No. 21-7796

ORIGINAL

FILED
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SUPREME COURT, U.S.

IN THE

SUPREME COURT OF THE UNITED STATES

Ryan Stephen Ehrenreich — PETITIONER
(Your Name)

vs.

Shirley Weber,
Secretary of State of California — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

United States Court of Appeals For the Ninth Circuit
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Ryan Stephen Ehrenreich
(Your Name)

6241 Freedom Lane
(Address)

Citrus Heights, CA 95621
(City, State, Zip Code)

(916) 716-0137
(Phone Number)

QUESTION(S) PRESENTED

In 1989, U.S. Court of Appeals for the Fourth Circuit decided "the fee requirement challenged in this lawsuit unconstitutional" and "the State may not condition the reporting of the results of write-in voting on candidate certification, whether or not accompanied by a fee." See *Dixon v. Maryland State Administrative Board of Election Laws*, 878 F.2d 776 (4th Cir. 1989). In dismissing Petitioner's case, the U.S. Court of Appeals for the Ninth Circuit has shown disagreement with the Fourth Circuit.

Petitioner now respectfully asks the Court:

1) Under U.S. Law, may the State of California condition the reporting of the results of write-in voting on the State's "candidate certification" requirement that a write-in candidate produce the notarized sworn oaths of 55 (fifty-five) electors?

2) Under U.S. Law, does the State of California's requirement that a write-in candidate produce the notarized sworn oaths of 55 (fifty-five) electors (costing $825 at minimum based on standard cost of $15 per notarization) constitute a "filing fee" or, more generally, a "fee requirement"?

LIST OF PARTIES

[X] All parties appear in the caption of the case on the cover page.

[ ] All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

RELATED CASES

The Petitioner has performed searches over the internet and is unaware of any other related cases.

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IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

[X] For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix A to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[X] is unpublished.

The opinion of the United States district court appears at Appendix B to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[X] is unpublished.

[ ] For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix _____ to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

The opinion of the _____ court appears at Appendix _____ to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

JURISDICTION

[X] For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was February 18, 2022.

[X] No petition for rehearing was timely filed in my case.

[ ] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ___A_____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

[ ] For cases from **state courts**:

The date on which the highest state court decided my case was _____. A copy of that decision appears at Appendix _____.

[ ] A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ___A_____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The First Amendment to the U.S. Constitution states: "Congress shall make no law [...] abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble [...]." See Appendix E-1 for verbatim text. The right to vote must be protected under this clause, as voting is one of the most basic forms of freedom of speech, freedom of expression, and freedom of association.

The Fifth Amendment to the U.S. Constitution states: "No person shall [...] be deprived of life, liberty, or property, without due process of law [...]." See Appendix E-2 for verbatim text. The right to vote must be protected under this due process clause, as protecting the right to vote is necessary for liberty to exist and the right to vote is a form of property belonging to the voter.

The Fourteenth Amendment to the U.S. Constitution states in Section 1: "No State shall [...] deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." See Appendix E-3 for verbatim text. Similarly, the right to vote must be protected under these due process and equal protection clauses. Therefore, the protections provided to write-in voters to ensure that their votes are counted and reported must be on par with the protections provided to voters who cast votes for ballot-listed candidates; however, currently, they are not.

In absence of a clear definition of the word "vote" in the U.S. Constitution or its numerous amendments, the Voting Rights Act of 1965, Pub. L. 89-110, 79 Stat. 437

§ 14(c)(1) as codified in 52 U.S.C. § 10101(e) provides the best definition for the word "vote" for the Court to use in deciding voting rights cases: "the word "vote" includes all action necessary to make a vote effective including, but not limited to, [...] casting a ballot, and having such ballot counted and included in the appropriate totals of votes cast with respect to candidates for public office [...]." See Appendix E-4 and E-5 respectively for verbatim text. Under this definition, a write-in vote that is not counted or reported does not meet the definition of the word "vote", so the voter who cast said write-in vote is effectively denied their right to vote.

