allow plaintiffs’ failed candidates to appear on the ballot would harm the public interest. The plaintiffs’ motion should therefore be denied.

Dated: August 14, 2026.

Respectfully submitted,

BARDACKE ALLISON MILLER LLP

By: /s/ Justin Miller

Justin Miller

Michael Woods

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Santa Fe, NM 87501

505-995-8000

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michael@bardackeallison.com

*Counsel for Defendant Maggie Toulouse
Oliver, in her official capacity as Secretary
of State of New Mexico*

CERTIFICATE OF SERVICE

I hereby 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 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-SCY

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.

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 her in the execution and enforcement of all state and federal laws relating to elections.
3. I have served as a public servant for over twenty years. Most recently, I have served as an election administrator in the Office of the Secretary of State of New Mexico since 2011. Currently, I serve as the State Elections Director, a role I have had for eight years. Other public service roles I have held include Ethics Division Manager and Compliance Officer. I also serve as an election subject matter expert and representative of New Mexico for several election-related organizations. I previously served as President of the National Association of State Election

Directors, an Executive Board Member of the Electronic Registration Information Center, a Representative on the Election Assistance Commission Standards Board, a member of the Bipartisan Policy Center's Taskforce on elections, a member of the Election Workforce Advisory Council, and I represent the Standards Board on the Technical Guidelines Development Committee (TGDC).

4. The Secretary of State is the state's Chief Elections Officer, responsible for executing and enforcing all state and federal law relating to elections within the state. *See* NMSA 1978 § 1-2-1 (2023). The Secretary of State's Office is responsible for implementing the Chief Election Officer's responsibilities with regard to elections, including enforcing laws and providing technical information to the public and candidates.

5. The Secretary of State's Office and thirty-three county clerks are responsible for administering state and federal elections in New Mexico. This encompasses voter registration, balloting, tabulating votes, and certifying results in all elections for federal office and statewide offices. The Elections Bureau implements the Secretary of State's responsibilities in this regard, including enforcing election-related laws and providing technical information to the public and other stakeholders. The Secretary of State also maintains uniformity in the application, operation, and interpretation of New Mexico's Election Code, and—subject to the State Rule Act—promulgates rules in connection with the Election Code.

6. In my role as State Elections Director, I oversee all programs related to election administration within the state. This includes election related systems and compliance. I am responsible for ensuring that candidates for election comply with relevant statutes and regulations, developing election guidance, providing training, and implementing new and improved processes and technology to support New Mexico's elections. I work directly with internal and external

partners to develop all systems and procedures related to the administration of statewide elections. As the agency's subject matter expert and Elections Director, I have extensive knowledge of the daily operations, legal requirements, and stakeholders involved. I oversee the development and ongoing maintenance of our ballot management system and petition forms.

7. New Mexico is among a majority of states that statutorily recognize and categorize major and minor political parties. In New Mexico, a major party is any qualified party whose candidates receive sufficient votes in the prior general election, and who maintain a specified number of members across the state. N.M. Stat. Ann. § 1-7-7(2011). All other qualified parties are considered minor political parties. In either event, a political organization can only be qualified as a political party by submitting to the Secretary of State's Office a petition containing signatures from 0.5% of voters for governor in the last election. N.M. Stat. Ann. § 1-7-2 (2011). In 2026, that amounted to 3,561 signatures. The petition to qualify as a new political party is always available, and a new party can be qualified at any time.

8. In January of 2026, our office was contacted by members of the New Mexico Forward Party (NMFP) seeking to qualify as a political party under New Mexico law. We provided NMFP with information on the qualification process. It was not until May 8, 2026, that NMFP submitted its petition, after which our office certified NMFP as a political party in New Mexico on May 15, 2026.

9. After a party is qualified, New Mexico law provides additional steps the party's candidates must take in order to appear on the ballot. Major political party candidates seeking access to the primary must submit a petition containing signatures of registered party members in a specified amount, depending on the elected position. N.M. Stat. Ann. § 1-8-33 (2023).

10. For minor political party candidates, they similarly must petition for signatures, but from any voter, not necessarily from the same party. If the party is sufficiently large, then the individual candidate needs to collect fewer signatures. Candidates of parties with fewer members than the number of signatures needed to qualify normally, 1% of the total votes cast for governor in the previous election, must collect the same number of signatures as independent candidates, 2% of the total votes cast for governor. N.M. Stat. Ann. 1-8-2(B) (2023).

11. These signature requirements serve an important purpose—ensuring that the ballot given to all voters in New Mexico contains established candidates who have demonstrated support. The signature requirements are not impossible to meet, even for minor party candidates. In the last ten years, 18 candidates from minor political parties have met the Election Code’s requirements to appear on the general ballot, including members of NMFP, the Libertarian Party, the Green Party, the Constitutional Party, the American Delta Party, and the Better for America Party. *See* Summary of Minor Party Candidate Ballot Qualifications, attached as **Exhibit 1**.

12. Nor is it impossible for minor parties in New Mexico to become major political parties. Because the Election Code categorizes parties by votes received, and not by name, a minor party candidate who receives sufficient support in a general election may cause the candidate’s party to be recategorized as a major political party. This was the case with the Libertarian Party, which became a major political party under New Mexico law for seven years between 2018 and 2025.

13. Because NMFP has few members, its candidates for statewide elections were required to meet the heightened 2% signature requirement. NMFP’s current membership is 227 registered voters. This meant that its statewide candidates, Bob Perls and Michael Vigil, had to

obtain 14,200 signatures each. NMFP's candidates for local offices, Dennis Dingel, Harry Montoya, and Frances Kava, had smaller signatures requirements, which were met.

14. The Secretary of State's Office makes available petitions to collect signatures, which must comport in substance with the form created by statute, N.M. Stat. Ann. §§ 1-8-30, 1-8-65. Major political parties are provided the petition in October of odd-numbered years, which must be submitted by the following February for statewide offices, March for all others. Minor political parties are provided petitions to collect signatures in March of even-numbered years. Staggering the petitions and requiring petitions to be of a specified form allows the proper filing officer to process petitions in a timely manner for primary and general elections separately, informs voters of when the candidate is expecting to run for office, and prevents candidates from using signatures collected for other elections held in the past.

15. In 2026, signatures for minor party candidates were due by June 25, within 23 days of New Mexico's June 2 primary election. § 1-8-2(B). This statutory time frame serves the practical purpose of allowing the Secretary of State's Office and the county clerks sufficient time to certify that a candidate's signatures are valid, to prepare the ballot, send ballots to each county, test the ballot on voting machines, send ballots to be printed, finalize and mail the ballot for out-of-state and overseas voters, and ultimately complete the ballot for election day. Mock election runs are also performed for all counties to ensure that everything works as it should. Changing the ballot, even adding or deleting a name, can cause errors and require the Secretary of State's Office to repeat its proofing process from the beginning.

16. The Secretary of State's Office promulgated the form petition for minor party candidates on March 2, 2026, as a PDF available on its website. This was the first business day in March. We also optionally provide an online version of the petition, which was available to

registered members of a party on March 18, 2026. The Secretary of State's website does not currently allow access to multiple petitions at once, and could not be changed from the primary petition to the general election petition until after the March 17 deadline for write-in candidates and candidates that sought and failed to receive pre-primary convention designation by their party for the primary election. Secretary of State personnel made that change manually, after business hours, as soon as possible so the site could be ready on March 18.

17. The online petition platform was not "unavailable" until after June 12, 2026, as alleged by Bob Perls and Michael Vigil. Candidates must be registered members of their party to use the platform. However, by statute, county clerks cannot process new voter registrations 28 days before an election until the first business day after the election. That time period this year was May 5 to June 8 in relation to New Mexico's primary. N.M. Stat. Ann. § 1-4-8 (2023). This limitation was communicated to Bob Perls multiple times, including on April 30, May 27, and June 5. *See* Emails between Mandy Vigil et al. and Bob Perls et al., Apr. 26, 2026, to June 5, 2026, attached as **Exhibit 2**.

18. NMFP members sought to register on May 8, when county clerks could not process registrations. In accordance with the law, county clerks resumed processing registrations on June 8. The Secretary of State's Office urged the relevant county clerks to prioritize all NMFP registrations, a fact I told Mr. Perls on June 11. NMFP candidates were encouraged to circulate paper nominating petitions during the limitation period and not to depend on the online platform. Once registered, NMFP's candidates could use the online platform.

19. Bob Perls and Michael Vigil did not obtain sufficient signatures to qualify to appear on the general election ballot. Mr. Perls received 2,530 valid signatures and Mr. Vigil received

4,055 valid signatures. *See* Candidate Filing & Qualification Checklists, attached as **Exhibit** .¹ Dennis Ding, Harry Montoya, and Frances Kava received sufficient signatures. Although Frances Kava was initially disqualified, the County Clerk of Luna County has since qualified Ms. Kava in a decision consistent with how the Secretary of State treated Mr. Montoya. Ms. Kava will appear on the ballot in November.

