ELECTRONICALLY FILED SEP 09, 2024 CLERK OF SUPREME COURT

IN THE SUPREME COURT OF IOWA

NICHOLAS GLUBA, CHARLES ALDRICH, and MARCO BATTAGLIA,

Petitioners-Appellants

v.

STATE OBJECTIONS PANEL,
Respondent-Appellee,

DAN SMICKER, CYNTHIA YOCKEY, JACK SAYERS, GARRETT ANDERSON, TRUDY CAVINESS, and ELAINE GAESSER,

Intervenors-Appellees.

No. 24-1426

BRIEF OF INTERVENORS-APPELLEES

Appeal from the Iowa District Court for Polk County
Hon. Michael Huppert, Chief District Court Judge

Case No. CVCV067799

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STATEMENT OF ISSUES PRESENTED FOR REVIEW

I. The candidates claimed that the objectors must satisfy standing requirements to invoke the judicial power of the Iowa courts through a cause of action. But Iowa law permits any registered voter entitled to vote for the office in question to challenge a candidate's certificate of nomination before the State Objections Panel, a nonjudicial body of executive branch officials. Did the district court properly reject the candidates' standing claim?

II. Iowa Code Chapter 43 regulates the final form of the general election ballot by providing the method for political parties to (1) select candidates through a state-run primary election and (2) nominate candidates at a convention when no candidate is elected in the primary. But the candidates claimed that the Panel could only consider objections for primary election candidates, not those nominated by a convention. Did the Panel correctly consider challenges to the legality of the Libertarian's nominating convention?

III. States must impose regulations of the electoral process. So long as those regulations are reasonable and nondiscriminatory, they do not violate the First Amendment. The Libertarian Party failed to follow basic organizational steps that apply equally to all political parties. Did the district court correctly reject the candidates' constitutional argument?

Routing Statement

This is an appeal from an order affirming the order of the State Objections Panel finding three candidates of the Libertarian Party of Iowa were not validly nominated by the party because of the party's failure to conduct legal county conventions where delegates were validly elected by party members. Because of the need for a prompt resolution of this appeal and the broad public importance of the question presented, retention by the Iowa Supreme Court is appropriate. Iowa R. App. P. 6.1101(2)(d).

STATEMENT OF THE FACTS

In the 2022 general election, the Libertarian Party candidate for Governor, Rick Stewart, received more than two percent of the vote total.[1] The party then filed the application for political party status provided by Iowa Code § 43.2 and IAC 721—21.10(1). The Iowa Secretary of State declared the Libertarian Party a qualified political party, a status that would apply for the 2024 election cycle and each succeeding cycle in which the Libertarian Party had a nominee for either president or governor and achieved more than 2 percent of the vote. *Id.*

Political party status: benefits and responsibilities

The move from being a nonparty political organization to political party status brings several benefits. Chief among them is the ability to register voters as a declared member of the party. Iowa Code § 48A.11(1)(i). A political party with this status does not have to follow the process for a nonparty political organization to access the ballot. *See* Iowa Code Chapter 44. But when a political organization achieves political party status, it must follow certain organizational requirements. As nearly all Iowans know, this process begins with precinct caucuses. The county chair issues the call for caucus. *Id.* The county chair must notify the county commissioner of elections of

[1] The total votes cast for governor in the 2022 general election was 1,230,416. A party therefore needed their candidate to receive more than 24,609 votes to have major-party status in the 2024 election cycle. Records of the Iowa Secretary of State show that the LPIA candidate for governor received 28,998 votes. https://sos.iowa.gov/elections/pdf/2022/general/govcanvsummary.pdf <last visited Sept. 8, 2024>

"the meeting place of each precinct caucus at least seven days prior to the date of holding the caucus." *Id.*

At the caucus, the party must take its first organizational steps, electing "a chairperson and a secretary" for each precinct "who shall within seven days certify to the county central committee the names of those elected as party committee members and delegates to the county convention." Iowa Code § 43.4(2). The results of the caucus organizational process must be filed with the county commissioner of elections. "Within sixty days after the date of the caucus the county central committee shall certify to the county commissioner the names of those elected as party committee members and delegates to the county convention." Iowa Code § 43.4(4). The county commissioner is required to maintain these records for 22 months. *Id.* The delegates to the county convention elected at the precinct caucus must be notified of "the time and place of holding the county convention." Iowa Code § 43.4(5). "Such conventions shall be held either preceding or following the primary election but no later than ten days following the primary election and shall be held on the same day throughout the state." *Id.* Thus the last day to hold a county convention was June 14, 2024.