After a voter has already written in a name of their choosing in a contest where write-in voting is allowed, the State of California applies California Elections Code § 8600-8606 (2018) and California Elections Code § 8650-8653 (2018) (sometimes individually and sometimes as a set of rules) in such a manner as to exclude a significant number of already cast write-in votes from the totals of votes cast for specific candidates, violating the requirements of the definition of the word "vote" specified in 52 U.S.C. § 10101(e) and quoted above. The State of California routinely uses these statutes to deny write-in voters their right to vote. See Appendix E-6 for verbatim text of California Elections Code § 8600-8606 (2018). See Appendix E-7 for verbatim text of California Elections Code § 8650-8653 (2018).

Petitioner also notes that the rights of candidates are derived from the same aforementioned constitutional provisions that determine the rights of voters, as voting for a candidate is a necessary component of casting a complete vote (i.e. not an undervote or overvote). Therefore, Petitioner asserts that, derived from the

constitutional rights of voters, candidates have a constitutional right that guarantees that votes that have already been cast for a specific candidate must be counted and reported. In relation to a voter's right to expression, the voter and the candidate are not separable components of that expression.

When states fail to count and report write-in votes (or any other kind of votes), not only do they disenfranchise voters by denying said voters the ability to exercise their vote and express their true intent, but they also disenfranchise candidates as the vehicles of that expression.

STATEMENT OF THE CASE

Petitioner's case arises from the State of California's unwillingness to count and report write-in votes for the 2020 U.S. Presidential Ticket of Ryan Ehrenreich (for President) and Veronica Ehrenreich (for Vice President). As justification for not counting or reporting said write-in votes, functionaries of the Respondent have cited various state-level statutes (i.e. CA Elections Code § 8650-8653) that required Petitioner to produce fifty-five (55) sworn electors via notarized oaths on state forms for the purpose of electoral college voting by the deadline of October 20, 2020 as a precondition for the State of California counting or reporting write-in votes for Petitioner's candidacy.

However, Petitioner clearly communicated that he was unwilling to meet these requirements, as he held firmly to the position that for any state that willingly provides the means to cast write-in votes for a given contest on official state ballots, that upon those means having been used by a voter to cast a write-in vote, the state is then consequentially obligated to count and report such a write-in vote. Based on this position, Petitioner further concluded that any state-level statutes that exclude such already cast write-in votes from the counting and reporting process were unconstitutional.

Realizing the divergence between Petitioner's own perspective on these matters and the perspective of various state election officials and agencies, Petitioner directly mailed letters to the 33 state election officials for states that allowed any

form of write-in voting in the hopes of proactively resolving this matter. In these letters, he 1) stated his position on the unconstitutionality of various state-level requirements, 2) presented a compromise of Petitioner and his running mate completing purely informational forms, and 3) notified these state election officials that Petitioner would likely sue if votes for his candidacy were not counted.

Specifically, for the State of California, Petitioner mailed such a letter to the California Secretary of State's office on October 7, 2020 (which he also faxed on October 8, 2020). On October 9, 2020, the California Secretary of State's office responded by mail, declining Petitioner's effort to reach a compromise and re-affirming the requirement to produce fifty-five (55) sworn elector oaths on state forms that require notarization of each elector's signature on the oath form. Subsequently, on October 23, 2020 and November 5, 2020, Petitioner faxed follow-up letters re-iterating his request that the State of California count votes for his candidacy without enforcing said requirement.

Upon waiting a sufficient amount of time to definitively conclude that the State of California had not and would not report vote totals for his U.S. Presidential Ticket, on December 7, 2020, Petitioner filed a lawsuit in the U.S. District Court for the Eastern District of California at Sacramento seeking various forms of relief. The relief sought definitely included a court order stating that CA Elections Code § 8650-8653 are unconstitutional and requiring the immediate counting and reporting of already cast write-in votes. Additionally, the relief sought also included thorough reviews of existing election results, and conditioned on the outcome of these

reviews, included the possible imposition of penalties specified under the Fourteenth Amendment to the U.S. Constitution and, possibly, a court order requiring a new election.

On January 25, 2021, Magistrate Judge Carolyn K. Delaney filed her findings and recommendations (see Appendix C), which stated that Petitioner's claim failed as a matter of law and recommended that Petitioner's case be dismissed with prejudice.