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

Dated: August 14, 2026.



Mandy Vigil

¹ The required number of signatures listed on these checklists erroneously states 7,100, rather than the statutory requirement for 14,200 signatures. Mr. Perl and Mr. Vigil did not exceed 7,100 signatures, even if that requirement was correct.

Election Year	FID	CONTEST	CANDIDATE NAME	PARTY	FILING DATE	STATUS
2026 GENERAL	2917	United States Senator	BOB PERLS	FWD	6/25/2026 11:44	Disqualified
2026 GENERAL	2917	State Auditor	MICHAEL J VIGIL	FWD	6/25/2026 11:38	Disqualified
2026 GENERAL	2917	Public Education Commissioner DISTRICT 3	DENNIS C DINGE	FWD	6/25/2026 14:50	Qualified
2026 GENERAL	2917	Magistrate Judge DIVISION 1	HARRY B MONTOYA	FWD	6/25/2026 10:33	Qualified
2026 GENERAL	2917	Magistrate Judge MAGISTRATE	FRANCES JO KAVA	FWD	6/25/2026 11:34	Qualified
2026 GENERAL	2917	County Councilor	CHRIS LUCHINI	LIB	6/25/2026 15:02	Qualified
2026 GENERAL	2917	County Assessor	JAMES CURTIS WERNICKE, JR	LIB	6/25/2026 15:19	Qualified
2026 GENERAL	2917	County Commissioner DISTRICT 1	FRANCISCO R CHAVEZ	LIB	6/25/2026 11:05	Qualified
2024 GENERAL	2882	President and Vice President of the United States	JILL STEIN AND RUDOLPH WARE	GRN	8/27/2024 9:49	Qualified
2024 GENERAL	2882	President and Vice President of the United States	LAURA EBKE AND TRISHA BUTLER	LPU	9/5/2024 19:32	Qualified
2024 GENERAL	2882	President and Vice President of the United States	CLAUDIA DE LA CRUZ AND KARINA GARCIA	PSL	8/27/2024 9:47	Qualified
2022 GENERAL	2838	None				
2020 GENERAL	2782	President and Vice President of the United States	SHEILA "SAMM" TITTLE AND DAVID CARL SANDIGE	CON	6/25/2020 13:34	Qualified
2020 GENERAL	2782	President and Vice President of the United States	GLORIA LA RIVA AND SUNIL FREEMAN	PSL	8/20/2020 13:57	Qualified
2020 GENERAL	2782	President and Vice President of the United States	HOWIE HAWKINS AND ANGELA NICOLE WALKER	GRN	8/20/2020 13:06	Qualified
2020 GENERAL	2782	State Representative DISTRICT 25	STEPHEN A VERCHINSKI	GRN	6/25/2020 10:45	Qualified
2018 GENERAL	2698	None				
2016 GENERAL	84	President and Vice President of the United States	"ROCE LA FUENTE AND MICHAEL STEINBERG	ADN	9/13/2016 10:59	Qualified
2016 GENERAL	84	President and Vice President of the United States	EVAN MCMULLIN AND NATHAN JOHNSON	BFA	9/12/2016 11:47	Qualified
2016 GENERAL	84	President and Vice President of the United States	DARRELL CASTLE AND SCOTT BRADLEY	CON	7/22/2016 10:28	Qualified
2016 GENERAL	84	President and Vice President of the United States	JILL STEIN AND AJAMU BARAKA	GRN	8/15/2016 16:34	Qualified
2016 GENERAL	84	State Senator DISTRICT 39	FRANCES M GALLEGOS	GRN	6/30/2016 15:44	Disqualified
2016 GENERAL	84	State Representative DISTRICT 45	SKY TALLMAN	GRN	6/30/2016 15:19	Disqualified
2016 GENERAL	84	President and Vice President of the United States	GARY JOHNSON AND BILL WELD	LIB	7/11/2016 15:48	Qualified
2014 GENERAL	2	County Sheriff	MICHAEL E LUNNON	CON	6/25/2014 14:54	Qualified

EXHIBIT 2

From: Bob Perls
To: Vigil, Mandy, SOS
Cc: Bachman, Lindsey, SOS; Romero, Charles, SOS; ana@nmforwardparty.org; John Gerhart; ToulouseOliver, Maggie, SOS; Trujillo, Anastacio, SOS; Harry Montoya
Subject: Re: BOE-1905 - RE: [EXTERNAL] Re: Firm up time on May 8 to register Forward Party
Date: Friday, June 5, 2026 2:23:27 PM
Attachments: PastedGraphic-1.png
image001.png
image002.png

Hello Mandy,

Thank you for the update. Can you confirm that any candidate as long as they register with the Forward Party, will be able to access the electronic signature portal? Specifically, Harry Montoya registered with the forward party a week or so ago and tried to change from DTS to Forward in CFIS and was told by your staff that he could not because he was not registered with the forward party on May 8. Can you confirm that once you/the clerk updates his voting reg that he will be able to be treated as a forward party candidate by CFIS and the signature portal?

Thank you very much.

Bob Perls
 Forward Party of NM State Chair
 Former NM State Representative
 505-259-2377
<https://www.nmforwardparty.org>



On Jun 5, 2026, at 1:42 PM, Vigil, Mandy, SOS <Mandy.Vigil@sos.nm.gov> wrote:

Mr. Perls,

All of the system work to accommodate the Forward Party is complete. The candidate online petition portal registration will look to our statewide voter registration system to confirm party/district information. The processing of pending voter registrations will begin in county offices as allowed by the Election Code on Monday, June 8.

As soon as potential candidates are registered with the Forward Party, they can complete their portal registration to circulate petitions electronically. The timing is dependent on county clerk processing of their voter registration queue.

Let me know if you have any additional questions.

Thanks,
 Mandy

Mandy Vigil | State Election Director
 New Mexico Office of the Secretary of State
 325 Don Gaspar, Ste. 300 | Santa Fe, NM 87501
 Cell: 505.660.4045 | mandy.vigil@sos.nm.gov
[NMVOTE.ORG](https://nmvote.org) | Rumor vs. Realty



From: Bob Perls <bob@nmforwardparty.org>
Sent: Friday, June 5, 2026 12:23 PM

EXHIBIT 2

To: Bachman, Lindsey, SOS <lindsey.bachman@sos.nm.gov>
Cc: Romero, Charles, SOS <Charles.Romero@sos.nm.gov>; Vigil, Mandy, SOS <Mandy.Vigil@sos.nm.gov>;
ana@nmforwardparty.org; John Gerhart <john.p.gerhart@gmail.com>; ToulouseOliver, Maggie, SOS
<Maggie.TOliver@sos.nm.gov>; Trujillo, Anastacio, SOS <anastacio.trujillo@sos.nm.gov>
Subject: Re: BOE-1905 - RE: [EXTERNAL] Re: Firm up time on May 8 to register Forward Party

Hello Lindsey and Team,

How are we looking for you guys getting the candidate portal open for electronic signature collection? Can you give us a day that we can start? Thanks so much. Bob

Bob Perls
Forward Party of NM State Chair
Former NM State Representative
505-259-2377
<https://www.nmforwardparty.org>



On May 27, 2026, at 9:41 AM, Bob Perls <bob@nmforwardparty.org> wrote:

Hi SOS team, thank you for all your hard work on all of these important issues.

However, the two most important issues for us or are not being addressed. We have got to be able to use electronic petition gathering in the next few days or there is no way to hit the signature requirements that your office is stipulating. Also, we need to make sure the bank will open a bank account for us as soon as possible. I'm not clear whether your business office has shown the Forward Party as in the system and approved. Can you please clarify these two issues?

Can you offer a week extension on when our petitions are due given the delay in getting the candidate signature portal up and going?

Given that we submitted our paperwork on May 8, it seems not appropriate that we're having to wait a full month for candidates to collect electronic signatures. Please let us know your thoughts.

Thank you again. And I hope you can help us with these critical issues.

Thank you, Bob Perls
Sent from my iPhone

On May 27, 2026, at 8:55 AM, Bachman, Lindsey, SOS
<lindsey.bachman@sos.nm.gov> wrote:

Good morning,

Although we had shared previously that systemic updates would require a bit of time to accomplish, the team has been prioritizing updates related to the Forward Party's recent qualification and I am happy to share that they

EXHIBIT 2

have accomplished quite a bit.

