

IN THE
SUPREME COURT OF THE UNITED STATES

NEW MEXICO FORWARD PARTY, *et al.*,

Applicants,

v.

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

Respondents.

**RESPONSE IN OPPOSITION TO EMERGENCY
APPLICATION FOR WRIT OF INJUNCTION PENDING APPEAL**

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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On one day's notice, the New Mexico Forward Party (NMFP) and its candidates ask the Justice to order Secretary of State Maggie Toulouse Oliver to put Bob Perls and Michael Vigil on every ballot in New Mexico.¹ They suggest this would be possible, but in fact the deadline to add a candidate to the ballot has effectively passed. Their application for an injunction presents nothing that courts below with more time have not fully considered and rejected. For reasons explained here and in briefs before the District Court and Tenth Circuit Court of Appeals, the Secretary respectfully requests that the Justice deny the application.

ARGUMENT

NMFP formed a few months ago in May. App. 219 n.2. It could have formed at any time—its national party affiliate has existed since 2022—but it chose to do so halfway through an election year. N.M. Stat. Ann. 1-7-2; App. 14. Three of its candidates were able to get on the ballot, while two were not. Mr. Perls and Mr. Vigil were unable to convince enough voters to sign their petitions for statewide office. App. 15, 224. They have resorted to the courts to get on the ballot anyway. They argue that New Mexico imposes too high a signature requirement and is not justified in asking candidates to collect signatures separate from their political party. The District Court considered these arguments, received significant briefing from the parties, and held an hours-long evidentiary hearing in which Applicants offered no testimony while the Secretary did. The District Court in a 31-page decision described in detail why Applicants' arguments were unlikely to succeed, because the signature requirements can be met by a reasonably diligent candidate and New Mexico has long-established interests under the Elections Clause in requiring candidates to

¹ Applicants did not provide the Secretary with a copy of their application until September 16, 2026, at Respondent's request, even though it was filed on September 15. The Secretary is responding as promptly as possible given Applicants' request for relief by September 17. Sup. Ct. R. 21.4. This response is limited as a result. Because the application raises no new argument, the Secretary's position has already been thoroughly briefed in the courts below.

show a modicum of support to gain access to the ballot. App. 5–35; U.S. Const. art. I, § 4. The candidates rehashed their arguments to the District Court in an emergency motion for stay, which was denied, App. 3–4, and again to the Tenth Circuit Court of Appeals, which denied an injunction in a single sentence. App. 2. The arguments presented to the Justice are nearly identical to those made below, and are wrong for the same reasons.

I. Applicants Cannot Show a Likelihood of Success on Appeal

Applicants suggest New Mexico’s Election Code, N.M. Stat. Ann. §§ 1-1-1 to 1-26-6, imposes without reason a significantly higher burden on minor party candidates than it does on major party candidates. Every candidate for election in New Mexico, with the exception of those for President, must collect signatures demonstrating individualized support from voters to get on the ballot. It makes no difference whether the candidate is a member of a major party, minor party, or is an independent or write-in. N.M. Stat. Ann. §§ 1-8-21, 1-8-33(B) (major parties); N.M. Stat. Ann. § 1-8-2 (minor parties); N.M. Stat. Ann. § 1-8-51 (independents); N.M. Stat. Ann. § 1-8-66 (write-ins). What changes is how they show that support. Major party candidates for statewide elections must gather signatures from voters, earn votes at a party convention, and finally win a primary. N.M. Stat. Ann. §§ 1-8-21, 1-8-21.1, 1-8-33(B). The primary leads to the general ballot, but only for candidates who win over New Mexico’s voters throughout the state, where they often must gain hundreds of thousands of votes.² The very fact that a party is “major” also indicates its support, because New Mexico categorizes parties based on percentage membership and past success in elections. N.M. Stat. Ann. § 1-7-7. This has allowed minor political parties to recently become major parties—far from “freez[ing] the status quo.” Appl. 10; App. 240, ¶ 12.

² See, e.g., New Mexico Secretary of State, Official Results, 2026 Primary, Statewide Offices & Questions, <https://electionresults.sos.nm.gov/resultsSW.aspx?type=SW&map=CTY>.

