No. _____

IN THE

Supreme Court of the United States

ROBERT F. KENNEDY, JR.,

Applicant,

v.

JOCELYN BENSON, IN HER OFFICIAL CAPACITY AS MICHIGAN SECRETARY OF STATE,

Respondent.

Application of Robert F. Kennedy, Jr. on Appeal from the United States Court of Appeals for the Sixth Circuit for an Emergency Injunction Pending Appeal Removing Robert F. Kennedy, Jr.'s Name from Michigan's 2024 Ballot

To the Honorable Brett M. Kavanaugh,
Associate Justice of the Supreme Court of the United States
and Circuit Justice for the Sixth Circuit

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PARTIES TO THE PROCEEDING

Applicant in this Court is Robert F. Kennedy, Jr. Applicant is the Plaintiff in the United States District Court for the Eastern District of Michigan and the Appellant in the United States Court of Appeals for the Sixth Circuit.

Respondent in this Court is Jocelyn Benson, who serves as Michigan's Secretary of State. Secretary Benson is the Defendant in the United States District Court for the Eastern District of Michigan and the Appellee in the United States Court of Appeals for the Sixth Circuit. Secretary Benson was sued below solely in her official capacity.

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INTRODUCTION

"It is the duty of the secretary of state to conform to the law, and in this he is an officer of the United States, bound to obey the laws." *Marbury v. Madison*, 5 U.S. 137, 158 (1803). Unfortunately, Secretary Jocelyn Benson's ("**Secretary Benson**") actions contravene that longstanding principle.

This action arises from Secretary Benson's unilateral decision to recertify Robert F. Kennedy, Jr. ("**Mr. Kennedy**") as a Presidential candidate after the September 6, 2024 statutory deadline. Mr. Kennedy sought to withdraw from the Presidential race on August 23, 2024. Secretary Benson refused to remove Mr. Kennedy's name from the list of candidates to be included on the November 2024 general election ballot in Michigan. As a result, Mr. Kennedy initiated litigation in the Michigan Court of Claims, which found that Michigan law did not allow for Mr. Kennedy to withdraw from the ballot.

Mr. Kennedy immediately appealed, and, on September 6, 2024, the Michigan Court of Appeals reversed the Michigan Court of Claims and instructed the Secretary of State to remove Mr. Kennedy's name from the list of candidates to be included on the ballot. Secretary Benson abided by this order and then appealed to the Michigan Supreme Court.

On September 9, 2024, the Michigan Supreme Court issued an order that simply provided that Mr. Kennedy was not permitted to withdraw from the

Presidential race. Notably absent from the order was any language instructing Secretary Benson to recertify the list of candidates to include Mr. Kennedy.

Under Michigan law, September 6, 2024 was the deadline for Secretary Benson to certify the list of candidates to be included on the ballot:

> The secretary of state, at least 60 days and not more than 90 days preceding any regular state or district primary or election, shall send to the county clerk of each county a notice in writing of such primary or election, specifying in such notice the federal, state and district offices for which candidates are to be nominated or elected, as well as any constitutional amendments and questions to be submitted thereat.

Mich. Comp. Laws § 168.648.

Michigan law does not provide for any recertification of the list of candidates after the statutory deadline.

Despite a clear lack of authority, Secretary Benson recertified Mr. Kennedy as a candidate for President of the United States on the Michigan ballot. Secretary Benson's conduct is unprecedented, such that review by this Court is absolutely necessary:

> The Secretary's decision to belatedly add a withdrawn candidate to the ballot, over the candidate's objection no less, was head scratching, unnecessary, and, in the end, lawless. Nor is the public interest served by adding a frivolous presidential candidate to the field, stoking voter confusion and undermining the election's integrity.

Kennedy v. Benson, No. 24-1799, 2024 WL 4501252, at *18 (6th Cir. Oct. 16, 2024) (Readler, J., dissenting), *citing Kennedy v. Benson*, No. 24-1799, 2024 WL 4327046, at *6 (6th Cir. Sept. 27, 2024) (McKeague, J., dissenting).