Here are some important updates:

- Voters now have the option to register with the Forward Party through online voter registration. Please note that voter registration closes during an election window pursuant to 1-4-8 NMSA 1978. Registrations received during this window may be processed beginning the Monday following an election and shall be processed beginning no later than the first business day after the approval of the county canvass.
- The statewide voter database, SERVIS, now has the Forward Party as a qualified political party for the processing of voter registrations at the county level once processing begins again post-primary election.
- The state's campaign finance system, CFIS, now has the Forward Party for campaign registration.
- Automatic Voter Registration at MVD should be updated on/around May 28th to display the Forward Party. This update requires technical systemic updates at our office as well as MVD.
- There is a planned update for the general election to same day voter registration systems to allow voters to register with the Forward Party. Work on this update will take place following the June Primary Election.
- The work on the online nominating petition portal will not be complete until at least the Monday following the June 2nd Primary Election. In the interim, candidates may circulate paper nominating petition forms, even if their submitted registration update has not been processed by county clerks during the closed registration window.

Best,

Lindsey

Lindsey Bachman | Director of Communications, Legislative and Executive Affairs

New Mexico Office of the Secretary of State
325 Don Gaspar, Suite 300 | Santa Fe, NM 87501
Cell: (505) 479-2626

lindsey.bachman@sos.nm.gov

EXHIBIT 2

NMVOTE.ORG | Rumor vs. Reality

From: Bob Perls <bob@nmforwardparty.org>
Sent: Monday, May 25, 2026 2:42 PM
To: Elections, SOS <Elections@sos.nm.gov>
Cc: Bachman, Lindsey, SOS <lindsey.bachman@sos.nm.gov>; Romero, Charles, SOS <Charles.Romero@sos.nm.gov>; Vigil, Mandy, SOS <Mandy.Vigil@sos.nm.gov>; ana@nmforwardparty.org; John Gerhart <john.p.gerhart@gmail.com>; ToulouseOliver, Maggie, SOS <Maggie.TOliver@sos.nm.gov>
Subject: Re: BOE-1905 - RE: [EXTERNAL] Re: Firm up time on May 8 to register Forward Party

Hi SOS team,

Here is what Maggie told me last week:

Charles Romero on my team is going to send you an email specific to the candidate portal. We need vendor intervention and again, cannot change party anywhere until June 5

So he's going to give you some guidance about what candidates should do for now with the candidate signature portal and how we will fix it once the books reopen.

Can you share with the Forward Team where we are? We really need ASAP to be able to collect electronic candidate signatures to qualify for the ballot.

Thanks so much.

Bob Perls
Forward Party of NM State Chair
Former NM State Representative
505-259-2377
<https://www.nmforwardparty.org>

<image001.png>

On Apr 30, 2026, at 4:35 PM, elections@sos.nm.gov wrote:

Your Ticket Has Been Updated

Ticket Number: BOE-1905

<~WRD0000.jpg>

A New Note Was Added To Your Ticket

EXHIBIT 2

Note:

Hello Bob,

Thank for checking in, we are ready to support you with filing next week. Reviewing the following statutes, NMSA 1978, 1-7-1 through 1-7-7 will help inform your political party's preparation for your visit next week.

Our office will accept your filing paperwork next Friday May 8, 2026. Statute provided for the timeline our office is allowed to review the paperwork filed and ensure all filing documents are in order. If everything is in order in our review and we qualify the Forward Party of NM as a new political party, we will then begin adding you to our systems as a qualified political party.

Pursuant to NMSA 1978, 1-7-4(B), "B. Within seven days after the filing of the political party's rules and qualifying petitions, the secretary of state shall notify the political party whether the rules and qualifying petitions are in

proper order and that the party has qualified. The secretary of state shall notify all county clerks in the state of the qualification of that political party and post notice of qualification on the secretary of state's web site."

If you are a qualified political party and added to our systems, we will inform the county offices about your qualification status. At that time, constituents can then submit paper forms or electronic voter registration forms if they are wishing to register with your party for the 2026 General Election.

Important dates to know and understand, voter registration processing closes for the Primary Election on May 5, 2026, and will reopen on June 8, 2026. Any new voter registrations submit within this period will be processed starting June 8, 2026. This will include any voter registration application received from constituents registering with a newly qualified political party. Pursuant to NMSA 1978, 1-4-8, 1-4-8(D) and 1-4-5.7

EXHIBIT 2

Respectfully,

Error! Filename not specified.

Anastacio F. Trujillo | Elections Deputy Director

New Mexico Office of the Secretary of State

anastacio.trujillo@sos.nm.gov

Subject: RE: [EXTERNAL] Re: Firm up time on May 8 to register Forward Party

Status: Assigned

Requested By: lindsey.bachman@sos.nm.gov

Requested For: Lindsey Bachman

Description:

Good morning,

I have adjusted the members of the team on this thread to include the BOE leadership. I have also added the elections ticketing system for tracking purposes. The team will work with you on the logistics for your filing on May 8th.

Best,

Lindsey

Lindsey Bachman | Director of Communications, Legislative and Executive Affairs

New Mexico Office of the Secretary of State

325 Don Gaspar, Suite 300 | Santa Fe, NM 87501

Cell: (505) 479-2626

lindsey.bachman@sos.nm.gov

NMVOTE.ORG | Rumor vs. Reality

EXHIBIT 2

From: John Gerhart <john.p.gerhart@gmail.com>
Sent: Sunday, April 26, 2026 5:53 PM
To: Bob Perls <bob@nmforwardparty.org>
Cc: Bachman, Lindsey, SOS <lindsey.bachman@sos.nm.gov>; Auh, Peter, SOS <peter.auh@sos.nm.gov>; Vigil, Mandy, SOS <Mandy.Vigil@sos.nm.gov>; ToulouseOliver, Maggie, SOS <Maggie.TOliver@sos.nm.gov>; Ana Moran <ana@nmforwardparty.org>
Subject: [EXTERNAL] Re: Firm up time on May 8 to register Forward Party

CAUTION: This email originated outside of our organization. Exercise caution prior to clicking on links or opening attachments.

I vote for morning, maybe 9:00 am?

John

On Sun, Apr 26, 2026 at 12:44 PM Bob Perls <bob@nmforwardparty.org> wrote:

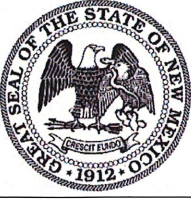
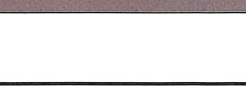
Hello SOS Team,

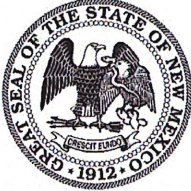
I never heard back about what time works for all of you for us to turn in all of our paperwork plus register a few folks with the Forward Party on May 8. Thanks.

Bob Perls
Forward Party of NM State Chair
Former NM State Representative
505-259-2377
<https://www.nmforwardparty.org>

<~WRD0000.jpg>

<~WRD0000.jpg>

	CANDIDATE FILING & QUALIFICATION CHECKLIST	TIME STAMP REC'D NM-SEC. OF STATE 2026 JUN 25 AM 11:41
Candidate Name: <u>Bob Perlis</u> Election: <u>2026 General Election</u> Party: <u>Forward</u> Campaign Email: <u>bob@nmforwardparty.org</u> Campaign Phone: <u>505-259-2377</u> Office Sought: <u>US Senate</u> District: <u>Ø</u>		
SECTION 1 – FILING DAY		
STATION 2 – FORM VERIFICATION		
REQUIRED FORMS Declaration of Candidacy ☒	OPTIONAL FORMS Affidavit of Designee (Required if someone is filing on behalf of candidate) ☐	Petition Request ☐ Staff Initials JB
STATION 3 – SERVIS ENTRY		
Candidate Lookup ☒	Declaration Matches Voter Registration ☒	Position Confirmed ☒ Party Confirmed ☒ Candidate Added to Race ☒ Staff Initials JB
STATION 4 – PETITION PAGE COUNT AND RECEIPTING		
Petition Page Count 113174	Receipt Provided to Candidate ☒	Original copies of petitions delivered to Security Custodian ☒ <u>SE</u> Security Custodian Initials Staff Initials JB
SECTION 2 – CANDIDATE QUALIFICATION		
GENERAL QUALIFICATION REQUIREMENTS	NOMINATING PETITION COUNT	QUALIFICATION NOTES
Candidate's Political Party Confirmed FWD Address on Declaration of Candidacy matches address on Voter Registration ☒ Name on Declaration of Candidacy matches name on Voter Registration ☒ BOE Staff Initials SE	Petition Signatures 7100 Signature count Confirmation yes Scanned? ☒ N BOE Staff Initials SE	# Required 7100 # Counted 2,530
Candidate Meets All General Requirements Yes / No ☒ Yes BOE Staff Recommendation Qualify / <u>Disqualify</u>  BOE Staff Signature		
SECTION 3 – BOE DIRECTOR APPROVAL		
BOE Director Determination	Determination Date	BOE Director Sign-off  BOE Director Signature