To support her position, Judge Delaney stated two sub-points: a) the burden on plaintiff's rights is not severe and b) the balance of interests favors the state. In making these points, Judge Delaney relied on two faulty analogies: 1) the analogy that the requirement for a notarized sworn oath from an elector (which requires coordination with the elector and notary and also requires a fee be paid to the notary by the candidate) is as burdensome as the requirement for a simple signature of support (which can be obtained without a notary and does not require a fee be paid by the candidate) and 2) the analogy that requirements for simple signatures of support from candidates seeking ballot-listing (i.e. their name printed directly as an option in a specific contest on the official state ballots) justify placing the much harsher notarization requirements on write-in candidates, who seek no extra services from the state beyond fulfillment of state obligation to count and report vote totals for their candidacy. Also, requirements for ballot-listing come into effect before the ballots are printed and before any voter casts a vote; however, requirements for write-in candidates come into effect after voters have already cast

write-in votes. Thus requirements on write-in candidates unfairly disenfranchise the voter, as well as the candidate.

In supporting her analysis, Magistrate Judge cited many decisions that support state requirements for candidates seeking ballot-listing, but cited almost no decisions directly about matters of write-in voting. The one case that Magistrate Judge did cite on write-in voting was *Burdick v. Takushi*, 504 U.S. 428 (1992). She determined that *Burdick*, 504 U.S. is the most relevant prior decision in regards to Petitioner's case, even though *Burdick* addresses the question of whether states are obligated to allow write-in voting, not what obligations the state has toward its voters after said state has already willfully decided to allow voters to cast write-in votes in a specific contest.

Additionally, Magistrate Judge found that under existing precedents, Petitioner had not demonstrated a severe burden on his constitutional rights, so strict scrutiny does not attach to his claim.

On February 4, 2021, Petitioner responded with his objections to the Magistrate Judge's findings and recommendations. In his objections, he explained the faulty analogies that the Magistrate Judge had used to draw her conclusions and presented detailed arguments as to why the State of California's handling of write-in votes in the 2020 U.S. Presidential Election under CA Elections Code § 8650-8653 was unconstitutional, as it summarily discarded the clearly expressed will of voters who had entered write-in votes using the state-provided means to do so.

Furthermore, Petitioner offered specific arguments in relation to the contents of his campaign platform that justified the use of strict scrutiny specifically for his case. Petitioner explained that he advocated for a Price Support for Labor (i.e. Aid to Families with Dependent Children or AFDC) as the mechanism that had created the historically strong Middle Class in the U.S and that he criticized the 1996 Welfare Reform (i.e. Temporary Assistance for Needy Families or TANF) as the legislation that broke the existing Price Support for Labor. He then explained how CA Elections Code § 8650-8653 served to restrict those political processes which can normally be expected to bring about repeal of undesirable legislation, justifying the application of strict scrutiny in his case. He also explained how these codes curtailed the operation of political processes that poor people, as a discrete and insular minority, rely upon to protect their rights.

On March 29, 2021, District Court Judge John A. Mendez filed his order that the Magistrate Judge's findings and recommendations be adopted in full and that Petitioner's case be dismissed with prejudice. In ordering this outcome, Judge Mendez did not offer any further analysis on the matters of the case.

On April 27, 2021, Petitioner filed his Notice of Appeal for this case in the U.S. District Court for the Eastern District of California at Sacramento, thus seeking relief from the U.S. Court of Appeals for the Ninth Circuit.

On May 5, 2021, Deputy Clerk Corina Orozco filed for the U.S. Court of Appeals for the Ninth Circuit an order revoking Petitioner's *in forma pauperis* (IFP) status

and requiring him to pay the court fee for the case (or submit a new IFP application) and to submit a statement why his appeal was not frivolous and should go forward.

On May 28, 2021, the Petitioner fulfilled this latest order by filing a statement that further explained his arguments that he initially stated in his objections to the Magistrate Judge's findings and recommendations. He also include proof that he paid the $505 fee for his appeal, which he could afford to pay due to his recent two-month term of employment and receipt of his federal stimulus check.