The terms of the delegates to the county convention begin "on the day following their election at the precinct caucus, and shall continue for two years and until their successors are named." Iowa Code § 43.94. "The county convention shall be composed of delegates elected at the last preceding precinct caucus." Iowa Code § 43.90. Those delegates must be eligible to vote in the upcoming general election and be "residents of the precinct." *Id.* The apportionment of delegates must have been filed

with the county commissioner along with the caucus site notification or, if not filed, are determined by the county commissioner. *Id.* At the county convention, the delegates may make nominations to fill ballot vacancies at the county level, transact other business called for by the party's constitution or bylaws, and elect delegates to district and state conventions. Iowa Code § 43.97. The duty to elect district and state delegates will prove important in a moment.

Congressional district conventions may be held "upon the call of the state party chairperson" to, among other duties, "[m]ake nominations to fill vacancies on the general election ballot as provided by law." Iowa Code § 43.102(2). While a separate district convention is optional, the state convention is not. Iowa Code § 43.107. The state convention must conduct party business, make nominations to fill vacancies for statewide offices, and elect a state central committee to oversee party affairs. Iowa Code §§ 43.109 and 43.111.

The Party misses basic organizational steps in the 2024 election cycle

The Libertarian Party of Iowa did not follow the required process after its precinct caucuses. It did not file the required certifications with any county commissioner of elections of who had been elected to be delegates to the county conventions in the First, Third, or Fourth Congressional Districts of Iowa. Iowa Code § 43.4(2). As far as the public knew, no county conventions were conducted by the party. It appeared that the Libertarian Party of Iowa went straight from a handful of county caucuses to a state convention that purported to nominate a candidate for three congressional

seats. But without conducting county conventions, the Libertarian Party of Iowa has no valid organizational structure.

On July 1, 2024, the state board of canvassers met to conduct the state canvass.[2] Iowa Code § 43.63(2). The canvass results showed that no candidate for the Libertarian Party of Iowa filed to run for the office of United States Representative for the any of Iowa's seats in Congress. In addition, no candidate received sufficient write-in votes to be nominated as the party's candidate. *See* Iowa Code § 43.66. As a result, the Secretary of State issued a certificate of vacancy for the offices.[3] Iowa Code § 43.69.

Libertarian candidates present purported certificates of nomination

On July 29, 2024, three individuals presented purported certificates of nomination to the Secretary of State claiming to be the Libertarian Party's candidates for United States Representative for the First, Third, and Fourth Congressional Districts of Iowa. D0045, State Objections Panel decision at 2 (9/4/2024). The certificates claimed that the nominations took place on June 8, 2024, at the party's state convention.

The hearing before the State Objections Panel

Objectors filed challenges on August 5, 2024, to the certificates of nomination before the State Objections Panel. Iowa Code § 43.24(1). D0045 at 2. They pointed

[2] https://sos.iowa.gov/elections/pdf/2024/primary/canvsummary.pdf <last visited Sept. 8, 2024>
[3] https://sos.iowa.gov/elections/pdf/2024/primary/nonominee.pdf <last visited Sept. 8, 2024>

to the organizational requirements placed on the Libertarian Party to conduct county conventions and file delegate lists with county auditors and explained that the party had not done what was required of it to conduct a valid nominating process for congressional candidates. *Id.* Objectors provided the results of public records requests to the county auditors in the three congressional districts that showed that no records of county conventions had been filed as required by Iowa Code § 43.4(4). *Id.*

In the lead up to the State Objections Panel hearing the candidates expressed confidence that they had complied with the law. Stephen Gruber-Miller, *Republicans seek to remove Libertarians from the ballot in 3 Iowa congressional districts*, Des Moines Reg. (Aug. 13, 2024), https://perma.cc/GJ33-E7VT. "'We had conventions,' Battaglia told reporters after the [Iowa State Fair] Soapbox. 'We just couldn't have 99 events overnight.'" *Id.* "'I was there,' Gluba said. 'I remember being at a convention. I presided over three of them.'" *Id.*