	CANDIDATE FILING & QUALIFICATION CHECKLIST	TIME STAMP REC'D NM-SEC. OF STATE 2026 JUN 25 AM 11:02								
Candidate Name: <u>MICHAEL J. VIGIL</u> Election: <u>2026 General Election</u> Party: _____ Campaign Email: <u>MICHAEL@VIGILGROUP.NET</u> Campaign Phone: <u>505-263-9269</u> Office Sought: <u>STATE AUDITOR</u> District: _____										
SECTION 1 – FILING DAY										
STATION 2 – FORM VERIFICATION										
REQUIRED FORMS <table border="1" style="width:100%; border-collapse: collapse;"> <tr> <td style="width: 33%;"> Declaration of Candidacy ☒ </td> <td style="width: 33%;"> Political Party Nomination Form ☐ </td> <td style="width: 33%;"> Nominating Petitions (If Applicable) ☒ </td> </tr> </table> OPTIONAL FORMS <table border="1" style="width:100%; border-collapse: collapse;"> <tr> <td style="width: 50%;"> Affidavit of Designee <i>(Required if someone is filing on behalf of candidate)</i> ☐ </td> <td style="width: 50%;"> Petition Request ☐ </td> </tr> </table>					Declaration of Candidacy ☒	Political Party Nomination Form ☐	Nominating Petitions (If Applicable) ☒	Affidavit of Designee <i>(Required if someone is filing on behalf of candidate)</i> ☐	Petition Request ☐	Staff Initials je
Declaration of Candidacy ☒	Political Party Nomination Form ☐	Nominating Petitions (If Applicable) ☒								
Affidavit of Designee <i>(Required if someone is filing on behalf of candidate)</i> ☐	Petition Request ☐									
STATION 3 – SERVIS ENTRY										
<table border="1" style="width:100%; border-collapse: collapse;"> <tr> <td style="width: 20%;"> Candidate Lookup ☒ </td> <td style="width: 20%;"> Declaration Matches Voter Registration ☒ </td> <td style="width: 20%;"> Position Confirmed ☒ </td> <td style="width: 20%;"> Party Confirmed ☒ </td> <td style="width: 20%;"> Candidate Added to Race ☒ </td> <td style="width: 20%; text-align: center;"> Staff Initials MV </td> </tr> </table>					Candidate Lookup ☒	Declaration Matches Voter Registration ☒	Position Confirmed ☒	Party Confirmed ☒	Candidate Added to Race ☒	Staff Initials MV
Candidate Lookup ☒	Declaration Matches Voter Registration ☒	Position Confirmed ☒	Party Confirmed ☒	Candidate Added to Race ☒	Staff Initials MV					
STATION 4 – PETITION PAGE COUNT AND RECEIPTING										
<table border="1" style="width:100%; border-collapse: collapse;"> <tr> <td style="width: 30%;"> Petition Page Count 319 </td> <td style="width: 20%;"> Receipt Provided to Candidate ☒ </td> <td style="width: 40%;"> Original copies of petitions delivered to Security Custodian ☒ je Security Custodian Initials </td> <td style="width: 10%; text-align: center;"> Staff Initials je </td> </tr> </table>					Petition Page Count 319	Receipt Provided to Candidate ☒	Original copies of petitions delivered to Security Custodian ☒ je Security Custodian Initials	Staff Initials je		
Petition Page Count 319	Receipt Provided to Candidate ☒	Original copies of petitions delivered to Security Custodian ☒ je Security Custodian Initials	Staff Initials je							
SECTION 2 – CANDIDATE QUALIFICATION										
GENERAL QUALIFICATION REQUIREMENTS		NOMINATING PETITION COUNT		QUALIFICATION NOTES						
Candidate's Political Party Confirmed FWD	Petition Signatures 7,100	Signature count Confirmation yes	Scanned? Y N							
Address on Declaration of Candidacy matches address on Voter Registration ☒	Name on Declaration of Candidacy matches name on Voter Registration ☒	BOE Staff Initials je	BOE Staff Initials je							
Candidate Meets All General Requirements ☒ Yes / No		BOE Staff Recommendation	Qualify / Disqualify ☒ Qualify							
		BOE Staff Signature [Signature]								
SECTION 3 – BOE DIRECTOR APPROVAL										
BOE Director Determination	Determination Date	BOE Director Sign-off	BOE Director Signature							

**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.	)	No. 1:26-cv-02286-MIS-SCY
	)	
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.	)	

**PLAINTIFFS’ REPLY IN SUPPORT OF THEIR EMERGENT MOTION FOR
PRELIMINARY INJUNCTION**

The Secretary’s Response confirms that preliminary relief is warranted. She defends New Mexico’s double-petition scheme with cases upholding single-petition schemes; she defends a 41-day petitioning window by describing a 115-day window these candidates could not lawfully use; and she defends the doubled signature requirement of §§ 1-8-2(B)(1) and (2) and the registration trap of § 1-8-2(E) not at all. Because the Response leaves the core of Plaintiffs’ showing unanswered, the Court should enjoin enforcement of the challenged provisions and order that Plaintiffs Perls and Vigil¹ be placed on the November 3, 2026 general election ballot.

I

**ALL PLAINTIFFS HAVE STANDING, AND THEIR CHALLENGE IS AS APPLIED,
NOT FACIAL**

A. Each Plaintiff Suffered a Concrete Injury from the Challenged Provisions.

¹ Plaintiff Kava has now been placed on the ballot by Defendant Luna.

The Secretary’s footnoted standing challenge (Resp. at 2 n.1) fails on its own terms. Perls and Vigil were excluded from the ballot—the Secretary does not dispute their standing. NMFP has standing in its own right and on behalf of its nominees: it spent \$63,000 attempting to qualify its slate, Compl. ¶ 47, and the challenged provisions denied it the ability to place a single nominee for statewide office on the ballot. That is a concrete, particularized injury fairly traceable to the statutes and redressable by the relief requested—not the speculative chill at issue in *Rio Grande Foundation v. Oliver*, 57 F.4th 1147 (10th Cir. 2023), where no evidence showed the challenged requirement ever affected the plaintiff’s speech.

As for Kava, the Secretary concedes that the Luna County Clerk deemed her unqualified under § 1-8-2(E)(1) and that she was placed on the ballot only “[s]ince filing the complaint.” Resp. at 2 n.1. A defendant’s post-suit change of position does not erase the injury that prompted the suit, and § 1-8-2(E) remains on the books, enforceable against Kava and every future NMFP candidate. Montoya and Dingo likewise remain subject to the scheme in every future cycle. The Secretary’s decision to seat Montoya and Kava despite their asserted noncompliance with § 1-8-2(E) does not defeat standing; it proves Plaintiffs’ point that the requirement serves no state interest at all.

B. Plaintiffs’ Challenge Rests on Their Own 2026 Circumstances.

The Response recasts the motion as a facial attack in order to import a heightened burden. Resp. at 6–7. But Plaintiffs challenge the enforcement of the identified provisions against them in the 2026 cycle, 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, Resp. at 10 n.3; and the doubled 2% requirement that applies precisely because NMFP

is new. An 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.” *United States v. Carel*, 668 F.3d 1211, 1217 (10th Cir. 2011). That is exactly Plaintiffs’ contention. *Green Party of Tennessee v. Hargett*, 791 F.3d 684 (6th Cir. 2015), is inapposite: the plaintiffs there attacked the statutes as to every recognized minor party in every application; Plaintiffs here ground their claims in the interaction of the statutes with their own formation timeline, registration status, and the State’s administration of its own platform. Aggregate figures—the 10 petitions and 131,361 signatures required to field a statewide slate—are evidence of the magnitude of the burden, not a concession that the challenge is facial.

II

PLAINTIFFS SEEK A PROHIBITORY INJUNCTION—AND SATISFY ANY STANDARD

An order enjoining a defendant from enforcing a statute is the paradigm of prohibitory relief. That is what Plaintiffs request: an injunction against enforcement of §§ 1-8-2(B), 1-8-2(E), and 1-8-65 as applied to them this cycle. The Tenth Circuit in *Fish v. Kobach*, 840 F.3d 710 (10th Cir. 2016)—the Secretary’s own framing case—affirmed exactly that kind of preliminary injunction against a Secretary of State’s enforcement of an election statute. And this Court has granted preliminary relief against this same Secretary even after characterizing the injunction as disfavored, where the movants showed a likelihood of success. *See Curtis v. Oliver*, 479 F. Supp. 3d 1039 (D.N.M. 2020). The “disfavored” label supplies 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 that, by their nature, must be resolved before ballots are printed. Plaintiffs’ showing survives close scrutiny for the reasons below.