Allowing Secretary Benson's unlawful conduct to stand without any recourse not only has dire consequences related to the November 2024 election, but also opens the floodgates for Secretaries of State across the United States to have unfettered authority to violate the law.

JURISDICTION

This Court possesses jurisdiction under Article III, Section 2, Clause 2 of the United States Constitution and 28 U.S.C. § 1254, and it possesses authority to grant the Applicant's sought relief pursuant to 28 U.S.C. § 1651(a) (All Writs Act), 28 U.S.C. § 2101(f), and S. Ct. Rules 22 and 23.

STATEMENT OF THE CASE

A. Mr. Kennedy Suspends His Presidential Campaign and Withdraws from the Michigan Ballot.

On August 23, 2024, Mr. Kennedy suspended his campaign for the office of President of the United States in Michigan. That same day, Mr. Kennedy sent the Secretary a formal withdrawal notice to withdraw from the 2024 general election in Michigan (the "**Withdrawal Notice**"). Two days later, on August 26, 2024, the Secretary rejected the Withdrawal Notice, stating "we cannot accept this filing. Michigan Election Law does not permit minor party candidates to withdraw. Mich. Comp. Laws § 168.686a(2)." Mich. Comp. Laws § 168.686a(2) provides as follows:

> County caucuses may nominate candidates for the office of representative in congress, state senator, and state representative if the offices represent districts contained wholly within the county, and for all county and township offices. Not more than 1 business day after the conclusion of the caucus, the names and mailing addresses of all candidates so nominated and the offices for which they

> were nominated shall be certified by the chairperson and secretary of the caucus to the county clerk. The certification shall be accompanied by an affidavit of identity for each candidate named in the certificate as provided in section 558 and a separate written certificate of acceptance of nomination signed by each candidate named on the certificate. The form of the certificate of acceptance shall be prescribed by the secretary of state. If a candidate is so certified with the accompanying affidavit of identity and certificate of acceptance, the name of the candidate shall be printed on the ballot for that election. Candidates nominated and certified shall not be permitted to withdraw.

The statute clearly does not mention presidential candidates and, therefore, does not apply to presidential candidates, such as Mr. Kennedy. As such, in response to the Secretary Benson's response, Mr. Kennedy renewed his request to withdraw on August 27, 2024.

On August 29, 2024, Secretary Benson responded and again rejected Kennedy's withdrawal, this time citing Mich. Comp. Laws § 168.686a(4), which provides as follows:

> The state convention shall be held at the time and place indicated in the call. The convention shall consist of delegates selected by the county caucuses. The convention may fill vacancies in a delegation from qualified electors of that county present at the convention. The convention may nominate candidates for all state offices. District candidates may be nominated at district caucuses held in conjunction with the state convention attended by qualified delegates of the district. If delegates of a district are not present, a district caucus shall not be held for that district and candidates shall not be nominated for that district. Not more than 1 business day after the conclusion of the convention, the names and mailing addresses of the candidates nominated for state or district offices shall be certified by the chairperson and secretary of the state convention to the secretary of state. The

> certification shall be accompanied by an affidavit of identity for each candidate named in the certificate as provided in section 558 and a separate written certificate of acceptance of nomination signed by each candidate named on the certificate. The form of the certificate of acceptance shall be prescribed by the secretary of state. The names of candidates so certified with accompanying affidavit of identity and certificate of acceptance shall be printed on the ballot for the forthcoming election. Candidates so nominated and certified shall not be permitted to withdraw.

The Secretary relied upon this statute in denying Kennedy's request to withdraw from the ballot.

B. Mr. Kennedy Files Suit Against the Secretary in Michigan.

On August 30, 2024, Mr. Kennedy filed a complaint in the Michigan Court of Claims seeking immediate relief. The Court of Claims, relying on Mich. Comp. Laws 168.686a(4), denied the requested relief and dismissed the action on September 3, 2024. The next day, September 4, 2024, Mr. Kennedy filed an appeal to the Michigan Court of Appeals. On September 6, 2024, around noon, the Court of Appeals issued its decision reversing the Court of Claims' decision because Mich. Comp. Laws 168.686a(4) plainly does not apply to presidential candidates and remanded for "entry of an order granting immediate mandamus relief (*i.e.*, that the Secretary not include Mr. Kennedy's name on the ballot).