Meanwhile, minor party candidates in New Mexico do not face primaries. Instead, their candidates only need to collect signatures from voters to access the general ballot. § 1-8-2(B). If the party's membership is large enough, the number of signatures for a statewide candidate is one percent of votes for governor in the previous election, 7,100 in 2026. *Id.*; App. 58. If the party is small, then to show adequate voter support they must collect signatures from an additional one percent, totaling 14,200. § 1-8-2(B); App. 58. This requirement puts the power in voters' hands to decide which candidates appear on the ballot. It also recognizes that there are "differences in kind between" candidates for parties that have demonstrated significant support in previous elections and parties or candidates who are brand new. *Jenness v. Fortson*, 403 U.S. 431, 441 (1971). A candidate like Mr. Perls or Mr. Vigil who seeks to access a statewide ballot as a member of a party with 227 members should be expected to show meaningful support comparable to what major parties show through years of established votes and rigorous primaries. The New Mexico Legislature has chosen for minor party candidates to do that through signatures. The Election Code justifiably asks more of candidates like Mr. Perls and Mr. Vigil to seek sufficient voter support by signed petitions, separate from their party, before getting on a general election ballot given to every voter in the State. *Rogers v. Corbett*, 468 F.3d 188, 197 (3d Cir. 2006).

Applicants have not made a showing that this structure unconstitutionally burdens their access to the ballot under *Anderson v. Celebrezze*, 460 U.S. 780 (1983) and *Burdick v. Takushi*, 504 U.S. 428 (1992), and every court to evaluate Applicant's emergency relief has rejected it for that reason. The specific number of signatures required of any NMFP candidate for statewide office was never more than 14,200. App. 220. Collecting 14,200 signatures between March 2 and June 25 this year is far fewer than the number this Court has found permissible, because a reasonably diligent candidate could do it. App. 23 (citing *Jenness*, 403 U.S. at 438–39 (1971), *Am. Party of*

Tex. v. White, 415 U.S. 767, 783–85 (1974), and *Storer v. Brown*, 415 U.S. 724, 740 (1974)). And New Mexico’s election framework has withstood scrutiny against similar challenges. *Libertarian Party of N.M. v. Herrera*, 506 F.3d 1303, 1310 (10th Cir. 2007); *Parker v. Duran*, 180 F. Supp. 3d 851, 861 (D.N.M. 2015); *Libertarian Party of N.M. v. Vigil-Giron*, CIV-06-0615, 2006 WL 8443845, at *11 (D.N.M. Sept. 18, 2006).

Applicants inflate the number to 131,361, exaggerating their burden by including the 3,561 signatures NMFP needed to form and then imagining that the party was able to field a full slate of nine statewide candidates in the general election. Appl. 5. As a factual matter, NMFP only had two candidates running for statewide office (Mr. Perls and Mr. Vigil), not nine. And those candidates only ever needed to obtain 14,200 signatures. App. 220. No candidate in this case needed to obtain 131,361 signatures, and the Election Code would not require it for any single candidate. *See* § 1-8-2(B). Applicants suggest that courts should measure the “cumulative” burden on a *party* caused by its roster of candidates, Appl. 10, but this is not supported by the law they cite. *See Utah Republican Party v. Cox*, 892 F.3d 1066, 1088 (10th Cir. 2018) (focusing on whether “*candidates* have alternative and constitutionally sufficient paths through which to qualify” (emphasis added)). While there exist cases that evaluate different election requirements in combination with each other, *see Libertarian Party of N.M.*, 506 F.3d at 1310, the District Court thoroughly conducted that analysis and found Applicants’ arguments lacking. App. 16–23. Accepting Applicants’ preferred form of a cumulative analysis would also make little sense, because the burden on a single candidate does not increase or otherwise depend on the number of candidates in a party. A candidate’s burden to collect signatures is his own. N.M. Stat. Ann. § 1-8-65.