On February 18, 2022, before Circuit Judges Fernandez, Tashima, and Friedland, the U.S. Court of Appeals for the Ninth Circuit affirmed the judgment of the U.S. District Court for the Eastern District of California at Sacramento that ordered Petitioner's case to be dismissed with prejudice.

Petitioner now seeks relief from the U.S. Supreme Court in these matters.

REASONS FOR GRANTING THE PETITION

Within the overall topic of write-in voting, Petitioners may present many different questions for the Court to consider. However, in adjudicating such petitions, it is imperative that the Court provide clear guidance to lower Courts on pressing questions on which the Court has not previously provided clear answers or on which the Court's own precedents are being actively misapplied. If the Court does not do so, lower courts have a tendency to conflate issues so as to apply precedents that are only loosely related to the question at hand, as occurred in Petitioner's case.

On the topic of write-in voting, the Petitioner offers for the Court's consideration three specific prior opinions that, while not directly conflicting with each other, when taken as a whole, provide conflicting understandings of how to properly apply the U.S. law to matters of write-in voting. Furthermore, Petitioner notes that the decision of the Fourth Circuit Court of Appeals in *Dixon v. Maryland State Administrative Board of Election Laws*, 878 F.2d 776 (4th Cir. 1989) does directly conflict with the Ninth Circuit Court of Appeals determination in his case.

The first relevant case is *Lubin v. Panish*, 415 U.S. 709 (1974), in which the U.S. Supreme Court found that a State may not require an indigent candidate to pay filing fees that said candidate cannot afford to pay, and so the State must provide an alternative means of testing the seriousness of such a candidate. The Court stated that requiring such fees without alternative means would violate the equal

protection clause of the Fourteenth Amendment, as well the rights to expression and association guaranteed by the First Amendment and Fourteenth Amendment. In expounding its decision, the Court specifically mentioned as an instance of concern that the California election statutes at the time required a write-in candidate to pay a direct filing fee in order for votes for that candidate to be counted. However, the Court made no determination on the constitutionality of implicit filing fees, which is the type of fee requirement imposed by the State of California's requirement for notarization of 55 (fifty-five) sworn elector oaths.

Subsequently, in *Dixon v. Maryland State Administrative Board of Election Laws*, 878 F.2d 776 (4th Cir. 1989), the U.S. Court of Appeals for the Fourth Circuit expanded the *Lubin* prohibitions against mandatory filing fees to apply to all write-in candidates, stating "[w]e therefore hold the fee requirement challenged in this lawsuit unconstitutional", and went even further by prohibiting any conditions on reporting results for write-in candidates, stating "[w]e hold also that the State may not condition the reporting of the results of write-in voting on candidate certification, whether or not accompanied by a fee." See *Dixon*, 878 F.2d. In this decision, the court of appeals clearly stated that not only is the State prohibited from charging write-in candidates a filing fee, but also that "candidate certification" must not be a condition of counting and reporting write-in votes. This decision is based on similar First Amendment and Fourteenth Amendment interpretations as *Lubin*, 415 U.S. In Petitioner's case, the U.S. Court of Appeals for the Ninth Circuit

upheld the district court's dismissal of his case in direct conflict with prohibitions specified by the U.S. Court of Appeals for the Fourth Circuit in *Dixon*, 878 F.2d.

Later, in *Burdick v. Takushi*, 504 U.S. 428 (1992), the U.S. Supreme Court found that the State of Hawaii's failure to include provisions for the casting and counting of write-in votes does not violate those same First Amendment and Fourteenth Amendment rights. But the State of Hawaii, to the best of Petitioner's knowledge, has never allowed voters to cast write-in votes. Conversely, the State of California has an extensive history of offering voters the ability to cast write-in votes, and California Elections Code § 8600-8606 and 8650-8653 provide the current California rules in relation to write-in voting.

Given the aforementioned case history, it is clear that in Petitioner's case, *Burdick*, 937 F.2d has been misapplied by lower courts to deny him any of the relief that he has sought via the U.S. Courts system.