At 3:42 p.m., a few hours after the Court of Appeals decision was entered, on September 6, 2024, as required by statute, Secretary Benson "sent the call of the election and certification of candidates to the 83 county clerks without Kennedy's name listed as the Natural Law Party's candidate for President." Thus, the

Secretary did **not** order that ballot printing be held. This was the statutory deadline by which Secretary Benson has to send out the call of the election and certification of candidates.

The Secretary then appealed to the Michigan Supreme Court later that day. On September 9, 2024, in a split decision, the majority in just one page held mandamus was not appropriate because Mr. Kennedy did not point to a specific law that demonstrated a clear right to require the Secretary Benson to perform the specific act of removing him from the ballot. The 15 page dissent strenuously disagreed. The Secretary then immediately added Kennedy to the ballot and re-certified the list of candidates, even though the September 6, 2024 deadline to do so had passed days earlier.

C. Kennedy Files a Federal Lawsuit.

On September 10, 2024 – the day after the Supreme Court of Michigan rendered its decision and interpreted the statute at issue – Mr. Kennedy filed suit in the Eastern District of Michigan, wherein he alleged that his Constitutional rights had been violated. Kennedy also filed a Motion for Temporary Restraining Order and for Preliminary Injunction. The district court entered its final judgment on September 18, 2022.

D. Court of Appeals Proceedings

On September 23, 2024, Mr. Kennedy filed an appeal before the United States Court of Appeals for the Sixth Circuit. The Court affirmed the District Court's judgment, but was accompanied by a 10-page dissent, wherein Circuit Judge McKeague took great issue with Secretary Benson's unlawful recertification

of the ballot after the September 6, 2024 statutory deadline. *See Kennedy v. Benson*, No. 24-1799, 2024 WL 4327046 (6th Cir. Sept. 27, 2024).

On October 3, 2024, Mr. Kennedy filed a Petition for Rehearing *En Banc* of the September 27, 2024 panel decision in the United States Court of Appeals for the Sixth Circuit. On October 16, 2024, the Court denied the petition for rehearing *en banc*, concluding that the issues raised in the petition were fully considered at the state court level and, therefore, barred by res judicata and the *Purcell* doctrine. *Kennedy v. Benson*, No. 24-1799, 2024 WL 4501252 (6th Cir. Oct. 16, 2024). In addition to another dissenting opinion authored by Judge McKeague, Circuit Judges Thapar and Readler also took great issue with Secretary Benson's conduct, noting the significance of the issues presented in this litigation:

> This case presents a question of exceptional importance: Does forcing a person onto the ballot compel his speech in violation of the First Amendment? The repercussions of that question are enormous. If a candidate can't stop his name from appearing on the ballot, could battleground states put President Joe Biden back on their ballots? Could states put anyone they wanted on their ballots (in violation of their own election laws)?

Kennedy v. Benson, No. 24-1799, 2024 WL 4501252, at *6 (6th Cir. Oct. 16, 2024) (Thapar, J., dissenting).

Pursuant to Supreme Court Rule 23.3, on October 25, 2024, the Office of the Clerk for the Sixth Circuit provided oral confirmation that the matter is closed.[1]

[1] According to the Office of the Clerk, matters are marked closed seven (7) days after a mandate is issued. The Sixth Circuit issued the mandate in the *Kennedy v. Benson* matter on October 24, 2024. In light of the emergency nature of this appeal, the Office of the Clerk has orally confirmed that the matter is marked closed.

In light of the foregoing, and with limited time before the national election, Mr. Kennedy submits this Application for Emergency Injunction Pending Appeal.