But at the hearing the Libertarians admitted their error. D0045 at 2-3. "[Libertarian Party of Iowa chair] Cutler acknowledged the party made mistakes but said its procedures substantially followed the law. 'It is embarrassing that we didn't do it,' Cutler said." Stephen Gruber-Miller, *3 Libertarian congressional candidates are kicked off Iowa's November ballot. Here's why*, Des Moines Reg. (Aug. 28, 2024), https://perma.cc/6G4N-ACXA. They acknowledged failing to file records showing the proceedings of county conventions. But the Libertarians claimed that they *had*

conducted a handful of county conventions.[4] They submitted documents to the Panel purporting to show that Libertarians had conducted their county conventions right after the precinct caucuses. Yet those documents told a different story, with the only documentary evidence of a county convention being in a single county.[5]

But even if the Party had conducted county conventions on the night of the caucus, it would not solve its problem. Recall Iowa Code § 43.94. Any delegates elected at the caucus on January 15, 2024, did not start their term until the next day. The Party could not conduct business the night of January 15 to elect delegates to district conventions. This means that the individuals who convened on June 8 did not have the ability to nominate anyone.

The Panel agreed with the objectors. "Without a valid county convention, there were no valid delegates elected to the district conventions and therefore no valid district conventions from which the candidates could have been certified as Libertarian Party nominees." D0045 at 3. Citing its own precedent, the Panel said, "the Libertarians must undertake the 'nuts and bolts work required by Iowa law to build and maintain that party's infrastructure' rather than relying on the informal processes that obtain for non-party political organizations." *Id.* (citing *In re Obj. to Pet. Of Joshua Miller* (2017)). As the Panel had previously noted, "in passing on those informal processes [the Panel's] 'expectation that the Libertarian Party, subject to and in

[4] The documents submitted showed that only 59 individuals attended the Libertarian Party caucuses for the three districts, and that only 19 of the 77 counties in those districts had anyone attend a caucus.

[5] The documents submitted show evidence of a county convention in Guthrie County that was attended by two people.

accord with its internal rules, will have in place the necessary precinct, county, district, and state organizations to fill any subsequent ballot vacancies in a transparent and consistent manner that is expected of the recognized political parties in the state.'" *Id.*

The candidates file for judicial review in district court

The disqualified candidates then sought judicial relief. The objectors before the Panel were permitted to intervene as respondents and the cases were consolidated. D0009, Order Granting Motions at 1 (9/3/2024). The candidates made five arguments before the district court to reverse the Panel's decision. D0021, Petitioners' Memorandum of Authorities at 3 (9/3/2024). They claimed that the objectors lacked standing to bring the objections before the Panel, that Iowa Code § 43.24 did not give the Panel authority to sustain the objections, that the objections were deficient on their face, that the Panel's finding there were no valid county conventions was wrong and violated First Amendment rights, and the Panel exceeded its authority and should have issued a technical infraction to the Libertarian Party of Iowa. *Id.*

The district court heard the consolidated petitions for judicial review on September 5, 2024. D0058, Ruling on Petitions for Judicial Review at 1 (9/7/2024). Finding that "[t]he factual backdrop for this dispute is relatively straightforward and generally undisputed," the district court examined the legal effect of the decision of the Libertarian Party to hold county conventions on the same day of the caucus and considered the arguments of the candidates in turn. *Id.* at 3.

The district court rejected the idea that the objectors lacked standing. "In making this argument, the petitioners incorrectly compare the notion of standing with the statutory parameters established by the legislature for an objection pursuant to Iowa Code § 43.24." *Id.* at 5. Because the objectors brought their claim in an administrative proceeding and not a judicial one, the judicial standing cases cited by the candidates were irrelevant. *Id.* at 5-6. (citing *Richards* v. *Iowa Dep't of Revenue and Finance*, 454 N.W.2d 573, 575 (Iowa 1990) and *Dickey* v. *Iowa Ethics and Campaign Disclosure Board*, 943 N.W.2d 34, 38 (Iowa 2020)).