Mr. Perls and Mr. Vigil could not collect 14,200 signatures, not because the Election Code imposed such an extreme burden, but because of circumstances within their control and of their

own making. Each could have circulated petitions for signatures for 115 days but chose to give themselves a third of that time, starting 41 days before the deadline. App. 241–42, ¶ 16; N.M. Stat. Ann. § 1-8-3.1 (explaining that a candidate may collect signatures before the candidate’s party qualifies as a political party). They complain that they were denied the ability to collect signatures because they could not use an online petition platform, but this is not so. Every candidate can collect signatures using a paper petition provided by the Secretary and can even send the petition electronically. *See* N.M. Stat. Ann § 1-8-65. The online platform is an optional tool started in 2024. N.M. Stat. Ann. § 1-1-7.2(e). Applicants knew it would not be available to them for a period of time because of when NMFP formed; if the party had formed earlier, they could have used the online form throughout their petitioning period. App. 242, ¶¶ 17–18. Applicants were instead encouraged to collect petitions by paper. *Id.* They ignored this encouragement to circulate paper petitions, choosing instead to spend tens of thousands of dollars on an electronic signature campaign directing voters to an online petition Applicants knew they could not use. App. 195, ¶ 14. These were Applicants’ decisions.

Compare the two failed candidates’ efforts to New Mexico’s recognized interests at stake. Under the *Anderson-Burdick* framework, because a reasonably diligent candidate could meet the signatures, *Storer*, 415 U.S. at 742, New Mexico’s interests in preventing ballot confusion, overcrowding, and frivolous candidacies are sufficient to justify its signature requirements. *Munro v. Socialist Workers Party*, 479 U.S. 189, 194 (1986); *Rainbow Coal. v. Okla. State Election Bd.*, 844 F.2d 740, 743 (10th Cir. 1988). Appellants assert New Mexico has no interest in imposing signature requirements higher for some candidates than others. Appl. 11–12. This is contrary to *Jenness*’s acceptance of “providing different routes to the printed ballot” depending on the candidate and a political party’s size and history. 403 U.S. at 441–42. And Applicants’ cited case,

Illinois State Bd. of Elections v. Socialist Workers Party, 440 U.S. 173, 186 (1979) is inapt, because it concerned only whether it was permissible to require a higher signature requirement for ballot access in Chicago than for the entire State, when the population of the State was obviously greater than one locality. *Id.* Moreover, a State’s ability to require signatures to gain ballot access is “beyond question.” *Dillon v. Evans*, 549 F.2d 183, 184 (10th Cir. 1977). This Court has also already recognized that a State has a greater interest in regulating elections concerning state offices and candidates for Congress compared to the President, because the outcome of Presidential elections “will be largely determined by voters beyond the State’s boundaries.” *Anderson*, 460 U.S. at 795.

Collecting signatures from voters is not an “obstacle,” Appl. 12, it is a tool to measure voter support for a candidate. On balance, Applicants cannot show that the need to obtain signatures in New Mexico creates any significant burden that outweighs New Mexico’s interests in regulating its elections pursuant to the Election Code. When a State’s ballot access regulation imposes “reasonable, nondiscriminatory restrictions,” then its “important regulatory interests are generally sufficient to justify” the regulation. *Anderson*, 460 U.S. at 788. Applicants have not shown a likelihood of success.

II. The Secretary Would be Unable to Comply with an Injunction Now and the Equities Strongly Disfavor Applicants

Applicants suggest that the equities are in their favor because the burden on the State to comply with an injunction is slight. The fact they ask for a one-day decision indicates the opposite. The position relies on an unfounded assumption that the Secretary and New Mexico’s 33 county clerks create a ballot in a day. In reality, it takes weeks of preparation, and a significant deadline has already passed. That deadline was September 4, 2026, when each of the county clerks in New Mexico prepared and certified in writing a separate ballot for each of the 2,204 precincts in the State, and sent each certified ballot to the Secretary and the ballot printer. N.M. Stat. Ann. § 1-10-

4(B), (H); App. 93, ¶ 4(a). Since that time, election officials have prepared the ballots for printing, which includes uploading the county clerks’ ballots for testing; performing logic and accuracy testing on nearly 1,800 tabulator machines; quality assurance review to eliminate the risk of reading errors; and preparing for mock election runs. App. 95–96, ¶¶ 5–9. These tasks are not left until election day because by September 18, 2026—tomorrow—counties must have completed ballots to mail to federal qualified electors. *Id.* at 93–94, ¶ 4(b); 52 U.S.C. § 20302(a)(8); N.M. Stat. Ann. § 1-10-5.