III

PLAINTIFFS ARE SUBSTANTIALLY LIKELY TO SUCCEED ON THE MERITS

A. The Secretary’s Precedents Involve Single-Petition Schemes and Full Petitioning Windows; They Do Not Measure This Burden.

The Response leans on *Jenness*, *American Party of Texas*, and *Storer* to argue the burden is “slight.” Resp. at 8–10. Each case upheld a *single* petition requirement imposed on a candidate or a party—not a second, larger petition stacked on top of a party petition already satisfied. None involved a scheme in which a qualified party’s nominees for statewide office must collectively produce 127,800 additional signatures, on top of the 5,500 the party submitted over the required 3,561, in order to field a slate. And none involved a doubled requirement triggered by the party’s newness.

The Secretary’s use of *Storer* is worse than inapt—it is inverted. The Response asserts the Supreme Court “held” that 325,000 signatures in 24 days was not “impractical.” Resp. at 3, 9.² The Court held no such thing. It *remanded* because the record could not answer the question, and it directed the lower court to consult “past experience”: a scheme is suspect where independent and minor-party candidates “only rarely . . . succeed in getting on the ballot,” and tolerable where they “have qualified with some regularity.” *Storer v. Brown*, 415 U.S. 724, 742 (1974). *Storer*’s actual test is Plaintiffs’ argument: in every New Mexico election for state and federal office (except President) since 2000, no ballot has carried more than three³ candidates, and that happened once; a majority of state legislative races in almost every cycle for two decades featured a single unopposed candidate. Compl. ¶¶ 55–73. The Secretary’s answer—fourteen minor-party candidates

² The Response cites *Storer* as “514 U.S. 724” (Resp. at 3) and *Constitution Party of Pennsylvania v. Cortes* as “924 F.3d 386 (3d Cir. 2016)” (Resp. at 11 n.4). The correct citations are *Storer v. Brown*, 415 U.S. 724 (1974), and *Constitution Party of Pennsylvania v. Cortes*, 824 F.3d 386 (3d Cir. 2016).

³ As noted the Declaration of Richard Winger, ECF Doc. No. 8-1.

across all offices, statewide and local, in ten years, Resp. at 13—confirms rarity rather than rebutting it. Courts applying *Storer*’s past-experience test to comparable records have found severe burdens. See *Graveline v. Benson*, 992 F.3d 524, 539 (6th Cir. 2021); *Lee v. Keith*, 463 F.3d 763, 769 (7th Cir. 2006).

The Secretary’s per-day arithmetic fails for the same reason. Her “123 signatures per day” figure assumes a 115-day window beginning March 2. Resp. at 9. But NMFP’s nominees could not begin petitioning until the Secretary certified the party on May 14, Compl. ¶¶ 35, 41, 43, and § 1-8-2(E)(1) forced them to bind themselves to an unqualified party—by changing their registration no later than the party’s filing date—before anyone knew whether NMFP would qualify. The window the statute actually afforded these candidates was 41 days: 346 signatures per day, per candidate, for each statewide office.⁴ And for most of those 41 days the State’s own systems made compliance harder still: by the Secretary’s account, Perls and Vigil could not use the online petitioning platform because the statutory registration pause ran from May 5 to June 8. Resp. at 10 n.3. The Secretary calls this “self-inflicted,” yet, there was no disclosure beforehand and no actual need to shut on-line petitions down since it is a discrete system from new voter registration. It is structural. Every newly qualifying party that follows the statutory sequence—petition, certification, convention, nomination—arrives at the same compressed window and the same doubled requirement. A burden the statutory architecture guarantees is not one the plaintiffs chose.

Nor has this framework “already been scrutinized and upheld” in the way the Response suggests. Resp. at 3. In *Libertarian Party of New Mexico v. Herrera*, 506 F.3d 1303 (10th Cir.

⁴ The Response’s arithmetic is likewise unreliable: it credits *American Party* with approving “1,466 signatures per day” (Resp. at 10), but 22,000 signatures in 55 days is 400 signatures per day. Even that figure describes a single-petition scheme with no antecedent party petition.

2007), the Tenth Circuit affirmed because the party had failed to develop the signature-number comparison in the district court—a waiver disposition, not a merits blessing of the numbers. 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. *See* Mot. at 10–14.

Rogers v. Corbett, 468 F.3d 188 (3d Cir. 2006), does not carry the Secretary’s weight either. Pennsylvania’s scheme contained no doubled requirement penalizing new parties, and the Third Circuit later invalidated a component of that same framework as applied. *Constitution Party of Pennsylvania v. Cortes*, 824 F.3d 386 (3d Cir. 2016). More fundamentally, *Rogers* rested on the premise that major-party candidates bore comparable obligations. In New Mexico they do not. A major-party candidate can reach the primary ballot with no petition at all—a 20% convention vote suffices, § 1-8-21.1—and once nominated, whether by contested primary or by running unopposed (as occurred in 120 of 140 State House primary races in 2026), the candidate is placed on the general election ballot automatically, with no individual showing of support. Mot. at 6–7, 15. The Secretary’s assertion that “New Mexico . . . requires both major and minor parties to submit signatures to qualify for the ballot,” Resp. at 12, elides the dispositive distinction: minor-party nominees must petition to reach the *general election* ballot; major-party nominees never do. That is the asymmetry *Maryland Green Party v. Maryland Board of Elections*, 832 A.2d 214 (Md. 2003), condemned, and the Secretary’s efforts to distinguish it only restate the asymmetry.

B. The Secretary’s Asserted Interests Cannot Justify This Scheme.

Plaintiffs do not dispute that a State may require candidates to show a modicum of support; petition requirements are not per se unconstitutional, and Plaintiffs have never argued otherwise. The question under *Anderson* and *Burdick* is whether the *precise* interests asserted justify the

particular burdens imposed. *Anderson v. Celebrezze*, 460 U.S. 780, 789 (1983). They do not, for three reasons.

First, the overcrowding rationale has no factual footing in modern New Mexico. The Secretary’s historical exemplars are a 1972 *major-party primary* with twenty-five Democratic Senate candidates, *Dillon v. King*, 1974-NMSC-096, ¶ 12, 87 N.M. 79, and a 1992 presidential ballot—an office for which New Mexico imposes no minor-party petition requirement at all, § 1-15-3. Neither involves minor-party access to the general election ballot, and neither postdates the record evidence showing that no New Mexico ballot has carried more than four candidates in a quarter century. A State cannot defend a severe burden with “generalized and hypothetical interests identified in other cases,” *Libertarian Party of Ohio v. Blackwell*, 462 F.3d 579, 593 (6th Cir. 2006), much less with interests refuted by its own election returns.

Second, the 227-member argument, Resp. at 14, 16, conflates party registration with voter support. Signatures for minor-party nominees may come from any registered voter regardless of affiliation, Resp. at 12, so party membership measures nothing the statute purports to test. NMFP demonstrated support by submitting 5,500 party-petition signatures—more than the 2,505 and 2,351 signatures required of Democratic and Republican statewide candidates respectively—and Perls and Vigil each gathered more signatures than any major-party statewide candidate was required to collect. Compl. ¶¶ 44, 48–49. Candidates who out-collect the major-party thresholds are not the “frivolous candidacies” the modicum-of-support cases address.

Third, the Response is silent on two of the challenged provisions. It nowhere defends the doubling of the signature requirement—from 1% to 2%—for parties too new to have amassed 7,100 registered members, §§ 1-8-2(B)(1), (2), a penalty that by design falls hardest on the newly qualified. And it nowhere defends § 1-8-2(E)(1)’s requirement that candidates change their

registration to a party before knowing whether it will qualify—a requirement the Santa Fe County Clerk and the Luna County Clerk themselves declined to enforce against Montoya and Kava respectively. The State’s own selective non-enforcement is a concession that the provision serves no interest, and compelled pre-qualification affiliation independently violates the First Amendment. *Tashjian v. Republican Party of Connecticut*, 479 U.S. 208, 215 (1986).

C. Section 1-8-65 Fails Under Any Level of Scrutiny.

The Secretary concedes that § 1-8-65 prohibits “the act of gathering signatures for candidacy” outside the statutory window. Resp. at 19. Under *Meyer v. Grant*, that act *is* the protected speech: petition circulation “involves the type of interactive communication concerning political change that is appropriately described as ‘core political speech.’” 486 U.S. 414, 421–22 (1988). The Response’s answer—that candidates remain free to send text messages about their platforms, Resp. at 19—misses the point in the same way Colorado’s arguments did in *Grant*: the availability of “other avenues” of expression does not cure a direct restriction on the protected activity itself. *Id.* at 424.