The district court turned to the claim that the Panel could only consider the "sufficiency of the contents of a candidate's certificate of nomination, not…whether the party complied with the appropriate process that resulted in the certificate." D0058 at 6. Recognizing that this argument would leave the direction in Iowa Code § 43.24(1)(a) for the panel to consider the "legal sufficiency" of a certificate of nomination "superfluous," the district court gave effect to the entire statute. "The 'legal sufficiency' of any nominating document must necessarily involve something other than the content of that document. It is therefore logical to conclude that it must include whether the proper procedures required under the law were followed in generating that document." D0058 at 7. The district court held the mandatory language in the statute about the timing of county conventions was properly enforced by the Panel—thereby also rejecting the claim that a technical infraction under Iowa Code § 39A.6(1) should have been imposed. "There is nothing in that statute or elsewhere that would support the proposition that it the exclusive remedy under these circumstances." D0058 at 8, n. 6.

The district court then examined the candidates' First Amendment argument. Applying the *Anderson-Burdick*[6] framework as used by the Court in *Dem. Senatorial Campaign Comm.* v. *Pate*, 950 N.W.2d 1, 7 (Iowa 2020), the district court considered that "when a state election law provision imposes only reasonable, nondiscriminatory restrictions upon the First and Fourteenth Amendment rights of voters, the State's important regulatory interests are generally sufficient to justify the restrictions." D0058 at 11 (citing *Smith* v. *Iowa Dist. Court for Polk County*, 3 N.W.3d 524, 529 (Iowa 2024)). The district court found the rules about the timing of county conventions and the duty to provide records of delegates to county auditors were "reasonable, nondiscriminatory restriction[s] on a party's ability to place their candidate before the voting public. The process is not weighed against the Libertarian Party—to the contrary, it is applicable to any group that qualifies as a major party under Iowa law." *Id.* at 12.

Because the state's regulatory interests of "avoiding overlapping terms of delegates, the prevention of dueling certificates of nomination and…provid[ing] some time to entertain internal challenges to a candidacy within the party" were sufficient, the district court found that the requirement of Iowa Code § 43.94 to hold county conventions at least one day following the caucus is constitutionally acceptable under *Anderson-Burdick* scrutiny. *Id.* The district court therefore denied the petitions for judicial review. This expedited appeal follows.

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[6] *Anderson* v. *Celebrezze*, 460 U.S. 780 (1983), *Burdick* v. *Takushi*, 504 U.S. 428 (1992).

ARGUMENT

I. The candidates claimed that the objectors must satisfy standing requirements to invoke the judicial power of the Iowa courts through a cause of action. But Iowa law permits any registered voter entitled to vote for the office in question to challenge a candidate's certificate of nomination before the State Objections Panel, a nonjudicial body of executive branch officials. Did the district court properly reject the candidates' standing claim?

Because the Court has stated it will rely on the district court briefs and provided for a simultaneous filing deadline of optional briefs, intervenors cannot respond to any statement by the candidates about preservation of error, scope of review, or standard of review. Iowa R. App. P. 6.903(3). "In a judicial review action on appeal our job is to determine whether in applying the applicable standards of review under section 17A.19(10), we reach the same conclusions as the district court." *Colwell* v. *Iowa Dep't of Hum. Services*, 923 N.W.2d 225, 231 (Iowa 2019). When the agency[7] has not been vested with interpretive authority, the Court reviews for correction of errors of law. *Id.*

[7] The challenge to the Panel's decision was pursued as judicial review of agency action. Iowa Code § 17A.19. *See* Iowa Code § 17A.2(1) ("'Agency' means each board, commission, department, officer or other administrative office or unit of the state.") Resolution of the status of the State Objections Panel under Chapter 17A is not necessary as the same standard of review would apply if the district court action was treated as a petition for writ of certiorari. See *Schmett* v. *State Objections Panel*, 973 N.W.2d 300, 302-03 (Iowa 2022).

A. The law imposes no standing requirement on individuals who wish to complain to an administrative agency or group of executive branch officials.

The candidates claim that the objectors lacked standing to file objections to the certificates of nomination. Yet they ignore that the code allows "[o]bjections to the legal sufficiency of a…certificate of nomination filed or issued under this chapter or to the eligibility of a candidate may be filed in writing by any person who would have the right to vote for the candidate for the office in question." Iowa Code § 43.24. Each objector is a resident of the respective congressional district of Iowa and has the right to vote at the November 5, 2024, general election at which the office of United States Representative will be elected. Attachment to D0037, Voter registration information of objectors (9/4/2024).