New Mexico currently has requests from 1,852 qualified electors. App. 94, ¶ 4(c). Adding candidates now would create different ballots for these electors than for other voters in New Mexico, and would require unheard-of expense and cooperation between the Secretary, the county clerks who she does not control, and third-party ballot vendors. App. 95, ¶ 5. A week ago, while this case was before the Court of Appeals, the Secretary’s Office said an injunction “will significantly increase the risk of error, require many overtime hours, and disrupt the orderly administration of the election.” App. 96, ¶ 10. At that time, she could not guarantee the ballot could be changed without creating severe errors; now, a week later, it assuredly cannot be changed. *See* App. 95, ¶¶ 5–6. This Court has denied injunctions when it would be “extremely difficult, if not impossible for [the State] to provide still another set of ballots,” including because it would cause “interference with the rights of some citizens, such as absentee voters.” *Williams v. Rhodes*, 393 U.S. 23, 34 (1968). For the same reasons, the equities do not weigh in Applicants’ favor, and an injunction would significantly harm the public.

It is not at all clear that this Court is likely to grant review and reverse, let alone “indisputably clear.” Appl. 8 (quoting *Ohio Citizens for Responsible Energy, Inc. v. Nuclear Regulatory Comm’n*, 479 U.S. 1312, 1313 (1986) (Scalia, J., in chambers)). As was recognized in

the District Court, New Mexico's requirements that the two candidates show some modicum of support by collecting signatures from voters is justified by the State's accepted interests in regulating elections. App. 23 (citing *Jenness*, 403 U.S. at 442). Applicants have not shown a strong likelihood of success on the merits or that the equities favor them.

III. The Secretary Represents New Mexico's Interests in this Litigation

Applicants complain that the Tenth Circuit declined to consider an amicus brief filed by the New Mexico Attorney General opposing the Secretary. Appl. 4, 7, 11. The Secretary of State is a separately elected, co-equal executive officer with the Attorney General. N.M. Const. art. V, § 1. The Secretary of State is unequivocally New Mexico's "chief election officer," N.M. Stat. Ann. § 1-2-1, charged to "maintain uniformity in the application, operation and interpretation of the Election Code." *Id.* The Attorney General does not share that duty.

Moreover, the Attorney General is statutorily obligated to defend the Secretary of State in litigation. N.M. Stat. Ann. § 8-5-2 ("Except as otherwise provided by law, the attorney general shall . . . defend all actions and proceedings brought by or against any state officer or head of a state department."). He has disregarded his statutory role and failed to respect and enforce the statutory role of the Secretary of State. As the Attorney General did not defend his client or attend the District Court proceeding, the rejected amicus brief ignored—or was unaware of—the uncontroverted evidence that the short time NMFP candidates had to gather signatures was "self-imposed and . . . not a burden imposed on Plaintiffs by the regulatory architecture" of the Election Code. App. 21. The Tenth Circuit appropriately struck the Attorney General's amicus brief. App. 1 n.1.

IV. The Court Should Deny Applicants’ Request for Certiorari Prior to Judgment

Applicants provide no justification that this matter merits certiorari, let alone that it presents an imperative public interest that warrants bypassing the Tenth Circuit. This case involves two candidates of a new political party who did not qualify for the general election ballot because they could not demonstrate the modicum of support required by New Mexico law. The candidates’ efforts to qualify were hamstrung by their party’s decisions and their own failure to work within the timeline for collecting and submitting qualifying petition signatures. Three of Applicants’ colleagues did meet these requirements—proving they can be met by diligent candidates.

The circumstances presented here, as applied to Applicants, with the timing of the new party’s formation and the candidates’ truncated signature collection, are unique and not likely to arise again, making this case a vehicle undeserving of the Court’s attention. The Tenth Circuit and the District Court of New Mexico aligned in finding Applicants were unlikely to succeed on the merits. App. 2, 35. And there is no conflict between the courts below and other court decisions which routinely recognize the variety of methods a State may employ to serve its important interests in regulating elections.

CONCLUSION

Applicants cannot show a likelihood of success that the decisions of the District Court and Tenth Circuit Court of Appeals will be reversed. An injunction now could not be complied with and would cause extreme disruption in New Mexico’s election administration. The application for a writ of injunction pending appeal should be denied.

Dated: September 17, 2026.

Respectfully submitted,

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CERTIFICATE OF SERVICE

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