Even accepting the Secretary’s time-place-manner framing, the statute fails. A content-neutral restriction must be narrowly tailored to a significant interest. The asserted interests do not withstand inspection. The confusion rationale—that a voter “may not know when the candidate will actually run,” Resp. at 20—is fully served by far less restrictive means: the petition form itself designates the election. And the “voter fatigue” interest appears nowhere in the statute’s history and everywhere in the Secretary’s brief; it is a litigation-built justification of exactly the kind *Blackwell* forbids, 462 F.3d at 593, and it proves too much—on the Secretary’s logic, the State could shorten the window to a week to spare voters solicitations. Nor is the restriction evenhanded: the State gave major-party candidates roughly five and a half months to circulate petitions

requiring a fraction of the signatures, while affording minor-party nominees at most three months on paper and 41 days in fact. Compl. ¶ 45. A “manner” restriction that allocates twice the speaking time to the candidates who need it least is not tailored to any administrative interest; it is preferential treatment of the established parties’ candidates. *See Cook v. Gralike*, 531 U.S. 510, 523–24 (2001).

IV

PLAINTIFFS FACE IRREPARABLE HARM

The Secretary’s only response on irreparable harm is that it rises and falls with the merits. Resp. at 21. Because Plaintiffs are substantially likely to succeed, the element is satisfied: “[t]he loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury,” *Elrod v. Burns*, 427 U.S. 347, 373 (1976), and exclusion from the 2026 general election ballot is an injury no later remedy can repair. Once this election is held without Perls and Vigil on the ballot, their rights—and the associational and voting rights of the New Mexicans who supported them—are lost for the cycle. *Fish*, 840 F.3d at 752.

V

THE EQUITIES AND THE PUBLIC INTEREST FAVOR RELIEF

“[I]t is always in the public interest to prevent the violation of a party’s constitutional rights.” *Awad v. Ziriox*, 670 F.3d 1111, 1132 (10th Cir. 2012). The Secretary’s contrary weighing depends entirely on her merits position, and her administrative objections are overstated on her own record. County ballot certification is not due until sixty-seven days before the election, § 1-10-4(B)—and the Luna County Clerk demonstrated the feasibility of the requested relief when she added Kava to the ballot in the midst of this litigation without apparent difficulty. Resp. at 2 n.1.

Plaintiffs moved for relief promptly and asked for a schedule that resolves this motion before ballots are printed; granting relief now disrupts nothing.

Nor would relief put the Court “in the position of deciding who is on the ballot.” Resp. at

4. Plaintiffs ask the Court to enjoin enforcement of unconstitutional requirements—nothing more. Perls and Vigil each demonstrated support exceeding what New Mexico demands of major-party statewide candidates. Placing them on the ballot vindicates the Legislature’s constitutional enactments while declining to enforce its unconstitutional ones—the ordinary business of judicial review, not judicial candidate selection.

CONCLUSION

For these reasons and those stated in their motion, Plaintiffs respectfully request that the Court enjoin Defendants from enforcing §§ 1-7-2(A), 1-8-2(B), 1-8-2(E), and 1-8-65(A), (B), and (D) against Plaintiffs in the 2026 election cycle and order that Plaintiffs Perls and Vigil be placed on the November 3, 2026 general election ballot.

Dated: August 15, 2026

Respectfully submitted,

Oliver B. Hall
Pro hac vice
D.C. Bar No. 976463
Center for Competitive Democracy
P.O. Box 21090
Washington, DC 20009
(202) 248-9294
oliverhall@competitivedemocracy.org

WESTERN AGRICULTURE, RESOURCE
AND BUSINESS ADVOCATES, LLP

/s/ A. Blair Dunn

A. Blair Dunn, Esq.
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(505) 750-3060
ABDunn@ABlairDunn-Esq.com
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Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on August 15, 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/ A. Blair Dunn, Esq.

**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.

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.

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

**PLAINTIFFS OPPOSED EMERGENCY MOTION FOR STAY
AND INJUNCTION PENDING APPEAL**

Plaintiffs New Mexico Forward Party (“NMFP”), Bob Perls, Michael Vigil, Dennis Dingo, Harry Montoya and Frances Kava, through undersigned counsel, move under Federal Rule of Appellate Procedure 8(a)(1) and Federal Rule of Civil Procedure 62(d) for an injunction pending appeal directing Defendant Secretary of State to place Plaintiff Perls (U.S. Senate) and Plaintiff 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 the Tenth Circuit.

Plaintiffs are likely to prevail on their appeal in this ballot access case because the Order’s analysis rests on a demonstrably false premise. Plaintiffs challenge the constitutionality of New Mexico’s statutory scheme primarily because it requires that Plaintiffs 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, and state that they reserve their right to seek the same relief from the Tenth Circuit under Fed. R. App. P. 8(a)(2).

Pursuant to D.N.M. LR-Civ. 7.1(a), Plaintiffs sought Defendants' concurrence in the relief requested. Defendants' 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 unifiably 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 signatures required of a single candidate, which was 14,200. 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 moved for a preliminary injunction on July 27, 2026, ECF No. 8; the Court heard the motion on August 28, 2026, ECF No. 21, and denied it on September 2, 2026, ECF No. 22. Plaintiffs have filed a Notice of Appeal to the United States Court of Appeals for the Tenth Circuit. ECF No. 24. An order denying a preliminary injunction is immediately appealable under 28 U.S.C. 1292(a)(1).

The Order accepts the following facts. 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, “due 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: Ding (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. Medler*, 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 Romans v. City of Albuquerque*, 264 F.3d 1240, 1243 (10th Cir. 2001).

Rule 8(a)(1) requires that Plaintiffs seek such relief in the District Court first. Plaintiffs recognize that asking the Court to enjoin what it has just declined to enjoin is likely futile, and courts treat that futility as satisfying Rule 8(a)'s prerequisite so that the movant may proceed to the Court of Appeals. *See In re Flint Water Cases*, 960 F.3d 820, 825 (6th Cir. 2020); *Planned Parenthood of Greater Tex. Surgical Health Servs. v. Abbott*, 734 F.3d 406, 410–11 (5th Cir. 2013). Plaintiffs nonetheless file this motion so that the record on the Rule 8 factors is complete and so that this Court may correct the errors identified herein without appellate intervention.

The Order applied the heightened standard for “disfavored” injunctions on the premise that placing two names on a ballot is a mandatory injunction that alters the status quo and grants all relief available at trial. Order at 8 (citing *O Centro Espirita Beneficiente Uniao Do Vegetal v. Ashcroft*, 389 F.3d 973, 975–76 (10th Cir. 2004)). That premise is incorrect. An injunction is disfavored on the ground that it grants all available relief only when it gives the movant everything it could win at trial. *See Center for Civic Action v. City of Albuquerque Bd. of Ethics Campaign Practices*, 2025 WL 3485749 (D.N.M. Dec. 4, 2025) (identifying the three characteristics of a disfavored injunction); *Curtis v. Oliver*, 479 F. Supp. 3d 1039 (D.N.M. 2020) (same). This Court accordingly declines to apply the heightened standard where, as here, the Complaint seeks declaratory relief that the interim motion does not. *See City of Albuquerque v. Barr*, 515 F. Supp. 3d 1163, 1173–74 (D.N.M. 2021). Plaintiffs’ Complaint seeks declaratory relief against provisions

that will govern every future cycle, *see* Compl. 86–87, 90, ECF No. 1, whereas the preliminary relief sought here is ballot placement for two nominees in one election. Nor is that relief “mandatory” in the relevant sense. This Court has declined to treat ballot-placement relief as mandatory merely because it is phrased affirmatively, where compliance requires no ongoing judicial supervision and any infraction can be reported to the court. *See Logan v. Pub. Emps. Ret. Ass’n*, 163 F. Supp. 3d 1007, 1028 (D.N.M. 2016). And even where the disfavored-injunction framework applies, it calls for closer scrutiny of whether the exigencies of the case support relief, not a mechanical bar. *See Voter Reference Found., LLC v. Balderas*, 616 F. Supp. 3d 1132, 1252, 1275 (D.N.M. 2022) (granting preliminary injunction despite finding it “disfavored” because the requested relief would alter the status quo). The exigency here is that denial of interim relief is final: no judgment after November 3 can put Perls and Vigil on the 2026 ballot, and their exclusion will harm the First Amendment rights of all New Mexicans who may wish to vote for them, including not only Plaintiffs but also the thousands of voters who signed Plaintiffs’ petitions. The heightened standard therefore does not apply. Even so, Plaintiffs make the strong showing the Order demanded.

III. Plaintiffs Are Likely to Succeed 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 party." *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 all NMFP candidates rather than just a single candidate, was clear error.