In the face of this statutory authorization, the candidates cite cases discussing the Court's standing doctrine for individuals who invoke the judicial power by bringing a cause of action seeking judicial relief against a defendant. *See, e.g.*, D0021, Petitioners' memorandum of authorities at 4 (9/3/2024) (citing *Alons* v. *Iowa Dist. Court for Woodbury County*, 696 N.W.2d 858, 863 (Iowa 2005) and *Godfrey* v. *State*, 752 N.W.2d 413, 419 (Iowa 2008)). But cases like *Alons* and *Godfrey* have no bearing on the ability of a citizen to complain to executive branch officials about the legality of another's conduct. This is different than standing to bring a claim in court. *Dickey*, 943 N.W.2d at 38 ("a person may be a proper party to agency proceedings and not have standing to

obtain judicial review.") The candidates offer no authority to place Article III-like standing requirements on a citizen who complains to an administrative agency. The district court was correct to reject this baseless claim.

B. The objectors did not have to be Libertarian Party voters or provide their addresses.

The candidates claimed that only registered Libertarian voters could file objections to the certificates of nomination. They also argued that the objectors had to provide their addresses for their written objections to be valid. Neither argument has merit.

As explained above, nothing in Iowa Code § 43.24 imposes a same-party qualification on those who file a written objection. The statute simply requires the objector to be eligible to vote for the "office" involved. Had the legislature wished to restrict the objections process to solely intraparty disputes, it could have easily said so.

The candidates' argument about the objectors' addresses fares little better. They claimed that provisions about what information is required to register to vote or to file a complaint under the federal Help America Vote Act should be imputed into the objections process. But again, the legislature could have, but did not, make such a requirement. And in any event, the objectors filed written proof of their voter registration status with the Secretary of State. Attachment to D0037. The candidates' unsupported argument is moot.

C. The ability of the Secretary of State or county auditor to issue a technical infraction does not limit the obligation of the Panel to consider objections to a certificate of nomination.

The candidates claim, citing Iowa Code § 39A.6, that the Libertarian Party should have simply received a technical infraction for their failure to hold valid county conventions. The potential availability of a technical infraction does not eliminate the ability of a voter to object to a party's failure to produce a valid certificate of nomination. First, the remedy is permissive. "[T]he state commissioner…*may* administratively provide a written notice and letter of instruction…" *Id.* (emphasis added.) That an alternative remedy might be available does not eliminate the remedy provided for by another section of the code.

Second, the technical infraction process is a tool available to the Secretary of State, as state election commissioner, and to county auditors, as county election commissioners. Iowa Code § 39A.6(1) ("if the state commissioner or county commissioner becomes aware of an apparent technical violation…") The Panel is not empowered to issue technical infractions. It has separate duties to consider objections to, among other things, a certificate of nomination. As the district court correctly held, the obligations of party organization demand strict compliance. D0058 at 9 (citing *Save Our Stadiums* v. *Des Moines Indep. Com. Sch. Dist.*, 982 N.W.2d 139, 148 (Iowa 2022)). The district court correctly rejected this argument.

II. Iowa Code Chapter 43 regulates the form of the general election ballot by providing the method for political parties to (1) select candidates through a state-run primary election and (2) nominate candidates at a convention when no candidate is elected in the primary. But the candidates claimed that the Panel could only consider objections for primary election candidates, not those nominated by a convention. Did the Panel correctly consider challenges to the legality of the Libertarian's nominating convention?

Review of the district court's determination of the scope of the Panel's authority is for correction of errors of law. *Colwell*, 923 N.W.2d at 231.

A. Political parties use a primary election or, if no one is elected at the primary, a special nominating convention to get on the general election ballot.

Iowa Code Chapter 43 contains the rules about how political parties determine which of their candidates are entitled to a place on the general election ballot. (Chapters 44 and 45 regulate how nonparty political organizations and independent candidates can do the same.) Like most states, Iowa requires political parties to use a primary election to select their general election candidates. There is one way for candidates to get on the primary election ballot: file a nominating petition that has the required number of valid signatures for the office. Iowa Code § 43.20, Iowa Code § 45.1.