Simply put, California is not Hawaii. The State of California has willfully chosen long ago in the past to allow write-in voting, but for the 2020 U.S. Presidential Election has required Petitioner and similar candidates to each spend at least $825 in notarization fees in order for the State to count and report votes for a given write-in candidate, putting the State in direct violation of the prohibitions established in *Dixon*, 878 F.2d. Petitioner notes that the $825 minimum cost is the result of multiplying 55 sworn oaths times $15 per notarization. But the true cost is likely much higher, as the candidate would likely need to incur logistical costs for either

the electors arriving at the notary's office at the correct date and time or for the notary arriving on-site as a mobile service, as well. These concerns do not exist in the State of Hawaii, which has never allowed write-in voting, and so has never faced disagreement over the requirements imposed on write-in candidates by the state (as there are no such requirements, because write-in voting is not allowed).

Petitioner now respectfully asks the Court to clearly answer the question of whether the mandatory notarization fees ($825 at minimum) required of him by the State of California in order for him to become a qualified write-in candidate are unconstitutional under the First Amendment and Fourteenth Amendment, as the precedents established in *Lubin*, 415 U.S. and *Dixon*, 878 F.2d clearly indicate.

Furthermore, Petitioner notes that in regards to the rights of California voters, this $825 in notarization fees also violates the Fifth Amendment and Fourteenth Amendment due process clauses, as voters regularly cast write-in votes on ballots that do not even warn them that such an implicit filing fee (or fee requirement) exists or whether their preferred write-in candidate has paid said fee. If a voter's preferred write-in candidate has not paid this fee requirement necessary to file the notarized sworn oaths, then that voter's write-in vote for said candidate will be discarded in the counting and reporting process, denying said voter both liberty (their ability to express their will at the ballot) and property (their actual vote).

Further, Petitioner maintains the position of the Fourth Circuit Court of Appeals in *Dixon*, 878 F.2d that "the State may not condition the reporting of the results of

write-in voting on candidate certification, whether or not accompanied by a fee." See *Dixon*, 878 F.2d. As such, Petitioner maintains, upon a voter casting a write-in vote on an official State ballot in a specific contest where the State provides the means to cast a write-in vote, under the definition of the word "vote" provided by 52 U.S.C. § 10101(e), that the State in question is then obligated to count and report such a write-in vote. By not counting and reporting such a vote, the State in question would be violating the First, Fifth, and Fourteenth Amendments to the U.S. Constitution in the manner already stated above by denying said voter their right to vote. As the State of California uses California Elections Code § 8600-8606 and 8650-8653 as justification to disqualify write-in candidates and not count or report votes for their candidacy, Petitioner maintains that these state-level statutes are unconstitutional in their application to the field of write-in voting.

To eliminate confusion and conflicts in the application of U.S. Law by the U.S. Courts system in regards to matters of write-in voting, Petitioner now requests that the Court grant his petition and review these matters. Petitioner ask the Court to answer the critical questions he has put forth and decide whether the statement that "the State may not condition the reporting of the results of write-in voting on candidate certification" from *Dixon*, 878 F.2d shall be the law of the land in the United States. Not doing so would be a miscarriage of justice to all present and future write-in candidates and write-in voters. The Court's review is therefore warranted.

A. The Court of Appeals erred in upholding that the burden on plaintiff's rights is not severe

In upholding that the burden on plaintiff's rights is not severe, the Ninth Circuit Court of Appeals relied on the Magistrate Judge's analysis that used as support five cases that do not specifically address the subject of write-in voting and are irrelevant to Petitioner's case when compared to *Dixon*, 878 F.2d.

The first of those cases, *Timmons v. Twin Cities Area New Party*, 520 U.S. 351 (1997), addresses a law in the State of Minnesota that prohibits an individual candidate from appearing multiple times on a ballot for different political parties. As Petitioner was a write-in candidate, he did not seek ballot-listing, so this case is irrelevant.

The second, *Blankenship v. Newsom*, No. 20-CV-04479-RS, 2020 WL 6589654, at *4 (N.D. Cal. Aug. 3, 2020), addresses a minor political party seeking ballot-listing that failed to fulfill the ballot-placement requirements by the deadline. Petitioner stipulates that lawful deadlines should be upheld, but this case is irrelevant, as it fails to address the unlawful statutes on write-in voting applied in Petitioner's case based on the decision in *Dixon*, 878 F.2d.

