

No. 24A408

IN THE SUPREME COURT OF THE UNITED STATES

**REPUBLICAN NATIONAL COMMITTEE,**

**ET AL.,**

*Applicants,*

*v.*

**FAITH GENSER, ET AL.,**

*Respondents.*

*ON EMERGENCY APPLICATION FOR STAY PENDING DISPOSITION OF A  
PETITION FOR A WRIT OF CERTIORARI*

**BRIEF FOR FORMER GOVERNMENT OFFICIALS AS *AMICI CURIAE* IN  
SUPPORT OF RESPONDENTS**

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## INTEREST AND IDENTITY OF *AMICI CURIAE*<sup>1</sup>

*Amici curiae* are current and former Republicans who have served as elected officials, prosecutors, and other government officers. They have collectively spent decades of public service defending the Constitution, the interests of the American people, and the rule of law. By seeking to draw this Court into a conflict over state courts interpreting state laws, Applicants are threatening our federalist system, confidence in the rule of law, and impartial justice. *Amici's* public service to their country included advancing the sacred principle that eligible American citizens should be able to exercise their right to vote, a cornerstone of our democratic system. *See Reynolds v. Sims*, 377 U.S. 533, 562 (1964) (“[T]he Court [has] referred to ‘the political franchise of voting’ as ‘a fundamental political right, because preservative of all rights’”) (quoting *Yick Wo v. Hopkins*, 118 U.S. 356, 370 (1886)). *Amici* are listed below:

- **Donald Ayer**, Deputy Attorney General in the George H.W. Bush Administration from 1989 to 1990.
- **Arne Carlson**, Governor of Minnesota from 1991 to 1999.
- **Ty Cobb**, Special Counsel to the President in the Trump Administration from 2017 to 2018.
- **Stuart M. Gerson**, Assistant Attorney General for the Civil Division in the George H.W. Bush Administration from 1989–1993.
- **John Giraud**, Attorney Advisor in the Department of Justice Office of Legal Counsel in the Reagan Administration from 1986 to 1989.

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<sup>1</sup> Pursuant to Supreme Court Rule 37.6, *amici* affirm that no counsel for a party authored this brief in whole or in part and that no person other than *amici* or their counsel made a monetary contribution to its preparation or submission.

- **Philip Allen Lacovara**, Deputy Solicitor General in the Nixon Administration from 1972 to 1973.
- **John McKay**, U.S. Attorney for the Western District of Washington in the George W. Bush Administration from 2001 to 2007.
- **Richard Painter**, Associate Counsel to President George W. Bush from 2005 to 2007.
- **Carter Phillips**, Assistant to the Solicitor General in the Reagan Administration from 1981 to 1984.
- **Trevor Potter**, Commissioner of the Federal Election Commission appointed by President George H.W. Bush from 1991 to 1995.
- **Alan Charles Raul**, Associate Counsel to President Ronald Reagan from 1986 to 1988.
- **Robert Shanks**, Deputy Assistant Attorney General, Office of Legal Counsel in the Reagan Administration from 1981 to 1984.
- **Fern M. Smith**, Judge of the U.S. District Court for the Northern District of California, appointed by President Reagan from 1988 to 2005.
- **Larry Thompson**, Deputy Attorney General in the George W. Bush Administration from 2001 to 2003.
- **Stanley A. Twardy, Jr.**, United States Attorney for the District of Connecticut under the Reagan Administration from 1985 to 1991.
- **William F. Weld**, Governor of Massachusetts from 1991 to 1997.
- **Christine Todd Whitman**, Governor of New Jersey from 1994 to 2001.

### **SUMMARY OF ARGUMENT**

The emergency application for a stay brought by the Republican National Committee and the Republican Party of Pennsylvania (“Applicants”) improperly asks this Court to step in and stay the Pennsylvania Supreme Court’s interpretation of Pennsylvania election law made in accordance with principles of statutory

interpretation laid out by the Pennsylvania legislature. The request for a stay asks this Court to abandon fundamental principles of federalism that leave matters of state law to be decided by state courts absent extraordinary circumstances that are not present here. A stay would also prevent some unknown number of voters—individuals who are eligible to vote and who intend to vote—from exercising their right to vote in upcoming national elections. Applicants’ request should be denied.

### **ARGUMENT**

#### **I. THE UNITED STATES SUPREME COURT SHOULD NEITHER STAY NOR DISTURB THE PENNSYLVANIA SUPREME COURT’S INTERPRETATION OF PENNSYLVANIA LAW.**

This Court should deny Applicants’ emergency application for a stay of the Pennsylvania Supreme Court’s decision interpreting Pennsylvania election law. It is well-settled that this Court (along with other federal courts) must defer to decisions from the highest courts of each respective state in matters involving the interpretation of that state’s law. *See Animal Sci. Prod., Inc. v. Hebei Welcome Pharm. Co.*, 585 U.S. 33, 34 (2018) (“If the relevant state law is established by a decision of the State’s highest court, that decision is binding on the federal courts.”) (cleaned up); *City of Chicago v. Morales*, 527 U.S. 41, 61 (1999) (“We have no authority to construe the language of a state statute more narrowly than the construction given by that State’s highest court.”); *Johnson v. Fankell*, 520 U.S. 911, 916 (1997) (“Neither this Court nor any other federal tribunal has any authority to place a construction on a state statute different from the one rendered by the highest court of the State.”); *Illinois Cent. R. Co. v. State of Minn.*, 390 U.S. 157, 165 (1940) (affirming Supreme

Court of Minnesota’s interpretation of state statute as “on such matters of construction we defer to the state court’s interpretation.”).