But sometimes no one files a nominating petition for a particular office. Assuming a write-in candidate does not win the primary[8], the ballot vacancy

[8] Which is hard to do. Normally a write-in candidate needs at least 35% of the votes received by the party's primary candidate last time the office was on the ballot. Iowa Code § 43.66. The rule is more complicated if there was no comparison race or if there has been an intervening redistricting. *Id.* Also, it takes

can be filled at a special nominating convention. Iowa Code § 43.102(2) (describing congressional district conventions). The winner of the nominating convention then presents a certificate of nomination to the Secretary of State to obtain his or her place on the general election ballot. Iowa Code § 43.88(1).

B. The Panel is empowered to hear challenges to both methods a political party uses to get its candidates on the general election ballot.

The candidates claim that the Panel cannot consider whether a certificate of nomination is what it purports to be. They say that the Panel's role is only to check the nomination petition filed by candidates seeking a spot on the primary election ballot. This runs headlong into the text. "Nomination petitions *or certificates of nomination* filed under this chapter which are *apparently in conformity with the law* are valid unless objection is made in writing." Iowa Code § 43.24(1). In addition, "[o]bjections to *the legal sufficiency* of a nomination petition *or certificate of nomination* filed or issued under this chapter or to the eligibility of a candidate may be filed in writing by any person who would have the right to vote for the candidate for the office in question." Iowa Code § 43.24(1)(a) (emphasis added.)

It is this apparent conformity with the law and the lack of legal sufficiency that the objectors tested. They pointed out that the Party had not conducted party business in a manner that would allow it to execute a certificate of

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35% of the vote to win a primary election. Iowa Code § 43.65. If the primary election is inconclusive, a special nominating convention is also used to determine who the party's general election candidate will be. *Id.*

nomination that complied with the law. The objections process tests the "legal sufficiency" of the certificate of nomination. Iowa Code § 43.24(1)(a). The objectors showed that the Party's deficient process left it with legally insufficient certificate. This is exactly what the panel is empowered to consider.

Similarly, in *Chiodo* v. *Section 43.24 Panel*, 846 N.W.2d 845 (Iowa 2014), the Court considered a challenge to an affidavit of candidacy by a candidate with an aggravated misdemeanor conviction. The challengers claimed this was an infamous crime and therefore disqualifying under Iowa Const. Art. II, § 5 (denying right to vote to persons convicted of an "infamous crime.") Because a person who seeks public office must be an eligible elector, the Court examined the meaning of the term "infamous crime" to determine if the challenged candidate was eligible for public office. *Chiodo*, 846 N.W.2d at 852-857. The challenge to the candidacy was not simply to the contents of the affidavit of candidacy. The Panel (and the Court in review) looked beyond the document to understand its legal meaning and validity. The Court's *Chiodo* decision lends no support to the idea that the Panel can only count signatures on a nominating petition.

The structure of Iowa Code Chapter 43 also supports the view that the Panel is empowered to consider more than just the elements of a certificate of nomination. The commissioner of elections (whether at the state or county level) has the ministerial duty to reject nomination documents with missing elements. Iowa Code § 43.14(3) ("The person examining the petition shall mark any deficiencies on the petition and affidavit…If the nomination petition

lacks a sufficient number of acceptable signatures, the nomination petition shall be rejected and shall be returned to the candidate."); Iowa Code § 43.14(4) (listing grounds for election commissioner to reject affidavit of candidacy); Iowa Code § 43.20(3) (directing commissioner to remove candidate from ballot who files as candidate for more than one office to be elected at primary election). The Panel is unnecessary to simply superintend the commissioner's ministerial duties, an action that normally is contested through a petition for writ of mandamus. Iowa Code § 661.1. And the Secretary of State's membership in the Panel is inconsistent with it only having the limited duty to doublecheck his ministerial acts. That would place the secretary in the position of judging his own work. Because the Legislature has directed election commissioners to do things like check the number of valid signatures and ensure the blanks in forms are filled in, the Panel's role must be more substantial.