The third, *Common Sense Party v. Padilla*, 2020 WL 3491041 at *6 (E.D. Cal. June 26, 2020), is quite similar to *Blankenship*, 2020 WL 6589654 in that it addresses matters of ballot-listing for minor political parties (not write-in voting), and so suffers the same lack of relevance to Petitioner's case.

The fourth, *Joseph Kishore v. Gavin Newsom*, No. 2:20-cv-05859 at 10, 2020 WL 5983922 (C.D. Cal. July 20, 2020), is also quite similar to *Blankenship*, 2020 WL 6589654 in that it addresses matters of ballot-listing for independent candidates (not write-in voting), and so suffers the same lack of relevance to Petitioner's case.

The fifth, *Nader v. Brewer*, 531 F.3d 1028 (9th Cir. 2008), is also quite similar to *Blankenship*, 2020 WL 6589654 in that it addresses matters of ballot-listing for independent candidates (not write-in voting), and so suffers the same lack of relevance to Petitioner's case.

Those five cases cited by Magistrate Judge all address matters related to ballot-listing for candidates. Petitioner asks the Court to specifically note that ballot-listing is decided prior to the ballot being printed and votes being cast. Conversely, Petitioner's case addresses matters of write-in voting. Importantly, Petitioner asks the Court to further specifically note that write-in voting occurs in the opposite order as ballot-listing. First, the voter casts a write-in vote using means provided by the State on the ballot, then, after said write-in vote is already cast, the State then applies restrictions to determine which already cast write-in votes are counted or not, as the State of California has done in Petitioner's case.

Clearly, these five cases cited by Magistrate Judge do not answer the question of whether the State of California should be allowed to discard write-in votes that have already been cast of official state ballots. However, *Dixon*, 878 F.2d does answer this question, stating unequivocally that "the State may not condition the

reporting of the results of write-in voting on candidate certification." See *Dixon*, 878 F.2d.

B. The Court of Appeals erred in upholding that the burden on write-in voters' rights in general is not severe

The Ninth Circuit Court of Appeals relied on Magistrate Judge's analysis, which evaluates Petitioner's case from the perspective of Petitioner as a candidate. However, Petitioner also represents the class of write-in voters in general, as he stipulated that he cast a write-in vote for himself, which to the best of his knowledge was not counted or reported.

Further, he offered evidence in the form of Sacramento County's own final vote tabulations for the 2020 U.S. Presidential Election that indicates that 10,536 out of 10,686 write-in votes for the office of President of the United States of America were discarded in Sacramento County due to the enforcement of CA Elections Code § 8650-8653, representing approximately 1.4% of all votes cast in Sacramento County in that election for that office.

Furthermore, 33 (thirty-three) states offer some form of write-in voting (including nine out of ten of the most populous states). Based on the fact that many of these states uphold similar election statutes that require expenses to be incurred by the write-in candidate before votes for that candidate will be counted, it is likely that a similar proportion of write-in votes were discarded in other jurisdictions, as well.

So without a direct ruling on the lawfulness (or lack thereof) of write-in election statutes that exclude already cast votes from the counting and reporting process, it is likely that a sizeable number of U.S. voters (perhaps on the order of 1% or more) will continue to be denied their right to vote in future U.S. elections.

Dixon, 878 F.2d unambiguously provides certainty that the statutes in question are unlawful, stating unequivocally that "the State may not condition the reporting of the results of write-in voting on candidate certification" See *Dixon*, 878 F.2d. Petitioner seeks an answer from the Court as to whether this is also the Court's standard.

C. The Court of Appeals erred in upholding that the balance of interests favors the state

In upholding that the balance of interests favors the state, the Ninth Circuit Court of Appeals relied on the Magistrate Judge's analysis that cited a multitude of cases that generally take the perspective that a State has the authority to regulate its own elections and that it is reasonable for a State to require candidates to show support before their names are listed on the ballot.