ARGUMENT

A. Standard of Review for Stays and Injunctions Pending Appeal

"The Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law." 28 U.S.C. § 1651(a). An injunction pending appellate review is warranted when the applicant demonstrates that he is "likely to prevail, that denying . . . relief would lead to irreparable injury, and that granting relief would not harm the public interest." *Roman Cath. Diocese of Brooklyn v. Cuomo*, 141 S. Ct. 63, 66 (2020) (per curiam), *citing Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20, 129 S. Ct. 365, 374, 172 L. Ed. 2d 249 (2008). *See Munaf v. Geren,* 553 U.S. 674, 689 – 690, 128 S.Ct. 2207, 2218–2219, 171 L.Ed.2d 1 (2008); *Amoco Production Co. v. Gambell,* 480 U.S. 531, 542, 107 S.Ct. 1396, 94 L.Ed.2d 542 (1987); *Weinberger v. Romero–Barcelo,* 456 U.S. 305, 311–312, 102 S.Ct. 1798, 72 L.Ed.2d 91 (1982).

There are several factors that control a single Justice's consideration of such an application: "If there is a 'significant possibility' that the Court would note probable jurisdiction of an appeal of the underlying suit and reverse, and if there is a likelihood that irreparable injury will result if relief is not granted, the Justice may issue an injunction." *Am. Trucking Associations, Inc. v. Gray*, 483 U.S. 1306, 1308, 108 S. Ct. 2, 3, 97 L. Ed. 2d 790 (1987) (Blackmun, J., in chambers), *citing*

Nebraska Press Assn. v. Stuart, 423 U.S. 1327, 1330, 96 S.Ct. 251, 254, 46 L.Ed.2d 237 (1975) (Blackmun, J., in chambers). See also, *e.g., Ledbetter v. Baldwin,* 479 U.S. 1309, 1310, 107 S.Ct. 635, 636, 93 L.Ed.2d 689 (1986) (Powell, J., in chambers); *Rostker v. Goldberg,* 448 U.S. 1306, 1308, 101 S.Ct. 1, 2–3, 65 L.Ed.2d 1098 (1980) (Brennan, J., in chambers).

B. This Action is Not Barred by Res Judicata

Because the actionable conduct at issue in this matter did not occur until after the Michigan Supreme Court had issued its final order, the instant lawsuit cannot be barred by the doctrine of res judicata.

The Supreme Court has recognized that res judicata "preclude[s] parties from contesting matters that they have had a full and fair opportunity to litigate …." *Montana v. United States*, 440 U.S. 147, 153, 99 S.Ct. 970, 59 L.Ed.2d 210 (1979). "Under res judicata, a final judgment on the merits bars further claims by parties or their privies based on the same cause of action." *Id.*, *citing Cromwell v. County of Sac*, 94 U.S. 351, 352, 24 L.Ed. 195 (1877); *Lawlor v. National Screen Service Corp.,* 349 U.S. 322, 326, 75 S.Ct. 865, 867, 99 L.Ed. 1122 (1955); 1B J. Moore, Federal Practice ¶ 0.405[1], pp. 621–624 (2d ed. 1974); Restatement (Second) of Judgments § 47 (Tent. Draft No. 1, Mar. 28, 1973) (merger); *id.,* § 48 (bar).

"[T]his appeal concerns the Secretary's unlawful action on September 9, a dispute that could not possibly have been resolved in the original state-court litigation. So res judicata principles tied to the earlier litigation do not stand in the way of resolving this case's merits." *See Kennedy v. Benson*, No. 24-1799, 2024 WL

4501252, at *17 (6th Cir. Oct. 16, 2024), *citing Kennedy v. Benson*, No. 24-1799, 2024 WL 4327046, at *5 (6th Cir. Sept. 27, 2024) (McKeague, J., dissenting). In other words, the factual circumstances at issue in the current matter had not yet occurred while the state court action had been pending. The actionable conduct occurred on September 9, 2024 – after the Michigan Supreme Court had issued its opinion and order – when Secretary Benson recertified the list of candidates to be included on the ballot that Mr. Kennedy's claims based upon the federal constitution accrued.[2]

The timeline of events is perfectly explained by Circuit Judge Readler in his dissenting opinion:

> One, Kennedy seeks to have his name removed from the ballot based upon the Secretary's conduct on September 9, three days after the September 6 deadline, whereas his earlier case, pursued in advance of September 6, sought to have his name not included on the list of candidates to be circulated by the Secretary. Two, the challenged conduct here occurred only after the Michigan Supreme Court issued its opinion and order in the earlier case. Taking these points together, this appeal concerns the Secretary's unlawful action on September 9, a dispute that could not possibly have been resolved in the original state-court litigation. So res judicata principles tied to the earlier

[2] Prior to September 9, 2024, there was no equal protection claim and Mr. Kennedy's speech was not being compelled because his name was not on Michigan's 2024 general election ballot. There was also no violation of Article II, Section I of the United States Constitution at that time because Secretary Benson had already certified a list of candidates that did *not* include the candidate (Mr. Kennedy) who is no longer running in Michigan and, therefore, there was no risk of deceiving voters into casting their votes in an ineffective manner and undermining the integrity of our presidential election. In other words, Secretary Benson's act of recertifying the ballot to include Mr. Kennedy's name as a candidate triggered the federal constitution claims.

> litigation do not stand in the way of resolving this case's merits.

Kennedy v. Benson, No. 24-1799, 2024 WL 4501252, at *17 (6th Cir. Oct. 16, 2024) (Readler, J., dissenting), *citing Kennedy*, 2024 WL 4327046, at *5 (McKeague, J., dissenting).

"As 'the evidence or essential facts' between the two lawsuits are not 'identical', indeed, far from it, Michigan res judicata principles do not bar today's action." *Kennedy v. Benson*, No. 24-1799, 2024 WL 4501252, at *17 (6th Cir. Oct. 16, 2024) (Readler, J., dissenting), *citing Dart v. Dart*, 460 Mich. 573, 597 N.W. 2d 82, 88 (1999).

Therefore, a review of the record clearly demonstrates that Mr. Kennedy's claims are not barred by res judicata.

C. Secretary Benson Violated Mr. Kennedy's Constitutional Rights and Michigan Law by Recertifying Mr. Kennedy as a Presidential Candidate After the September 6, 2024 Statutory Deadline.

"By refusing to remove Kennedy's name and then placing his message back on the ballot against his will, the Secretary compelled Kennedy to speak. And she did so in apparent violation of Michigan's own laws." *Kennedy v. Benson*, No. 24-1799, 2024 WL 4501252, at *7 (6th Cir. Oct. 16, 2024) (Thapar, J., dissenting).

Supreme Court precedent dictates that, while states have an interest in enforcing ballot access requirements, issues concerning presidential elections go beyond state law:

> [I]n the context of a Presidential election, state-imposed restrictions implicate a uniquely important national interest. For the President and the Vice President of the

> United States are the only elected officials who represent all the voters in the Nation. Moreover, the impact of the votes cast in each State is affected by the votes cast for the various candidates in other States. Thus in **a Presidential election a State's enforcement of more stringent ballot access requirements, including filing deadlines, has an impact beyond its own borders**. Similarly, **the State has a less important interest in regulating Presidential elections than statewide or local elections**, because the outcome of the former will be largely determined by voters beyond the State's boundaries. This Court, striking down a state statute unduly restricting the choices made by a major party's Presidential nominating convention, observed that such conventions serve "the pervasive national interest in the selection of candidates for national office, and this national interest is greater than any interest of an individual State." *Cousins* v. *Wigoda,* 419 U. S. 477, 490 (1975). The Ohio filing deadline challenged in this case does more than burden the associational rights of independent voters and candidates. It places a significant state-imposed restriction on a nationwide electoral process.

Anderson v. Celebrezze, 460 U.S. 780, 794-95 (1983) (emphasis added).

By denying a federal candidate the ability to withdraw from the ballot, Michigan law "places a significant state-imposed restriction on a nationwide electoral process," and such a law was struck down in *Anderson*. In applying this rationale to the instant matter, Judge Thapar explained, "this dispute boils down to weighing Kennedy's First Amendment interest against the state's asserted interest in its election process. We weigh 'the character and magnitude of the asserted injury to the rights protected by the First and Fourteenth Amendments' against 'the precise interests put forward by the State as justifications for the burden imposed by its rule.'" *Kennedy v. Benson*, No. 24-1799, 2024 WL 4501252, at *9 (6th Cir. Oct.