Consider the mischief that could be caused by adopting the candidates' view of the Panel's limited role. What would happen if competing factions of a political party filed dueling certificates of nomination for the same office? Under the candidates' view, the Panel would lack any role to adjudicate which certificate was valid. Assuming both documents were completed correctly, the Panel—unable to probe the legal sufficiency of the documents or consider whether the Party had conducted its organizational affairs properly—would be powerless to determine which certificate was valid. What result then? Would the Party be entitled to two places on the ballot because the Panel

lacked authority to sort out the dispute? Would neither certificate be accepted, thus denying the validly nominated candidate his rightful place on the ballot? There *must* be a mechanism for elections officials to consider whether a document they have been presented is what it purports to be. Otherwise, chaos could overtake the elections process.

This is why the formalities of party organization must be observed. A seemingly minor procedural requirement can quickly become the decisive issue in a hotly contested dispute about who gets to be on the general election ballot. Requiring all political parties to follow basic organizational tasks is like an insurance policy for elections officials who face tight timelines to run elections. When deadlines loom for those officials, the orderly functioning of political parties as the law requires helps them sort out who is entitled to be on the ballot and who is not.

III. States must impose regulations of the electoral process. So long as those regulations are reasonable and nondiscriminatory, they do not violate the First Amendment. The Libertarian Party failed to follow basic organizational steps that apply equally to all political parties. Did the district court correctly reject the candidates' constitutional argument?

Review of constitutional claims is de novo. *Venckus* v. *City of Iowa City*, 930 N.W.2d 792, 798 (Iowa 2019).

A. Order in the elections process demands consistent and enforceable rules about how political parties access the general election ballot.

The candidates claim that the Panel's decision violates the Party's ability, protected by the First Amendment, to conduct its own affairs. Although the constitution gives political parties space to dictate their own affairs, that freedom does not restrict the state's broad authority to structure the electoral process. "[A]s a practical matter, there must be substantial regulation of elections if they are to be fair and honest and if some sort of order, rather than chaos, is to accompany the democratic process." *Burdick*, 504 at 433. "It is beyond question that States may, and inevitably must, enact reasonable regulations of parties, elections, and ballots to reduce election- and campaign-related disorder." *Clingman* v. *Beaver*, 544 U.S. 581, 593 (2005). Thus, regulations dealing with ballot access "do not compel strict scrutiny." *Id.* (citing *Bullock* v. *Carter*, 405 U.S. 134, 143 (1972) (U.S. Supreme Court has not "attached such fundamental status to candidacy as to invoke a rigorous standard of review.")

A state's election laws may "create[] barriers…tending to limit the field of candidates from which voters might choose" without "compel[ling] close scrutiny." *Burdick*, 504 U.S. at 433 (citing *Bullock*, 405 U.S. at 143). "[W]hen a state election law provision imposes only 'reasonable, nondiscriminatory restrictions' upon the First and Fourteenth Amendment rights of voters, 'the State's important regulatory interests are generally sufficient to justify' the restrictions." *Id.* "Not 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." *Anderson*, 460 U.S. at 788. Such is the case here. The Party can hardly claim that holding county conventions to elect delegates and providing the list of delegates to the county auditor was impossible. They simply failed to do so. Nor can it claim this requirement singles out smaller parties for disfavored treatment. The requirement applies to all political parties, not just upstart ones.

The candidates cite *Cal. Dem. Party* v. *Jones*, 530 U.S. 567 (2000) for the proposition that their removal for the Party's failure to conduct proper county conventions to elect delegates to nominate them violates their First Amendment "right of association, right to be on a ballot, and…free speech rights." But *Jones* says no such thing. The Court considered California's "blanket primary" system at which "[a]ll persons entitled to vote, including those not affiliated with any political party, shall have the right to vote…for any candidate regardless of the candidate's political affiliation." *Id.* at 570 (citing Cal. Elect. Code § 2001 (2000)). Because opening party primaries to voters not affiliated

with the party violated the party's right to exclude those who did not share its views and goals, it severely burdened the right of association of political parties. *Id.* at 577 (California's blanket primary…forces political parties to associate with—to have their nominees, and hence their positions, determined by—those who, at best, have refused to affiliate with the party, and, at worst, have expressly affiliated with a rival.") This is not what Iowa's organizational and reporting requirements do to political parties.