The Order suggests that Plaintiffs were artificially “bumping the number up” by measuring the burden New Mexico imposes on NMFP and its candidates and voters rather than just a single candidate, Order at 18, but Plaintiffs did nothing more than accurately state the requirements they must meet to qualify as a party and place their candidates on the general election ballot. That is not in dispute. And that is why the evidence Plaintiffs submitted regarding other states’ requirements is relevant to the constitutional analysis. The Order acknowledges that Plaintiffs submitted such evidence 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* TE ELEC. CODE 181.005(a) (minor parties qualify to place nominees on general election ballot by submitting petition with signatures equal in number to 1 percent of total vote for Governor in preceding election). 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 including those of Texas, despite Texas's vastly larger population 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 not only by citation but also 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. The Order notes the "disparity" in the type of ballot access requirements that states impose and in state populations, Order at 18, but Plaintiffs' evidence controls for those disparities. It only compares New Mexico's requirements for running a full slate of candidates for statewide office with those of other states. Furthermore, unlike the Order, Plaintiffs' evidence addresses the disparity in state populations and demonstrates that the disparity supports rather than undermines Plaintiffs' claims: New Mexico, with its significantly smaller population, has no legitimate interest in imposing requirements vastly greater than other states with significantly larger populations. "Finally," the Order concludes, "even if New Mexico did have the most stringent ballot-access framework compared to other states, that does not make it unconstitutional." 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:

Evidence 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 finding Plaintiffs’ evidence insufficient is even less convincing here. 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 “whether 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 Dingee 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.

Based on the foregoing, the uncontested record establishes a severe burden on Plaintiffs’ rights. The Order repeatedly cites to *Libertarian Party of N.M. v. Herrera*, 506 F.3d 1303, 1310 (10th Cir. 2007), but that case is not to the contrary. *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

errera,” *id.* at 18, cannot be squared with *errera*’s own description of the evidence lacking there. Courts routinely treat comparable evidence—the cost of compliance, the near-total absence of successful minor-party candidacies, and requirements exceeding other states’—as marks of a severe burden. *See Graveline v. Benson*, 992 F.3d 524, 539–40 (6th Cir. 2021); *Lee v. Keith*, 463 F.3d 763, 766, 768–69 (7th Cir. 2006); *Williams v. Rhodes*, 393 U.S. 23, 47 & n.10 (1968) (Harlan, J., concurring). Indeed, Pennsylvania’s ballot access scheme was held unconstitutional as applied to minor party candidates on a similar record, because compliance demanded a substantial investment of time and resources during the campaign season, no alternative route to the ballot existed, and minor party candidates would always need more signatures than major-party candidates. *See Constitution Party of Pa. v. Cortes*, 116 F. Supp. 3d 486, 501–05 (E.D. Pa. 2015), *aff’d*, 824 F.3d 386 (3rd Cir. 2016). Each of those features is present here.

Plaintiffs have established a severe burden on their First and Fourteenth Amendment rights based on every test the Supreme Court has recognized. Whether measured in comparison to other states, by the stifling impact they have had on minor party candidacies, or the cost of complying with them, the record evidence shows that the burdens imposed by New Mexico’s ballot access requirements fall on the “severe” end of the scale. The Order concludes otherwise only because it misstates the nature and magnitude of the burden and disregards the facts and evidence establishing it as severe. The Order should be stayed.

B. The Severe Burden Imposed By New Mexico’s Excessive Signature Requirements Is Compounded By the 30-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 the others did not exist, and it then confirmed the result by pointing to three local candidates who faced none of those burdens at scale. 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 “nothing 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 (D.N.M. Sept. 18, 2006)). But this 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, as in *Constitution Party of New Mexico*, 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. *Anderson* directs courts to weigh “the character and magnitude of the asserted injury,” 460 U.S. at 789, not to ask whether the State acted by affirmative deactivation or by neutral operation of its own code. 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) (enjoining full enforcement of Utah’s signature requirement where the State’s emergency orders restricted signature gathering, and finding the balance of harms favored a reduced requirement); *see also Libertarian Party of Ill. v. Pritzker*, 455 F. Supp. 3d 738, 745 (N.D. Ill. 2020) (granting similar relief as set forth in parties’ agreed-upon order). The decisions upholding New Mexico’s and other States’ signature requirements involved candidates

who had the full statutory period with circulation unimpeded. *See, e.g., Parker v. Duran*, 180 F. Supp. 3d 851, 858 (upholding the independent-candidate requirement where New Mexico imposed no suffocating restrictions on the circulation of petitions and the deadline fell 23 days after the primary). Plaintiffs are unaware of any case involving a State that closed its own petitioning channel to the candidate for most of the petitioning period.

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. The Order also overlooks that the Election Code guarantees the compressed window for every newly qualifying party that uses the statutory schedule, because certification necessarily follows petition filing and the candidate deadline follows twenty-three days after the primary. Reply at 5, ECF No. 14. A burden the scheme produces by design is a burden the State imposes. 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.

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 when the uncontested evidence unequivocally establishes that New Mexico’s requirements are more restrictive than necessary to further its legitimate regulatory interests. Winger Decl. 9-14, 21, 23-25, ECF No. 8-1. In fact, the Order provides no analysis whatsoever.

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 “the increased requirement for signatures based on the number of minor party members” that is, 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 the missing 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. This District has itself invalidated a New Mexico petition deadline where the State presented no factual basis for it. *See Constitution Party of N.M. v. Duran*, *supra*.

The doubled signature requirement for smaller minor parties also fails on its own terms. NMFP had just demonstrated statewide support with 3,561 valid signatures; the State then demanded that each nominee show four times that support again, within 41 days, because the party was new. *Vigil Giron* upheld New Mexico’s two-petition system on the reasoning that the candidate petition adds meaningfully to the party petition. 2006 WL 8443845, at 11. It did not address, and the Order does not explain, why newness alone justifies doubling that addition. Where the State can serve any interest in a “modicum of support” through the 1st requirement it applies to other minor parties, the 2nd requirement is not narrowly tailored. *See Norman v. Reed*, 502 U.S. 279, 289 (1992). This District reached that conclusion in *Workers World Party v. Vigil Giron*, 693 F. Supp. 989, 995-96 (D.N.M. 1988), enjoining a New Mexico minor-party petition condition because the State’s interest in an initial showing of support was already served by the base signature requirement, and the added condition merely imposed a further burden that unduly restricted association. The same logic governs a requirement that doubles for no reason other than the party’s date of qualification: whatever interest the 1st requirement serves, doubling it serves only to exclude. “The State’s interests must be *proportionate* to the burden the election procedures impose on Plaintiffs, and the specific State interests must *necessitate* the particular burden caused by the election procedures.” *United Utah Party v. Cox*, 268 F. Supp. 3d 1227, 1253 (D. Utah 2017). A facially valid requirement is still invalid as applied to candidates if it impacts them unequally. *See Patriot Party of Pa. v. Mitchell*, 826 F. Supp. 926, 939-41 (E.D. Pa. 1993) (2nd signature

requirement facially valid but unconstitutional as applied to candidates whose elections would always follow higher-turnout elections and thus always demand more signatures). A party entitled to the ballot is entitled to it on the day it qualifies, and a requirement whose only trigger is that a party is too new to have grown its rolls “operate s to freeze the political status quo.” *Jenness*, 403 U.S. at 438.

D. The Order Errs By Equating the Severe Burdens Imposed on Plaintiffs With the Minimal Burdens Imposed on Major Party Candidates.

The Order found the two schemes “reasonably similar” because major-party candidates must win a primary and, to reach the primary ballot, must either receive 20% of a convention vote or submit signatures. Order at 21–23 (citing 1-8-21.1(C), 1-8-33(B)). The record shows the disparity. A major party statewide candidate reaches the primary ballot with 2,505 or 2,351 signatures, or with none at all through the convention, and then reaches the general election ballot automatically. Mot. at 6, 17, ECF No. 8. Perls and Vigil each exceeded the major party signature threshold and still needed roughly five to six times more. That is the disparity *Maryland Green Party v. Maryland Board of Elections*, 832 A.2d 214, 232–33 (Md. 2003), condemned: a major party nominee shows no personal modicum of support because the party’s prior support suffices, while the minor party nominee must petition on top of the party’s petition. The Order distinguished *Maryland Green Party* on the ground that New Mexico’s major party candidates “must show support,” Order at 23, but a 20% convention vote among party delegates is not a showing of voter support comparable to 14,200 registered voters, and the Order did not weigh the two.

E. The Order Erred in Concluding That Plaintiffs’ Challenge to (E) Is Moot and That Plaintiffs Lack Standing to Assert It.

Kava was placed on the ballot only after the Secretary elected, without statutory authority, to extend to her the treatment given Montoya. Order at 4; Resp. at 2 n.1, ECF No. 13. Contrary to

the Order’s conclusion, Order at 13, that voluntary accommodation does not moot Plaintiffs’ challenge to 1-8-2(E) or deprive them of standing to assert it.