In the context of cases implicating the Elections Clause, U.S. Const., Art. I, § 4, as here, this Court recently reaffirmed its deference to state courts’ interpretation of state law in *Moore v. Harper*, 600 U.S. 1 (2023). As the majority opinion and concurrence in that case make clear, federal courts will disturb a state court’s ruling on state election law in only the narrowest of circumstances. The majority opinion held that state courts may not “arrogate to themselves the power vested in state legislatures to regulate federal elections.” *Id.* at 36. Justice Kavanaugh’s concurrence expanded on this standard, explaining that the Elections Clause prohibits state courts from “impermissibly distort[ing]” state law beyond “what a fair reading required.” *Id.* at 38-39 (Kavanaugh, J., concurring).

Even a cursory review of the Pennsylvania Supreme Court’s decision reveals that it did not come close to transgressing the barrier set by *Moore*. In its decision, the Pennsylvania Supreme Court gave a common-sense interpretation of the relevant statutes, and did so pursuant to the very statute by which the General Assembly set out the “bounds of judicial review” to be used by Pennsylvania courts interpreting Pennsylvania law: the Pennsylvania Statutory Construction Act, 1 Pa. C.S. §§ 1501-1991. *See* App. 33a-44a. Applicants’ arguments amount to nothing more than a disagreement with the Pennsylvania Supreme Court’s statutory interpretation. Such disputes do not provide grounds for review or intervention by this Court.

Indeed, prior to this Court reaffirming its deferential standard in *Moore*, this Court denied a stay application that challenged a Pennsylvania Supreme Court decision in the lead up to the 2020 election involving mail-in ballots. *Republican Party of Pa. v. Boockvar*, 141 S. Ct. 1 (2020). In that case, the Pennsylvania Supreme Court had rendered a decision on issues of Pennsylvania election law centering on mail-in ballots, ruling that valid mail-in ballots postmarked on or before Election Day would be counted if received by the pertinent Board of Elections within three days of Election Day. *Pa. Democratic Party v. Boockvar*, 662 Pa. 39, 82-83 (2020). There, as here, the Republican Party of Pennsylvania moved for a stay of the Pennsylvania Supreme Court's decision pending disposition of a writ of certiorari on nearly identical grounds. *Republican Party of Pa.*, 141 S. Ct. at 1. This Court properly denied the stay.

Though the Court did not issue an opinion in connection with its decision to deny the stay in the 2020 Pennsylvania case, Chief Justice Roberts spoke to the Court's reasoning in a concurrence in *Democratic National Committee v. Wisconsin State Legislature*, 141 S. Ct. 28 (2020), a case which concerned a *federal* district court's order altering election rules in the upcoming election. In his concurrence, Chief Justice Roberts contrasted the Pennsylvania decision (issued by the Pennsylvania Supreme Court) and the Wisconsin decision (issued by a Wisconsin federal district court), stating that the Pennsylvania decision "implicated the authority of state courts to apply *their own constitutions* to election regulations," while the federal district court's decision amounted to "federal intrusion on state



lawmaking processes.” 141 S. Ct. 28 (Roberts, C.J.) (concurring). As a result, the Court *acted* on the federal district court’s ruling (by refusing to vacate the Seventh Circuit’s stay of it), but refused to act on the Pennsylvania Supreme Court’s ruling. *Id.* The Court should similarly defer to the Pennsylvania Supreme Court here. The application here clearly “implicate[s] the authority of” the Pennsylvania Supreme Court’s ability to address questions of Pennsylvania law.

This deference is also necessary in light of the chaos that could result from sudden federal court intervention into matters of Pennsylvania election law mere days before Election Day. One of the most “important principle[s] of judicial restraint” is that federal courts refrain from altering state election laws too close to election day, since “election administrators must first understand the court’s injunction, then devise plans to implement that late-breaking injunction, and then determine as necessary how best to inform voters, as well as state and local election officials and volunteers, about those last-minute changes.” *Id.* (Kavanaugh, J., concurring in denial of application to vacate stay). This application requests the type of late-stage relief this Court has discouraged.

It should also be noted that the precedential effect of the Pennsylvania Supreme Court’s decision has brought uniformity to an issue where there had been differing interpretations by election officials. Prior to this litigation, the Pennsylvania Secretary of State and many counties had adopted the position that a voter could cast a provisional ballot and have that ballot counted if the voter neglected to include the secrecy envelope with their ballot, whereas Butler County and a subset of others took

the opposite position. Thus, a stay of the Pennsylvania Supreme Court's decision would result in the lack of uniformity across Pennsylvania's counties for the 2024 election. This would be problematic, especially in the event of a very close election.

As this Court is no doubt aware, there is an existing torrent of litigation surrounding the 2024 elections in state court involving interpretation of state election law issues. Granting a stay in this case would embolden countless efforts nationwide asking this Court to become the arbiter of state election law, undermining state supreme courts and federalism principles and scuttling the diligent work of state and local election officials. Those efforts should be rebuffed, and this Court's attention should be reserved for those rare cases that merit review. This case is only one of the first in what will be a repeated occurrence during this election. The Court should signal now how it will dispose of such cases.

### **CONCLUSION**

For the reasons stated above, *amici curiae* respectfully request that this Court deny Applicants' emergency request for a stay.

Respectfully submitted,

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