Jones did not disturb the Court's precedents permitting states to regulate ballot access. "We have considered it too plain for argument, for example, that a State may require parties to use the primary format for selecting their nominees, in order to assure that intraparty competition is resolved in a democratic fashion." *Id.* at 572 (citing *Am. Party of Tex.* v. *White*, 415 U.S. 767, 781 (1974)). "Similarly, in order to avoid burdening the general election ballot with frivolous candidacies, a State may require parties to demonstrate 'a significant modicum of support' before allowing their candidacies a place on that ballot." *Id.* (citing *Jenness* v. *Fortson*, 403 U.S. 431, 442 (1971)). Modest rules requiring political parties to conduct party business in an orderly manner do not limit the associational rights of the party or the rights of voters to participate in the election. *Anderson*, 460 U.S. at 788 (A restriction on candidacy implicates a fundamental right only if "the challenged restriction unfairly or unnecessarily burdens the availability of political opportunity.")

The candidates also cite *Dem. Party* v. *Wis. ex rel. La Follette*, 450 U.S. 107 (1981), claiming it holds "that the government cannot dictate the manner in

which political party (sic) chooses its convention delegates and ultimately its party's (sic) nominee to appear on the general election ballot." D0021 at 10. Yet, as with *Jones*, the case turned on Wisconsin's selection of an open primary system which would have permitted non-Democrat voters to select delegates to the Democratic National Convention. The Court held that Wisconsin's delegate election system violated the party's associational rights. *Id.* at 124.

B. The election rules violated here are neutral, nondiscriminatory, and modest.

Iowa's rules about conducting county conventions and providing records of those proceedings to elections officials do not interfere with the Party's associational rights. Nothing in Iowa law dictates to the Party who can be delegates or gives control of Party decisions to non-Libertarian voters. Because the laws violated by the Party are the kind of "evenhanded restrictions that protect the integrity and reliability of the electoral process itself," they are not "invidious" and therefore do not raise constitutional concerns. *Pate*, 950 N.W.2d at 6. As explained above, orderly selection of delegates who will make nominations to fill ballot vacancies implicates serious ballot access questions. Election officials must have a transparent mechanism to understand that the individuals who claim to represent a political party do so properly. This transparency promotes voter confidence in the reliability of the election system, a confidence that "encourages citizen participation in the democratic process." *Crawford* v. *Marion County Election Board*, 553 U.S. 181, 197 (2008).

Order in the electoral process demands that all political parties comply with the modest requirement to hold proper county conventions and identify those who can make decisions for the party. The Legislature has a right to act with foresight to prevent the chaos that could be caused by unregulated access to the ballot. *Munro* v. *Socialist Workers Party*, 479 U.S. 189, 195-96 (1986) (lawmakers "should be permitted to respond to potential deficiencies in the electoral process with foresight rather than reactively, provided that the response is reasonable and does not significantly impinge on constitutionally protected rights.") These important interests were found by the district court to include "avoiding overlapping terms of delegates, the prevention of dueling certificates of nomination and…provid[ing] some time to entertain internal challenges to a candidacy within the party. "D0058 at 12. This is sufficient under *Anderson-Burdick*. "The general election ballot is reserved for major struggles; it is not a forum for continuing intraparty feuds." *Storer* v. *Brown*, 415 U.S. 724, 735 (1974) (upholding California's "sore loser" law that prevented primary election losers from running as independent candidates in the general election.)

The weakness of the candidates' constitutional claim is evident if it were considered from the front end of the process. Imagine the candidates, or the Party, had sued the Secretary of State seeking relief from the obligation to hold county conventions in the manner provided by statute and to provide the list of its county delegates to county commissioners of elections. Would the plaintiffs in such a case have made out a claim under *Anderson-Burdick* analysis that

Iowa's regulations were "severe" and "unfairly burdensome"? Of course not.

This hypothetical challenge would have collided with the precedent cited above that states can provide modest regulations of the political and electoral process. The same result must apply when candidates and a political party have *ignored* the law. They can hardly bootstrap a constitutional claim to the back end of the process when their failures have been detected. The candidates offer no authority specific to their claim: that a modest and nondiscriminatory election law violates their constitutional rights. Nor could they. Their constitutional claim is contradicted by precedent. It must be rejected.

Conclusion

The Court should affirm the district court's decision.

Request for Oral Submission

The Court has scheduled oral argument. Intervenors request to participate.

CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limitation of Iowa R. App. P. 6.903(1)(g)(1) because it contains **6,386** words, excluding parts of the brief exempted by that rule.

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/s/ Alan R. Ostergren
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