These cases were cited for general perspectives that do not address the details of Petitioner's case. The most relevant of these cases in matters of write-in voting is *Burdick*, 504 U.S. However, Petitioner has already shown that *Burdick*, 504 U.S. is still irrelevant to his particular case, as the State of California has already granted voters the means to cast write-in votes, but the State of Hawaii has not. Petitioner's

case addresses the duty of the State of California to count and report write-in votes that have already been cast, whereas the State of Hawaii has no such duty because no such write-in votes exist for that state.

To determine the balance of interests in Petitioner's case, the Court must answer the question: "what are the State of California's obligations to count and report already cast write-in votes?" *Burdick*, 504 U.S. does not provide an answer to this question. However, *Dixon*, 878 F.2d does answer this question, stating unequivocally that "the State may not condition the reporting of the results of write-in voting on candidate certification." See *Dixon*, 878 F.2d.

D. The Court of Appeals erred in upholding that Petitioner did not clearly identify alleged injury

In weighing the interests of the parties, Magistrate Judge stated: "Plaintiff does not clearly identify his alleged injury against which these state interests must be weighed." However, in his complaint, Petitioner clearly alleged two types of injury: 1) injury as a voter in the State of California and 2) injury as a candidate.

As to injury as a voter in the State of California, in his complaint, Petitioner stipulated that he voted for himself and his vote was not counted or reported. He further stated: "These statutes clearly abridge the Right to Vote in the manner explained in this Complaint, thus also depriving Voters of their rights to Free Speech, Due Process, and Equal Protection of the Law." If abridgment of the right to

vote does not clearly present the injuries that Petitioner described, Petitioner is uncertain as to how to present these injuries more clearly to the Court.

As to injury as a candidate, Petitioner stated: "by refusing to count and report Write-In Votes, the State of California has denied Mr. Ehrenreich's Presidential Ticket the possibility of securing Electoral College Votes and prevented his Ticket from using his showing in the official results to further bolster his current and future national campaigns." For a write-in candidate, it is impossible to win an election, or even bolster one's stature, if votes for ballot-listed candidates are counted, but votes for write-in candidates are not. Such a two-tiered system clearly violates the write-in candidate's due process rights and denies said write-in candidate equal protection under the law.

Finally, based on the importance of the voting rights matters addressed in Petitioner's case, if the district court found any deficiencies in Petitioner's original *pro se* filings, under Federal Rules of Civil Procedure 15(a)(2), the district court should have granted Petitioner leave to amend, as "The court should freely give leave when justice so requires."

E. The Court of Appeals erred in not granting Petitioner the standard of strict scrutiny

Based on the main point of Petitioner's campaign, that AFDC functioned as a Price Support for Labor, creating the historically strong U.S. Middle Class while also providing a survival guarantee to Poor People, and that the 1996 Welfare

Reform destroyed this Price Support for Labor, Petitioner's case deserves Strict Scrutiny.

The reason for the existence of Strict Scrutiny is to protect discrete and insular minorities who lack the ability to seek redress through the normal political process. Poor People do not have the funds necessary to run the type of national campaigns that yield ballot-listing. Rather, Poor People must rely on write-in voting as a means of voting for non-traditional candidates, circumventing the barriers imposed for ballot-placement.

As Petitioner campaigned as a representative of Poor People adversely affected by the 1996 Welfare Reform, and as California Elections Code § 8600-8606 and 8650-8653 prevented him from accessing the normal political process by discriminating against him as a Poor Person by means of a $825 implicit filing fee imposed by the State of California's notarization requirements that he could not afford to fulfill, his case deserves Strict Scrutiny.

Finally, based on the fundamental importance of voting rights, as well as the massive number of write-in votes discarded (likely in the millions of votes) in each election cycle, as well as the lack of warning afforded to write-in voters at the time that they actually cast their ballots that their vote will likely be discarded, it is clear that this case presents a critical conflict in legal interpretations between circuit courts that must be resolved. Without the Court's intervention, the status

quo will continue and the true will of voters will remain obfuscated. Therefore, it is imperative that the Court grant this petition and agree to hear this case.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted.

Ryan Ehrensaft

Date: May 2, 2022