16, 2024) (Thapar, J., dissenting), *quoting Burdick v. Takushi*, 504 U.S. 428, 434, 112 S.Ct. 2059, 119 L.Ed.2d 245 (1992); *Anderson*, 460 U.S. at 789, 103 S.Ct. 1564).

The First Amendment proscribes against "abridging the freedom of speech." Forcing a party to engage in speech they would not otherwise make is compelled speech in its most basic form. *See Rumsfeld v. Forum for Acad. & Institutional Rights, Inc.*, 547 US 47, 63, 164 L Ed 2d 156 (2006) ("Our compelled-speech cases are not limited to the situation in which an individual must personally speak the government's message. We have also in a number of instances limited the government's ability to force one speaker to host or accommodate another speaker's message."). First Amendment protections extend to both speech and expressive conduct:

> The First Amendment literally forbids the abridgment only of "speech," but we have long recognized that its protection does not end at the spoken or written word. While we have rejected "the view that an apparently limitless variety of conduct can be labeled 'speech' whenever the person engaging in the conduct intends thereby to express an idea," *United States v. O'Brien,* 391 U.S. 367, 376, 88 S.Ct. 1673, 1678 (1968), we have acknowledged that conduct may be "sufficiently imbued with elements of communication to fall within the scope of the First and Fourteenth Amendments," *Spence v. Washington,* 418 U.S. 405, 409, 94 S.Ct. 2727, 2730 (1974). In deciding whether particular conduct possesses sufficient communicative elements to bring the First Amendment into play, we have asked whether "[a]n intent to convey a particularized message was present, and [whether] the likelihood was great that the message would be understood by those who viewed it." *Id.* at 410–411, 94 S.Ct. at 2730.

Texas v. Johnson, 491 U.S. 397, 404, 109 S.Ct. 2533, 2539 (1989).

Here, it is clear that the act of withdrawing conveys the message that a candidate is no longer willing (or able) to hold a particular office if elected. Any reasonable person understood Kennedy's August 23, 2024 speech to convey his decision to withdraw as a presidential candidate. And, if in doubt, Mr. Kennedy expressly withdrew his name from the ballot in Michigan on the same day he gave his speech. By recertifying the ballot to include Kennedy's name as a presidential candidate, the Secretary has compelled his speech in violation of the First Amendment. *See Kennedy v. Benson*, No. 24-1799, 2024 WL 4501252, at *8 (6th Cir. Oct. 16, 2024) (Thapar, J., dissenting) ("The 'involuntary affirmation' of speech is an even greater affront to the First Amendment than silence." (*citing W. Va. State Bd. Of Educ. v. Barnette*, 319 U.S. 624, 633, 63 S. Ct. 1178, 87 L.Ed. 1628 (1943))).

Because Secretary Benson's conduct here is unprecedented, there is limited case law that is directly on point; however, that simply indicates that this matter is very fact specific:

> A state official mandated a former candidate's appearance on the presidential ballot over the candidate's objection. That fact alone would likely strike any reasonable observer as odd. Then consider that the official did so in the face of the former candidate's assertion of his First Amendment right not to be compelled to appear as a candidate. And consider further that the state official did so after she had previously honored the former candidate's request not to have his name included on the ballot, and after the state's statutory deadline for placing candidates on the ballot had passed. Adding all of this together, the Secretary's decision is deeply suspect, legally and otherwise.

* * * *

> [W]hen a state official arbitrarily places a former political candidate's name on a presidential ballot against his wishes, after she had previously excluded him from the ballot, and after the state's legislatively imposed deadline for certifying candidates has passed, that official seemingly compels the candidate to convey a message to voters, in violation of the First Amendment.