As to standing: the Supreme Court has consistently held that “the court must determine whether standing exists at the time of the filing of the complaint only.” *Cleveland N.A.A.C.P. v. City of Parma*, 263 F.3d 513, 524-26 (6th Cir. 2001) (collecting cases). Plaintiffs plainly had standing to challenge 1-8-2(E) when they filed their Complaint because Defendant DeLaney’s enforcement of that provision barred Kava from the ballot. Even the Order concedes that much it asserts only that Defendant DeLaney’s voluntary cessation of enforcement “*deprives* Plaintiff Kava of standing .” Order at 13 (emphasis added). But the Order is incorrect. All Plaintiffs had standing to challenge 1-8-2(E) when they filed their Complaint and Supreme Court precedent makes clear that is all they were required to establish. *See Cleveland N.A.A.C.P.*, 263 F.3d at 524-26.

The Order is also incorrect as to mootness. This Court, like every other federal court, has consistently recognized two exceptions to the mootness doctrine: one involves disputes that are “capable of repetition yet evading review,” and the second involves the “voluntary cessation of the defendant’s conduct.” *AerSALE, Inc. v. City of Roswell*, No. 2:22-cv-00218 (June 11, 2024) (Strickland, J.) (citing *Brown v. Buhman*, 822 F.3d 1151, 1166 (10th Cir. 2016)). Disputes that are not moot because they are capable of repetition but evading review are those where “(1) the challenged action is in its duration too short to be fully litigated prior to cessation or expiration, and (2) there is a reasonable expectation that the same complaining party will be subject to the same action again.” *Brown*, 822 F.3d at 1166 (quoting *Fed. Election Comm’n v. Wis. Right to Life, Inc.*, 551 U.S. 449, 462 (2007)). This case fits squarely within that exception: Plaintiffs will not be able to litigate their claims to a final judgment before passage of the 2026 general election, and the

controversy is reasonably likely to recur. *See, e.g., City of Ferriman v. Bell*, 590 F.3d 1176, 1181-82 (10th Cir. 2010). Indeed, election law cases such as this are the paradigmatic example of controversies that are not mooted because they are capable of repetition yet evading review. *See Rio Grande Foundation v. Oliver*, 57 F.4th 1147, 1166 (10th Cir. 2023) (citing *Wis. Right to Life, Inc.*, 551 U.S. at 462).

Nor does Defendant DeLaney's voluntary cessation of enforcement of 1-8-2(E) moot Plaintiffs' challenge to that provision. "Voluntary cessation of challenged conduct does not ordinarily render a case moot because a dismissal for mootness would permit a resumption of the challenged conduct as soon as the case is dismissed." *Brown*, 822 F.3d at 1166 (quoting *Know v. Serv. Emps. Int'l Union, Local 000*, 567 U.S. 298, 307 (2012)). "This rule is designed to prevent gamesmanship. If voluntary cessation automatically mooted a case, a defendant could engage in unlawful conduct, stop when sued to have the case declared moot, then pick up where he left off, repeating this cycle until he achieves all his unlawful ends." *Id.* (quoting *Already*, 568 U.S. at 91). Consequently, a defendant's voluntary cessation of challenged conduct will not moot a claim unless "the defendant carries the formidable burden of showing that it is absolutely clear the allegedly wrongful behavior could not reasonably be expected to recur." *Id.* Defendants cannot carry that burden here. Section 1-8-2(E) remains law, and far from disavowing any intention to enforce it, Defendant DeLaney has a statutory obligation to do so. A challenge answered by a defendant's discretionary, unilateral accommodation while the statute remains on the books is not mooted by such voluntary cessation.

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

The Order found no irreparable harm for one reason: Perls and Vigil "are unlikely to succeed on the merits." Order at 28. That collapses two factors into one. In the Tenth Circuit, "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) (quoting *Elrod v. Burns*, 427 U.S. 347, 373 (1976)). 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. Courts deciding ballot-access cases apply the same rule. *See Garbett*, 458 F. Supp. 3d 1328, 1349-50 (loss of First Amendment freedoms for even minimal periods is irreparable injury supporting a preliminary injunction). Indeed, contrary to the Order’s conclusion, this Court recognizes that exclusion from a ballot constitutes irreparable injury to both the candidate and the voters who would support him, even where the plaintiffs failed to establish a substantial likelihood that they would prevail on the merits. *See Logan*, 163 F. Supp. 3d at 1031.

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 Order’s balancing “rests on alleged constitutional violations” that the Court “has not found,” Order at 30, and so adds nothing to its merits ruling. Weighed independently, the equities favor Plaintiffs. Placing two names on a ballot imposes a negligible administrative burden; the Secretary already added Kava after the motion was filed. 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. Ziriax*, 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. Federal courts in this Circuit have found the balance favors ordering election officials to certify a candidate for the ballot. *Goodall v.*

Williams, 324 F. Supp. 3d 1184, 1200 (D. Colo. 2018) (threatened injury to the candidate outweighed any harm from an injunction requiring the Secretary of State to certify him, and the injunction was not adverse to the public interest); *Garbett*, 458 F. Supp. 3d at 1351 (balance favored injunction where the State articulated no harm beyond assertions the court had already rejected).

The public-interest calculus is unusual here and cuts one way. The Republican Party fielded only a write-in candidate for U.S. Senate and no candidate for State Auditor. Mot. at 23–24, ECF No. 8. New Mexico voters in those races will otherwise choose from a single printed name. Adding a nominee of a qualified party who has already exceeded the major-party signature threshold serves the State’s own stated interest in a ballot “listing serious candidates with some prospects of public support,” Order at 29 (citing *Lubin v. Panish*, 415 U.S. 709, 715 (1974)); it does not clutter the ballot. The public interest favors an injunction placing a party’s nominee on the ballot precisely because it gives voters another option, and withholding it denies voters an important choice. *United Utah Party*, 268 F. Supp. 3d at 1260–61 (enjoining Utah’s Lieutenant Governor from omitting a party’s nominee from the ballot).

The Order’s remaining concern—that other 2026 minor-party candidates might cite the relief, and that the State “would be hard pressed to prevent future minor party candidates from appearing on the ballot,” Order at 30–31—contradicts the Order’s own framing. The Court expressly limited its analysis to Plaintiffs and “expressed no opinion” about other parties or candidates. *Id.* at 8 (citing *United States v. Carel*, 668 F.3d 1211, 1218 (10th Cir. 2011)). An as-applied injunction tailored to the 41-day window, the registration freeze, and these two candidates binds no one else, and *Abbott v. Perez*, 585 U.S. 579, 602 (2018), protects a State’s interest in enforcing its statutes only “unless unconstitutional.” Order at 29–30. In *Goodall*, the Secretary of

State's inability to identify any other candidate who would have qualified but for the challenged provision weighed in favor of relief. 324 F. Supp. 3d at 1200. The Secretary has identified no other 2026 candidate who was certified during the registration freeze, faced a 41-day window, and petitioned at the doubled rate.

VI. The Requested Relief and the Need For an Expedited Ruling.

Plaintiffs request that the Court (a) stay the Order pending appeal; (b) enjoin Defendants, pending appeal, from enforcing 1-8-2(B) against Perls and Vigil and direct the Secretary to certify and print them on the November 3, 2026 general election ballot as NMFP's nominees for U.S. Senate and State Auditor; and (c) in the alternative, enjoin Defendants from certifying or printing general election ballots that omit Perls and Vigil until the Tenth Circuit rules on Plaintiffs' Rule 8 motion. Consistent with Rule 62(d), Plaintiffs ask that no bond be required; the relief imposes no monetary cost on Defendants.

Federal law requires the State to transmit absentee ballots to military and overseas voters no later than 45 days before the election, which falls on September 19, 2026. 52 U.S.C. 20302(a)(8)(A). Plaintiffs therefore request a ruling on this motion as soon as practicable, and reserve their right to seek relief from the Tenth Circuit pursuant to Fed. R. App. P. 8(a)(2).

Plaintiffs further request that the Court stay further proceedings on the merits during the pendency of the interlocutory appeal, or of any application to the Supreme Court of the United States, to avoid duplicative litigation while the Tenth Circuit addresses the governing standard.

WHEREFORE, Plaintiffs respectfully request that the Court enter an order staying its Order Denying Motion for Preliminary Injunction, ECF No. 22, pending appeal; enjoining Defendants pending appeal from enforcing 1-8-2(B) against Plaintiffs Perls and Vigil and directing the Secretary of State to place them on the November 3, 2026 general election ballot as

the New Mexico Forward Party's nominees for U.S. Senate and State Auditor; alternatively, enjoining Defendants from certifying or printing ballots omitting them until the Tenth Circuit rules; ruling on this motion as soon as practicable; and granting such further relief as the Court deems just.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on September 4, 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



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.