Kennedy v. Benson, No. 24-1799, 2024 WL 4501252, at *12, 13 (6th Cir. Oct. 16, 2024) (Readler, J., dissenting), *citing Wooley v. Maynard*, 430 U.S. 705, 714, 97 S.Ct. 1274, 51 L.Ed. 2d 752 (1977).

A review of the aforementioned facts clearly demonstrates that Secretary Benson has compelled Mr. Kennedy's speech and, therefore, violated his Constitutional rights. Such behavior is unlawful and should not be countenanced.

D. All Harm Factors Strongly Favor Mr. Kennedy

Secretary Benson's unlawful conduct threatens election integrity and harms both Mr. Kennedy and Michigan voters.

"'The loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury.'" *Roman Cath. Diocese of Brooklyn v. Cuomo*, 592 U.S. 14, 19, 141 S. Ct. 63, 67, 208 L. Ed. 2d 206 (2020), *quoting Elrod v. Burns*, 427 U.S. 347, 373, 96 S.Ct. 2673, 49 L.Ed.2d 547 (1976) (plurality opinion). For the reasons set forth previously herein, Secretary Benson's conduct has unlawfully infringed upon Mr. Kennedy's First Amendment rights. "With an election pending—one for which his name has been forced on the ballot over his objection—his injury is quintessentially irreparable." *Kennedy v. Benson*, No. 24-1799, 2024 WL 4501252, at *18 (6th Cir. Oct. 16, 2024) (Readler, J., dissenting).

Moreover, such compelled speech harms every citizen in Michigan. The Secretary, by listing Mr. Kennedy on the ballot, is misrepresenting to voters that Mr. Kennedy is qualified and willing to serve the public if elected. Such a representation is not only incorrect, but it is also prejudicial to voters who reasonably expect that the ballot contain accurate information. "'Confidence in the integrity of our electoral processes is essential to the functioning of our participatory democracy.'" *Kennedy v. Benson*, No. 24-1799, 2024 WL 4501252, at *6 (6th Cir. Oct. 16, 2024) (Thapar, J., dissenting), *quoting Purcell v. Gonzalez*, 549 U.S. 1, 4, 127 S.Ct. 5, 166 L.Ed.2d 1 (2006). "When voters head to the polls, they need to have confidence in the accuracy of their ballots." *Kennedy*, 2024 WL 4501252, at *6 (Thapar, J., dissenting).

Any harm alleged to the Natural Law Party is based upon mere speculation and implies that the rights of voters affiliated with the Natural Law Party supersedes the rights of other Michigan voters and the rights of Mr. Kennedy. Similarly, any speculation as to Mr. Kennedy's motive with respect to withdrawing from the presidential race has no bearing here. *See Kennedy v. Benson*, No. 24-1799, 2024 WL 4501252, at *16 (6th Cir. Oct. 16, 2024) (Readler, J., dissenting). The fact of the matter is this – allowing Secretary Benson to *re*certify a list of candidates after the statutory deadline without any legal authority or even permitting mandating such an action upholds conduct that threatens the sanctity of our national elections.

Finally, accepting the rationale of the Sixth Circuit creates a "slippery slope" that would enable Secretaries of State throughout this country to modify ballots and lists of candidates at their own discretion and without any consequence in violation of state and federal law. "[E]lection rules should be clear, and last-minute changes to those rules muddy the waters at significant cost to voters, the administration of law, and public confidence in the election." *Kennedy v. Benson*, No. 24-1799, 2024 WL 4501252, at *16 (6th Cir. Oct. 16, 2024), *citing Republican Nat'l Comm. v. Democratic Nat'l Comm.*, 589 U.S. 423, 140 S. Ct. 1205, 1207, 206 L.Ed.2d 452 (2020); *Democratic Nat'l Comm. v. Wis. State Leg.*, --- U.S. ----, 141 S. Ct. 28, 30–31 (2020) (Kavanaugh, J., concurring). "Such blatant illegality in a presidential race justifies a federal remedy." *Kennedy v. Benson*, No. 24-1799, 2024 WL 4501252, at *16 (6th Cir. Oct. 16, 2024) (Readler, J., dissenting).

CONCLUSION

For the foregoing reasons, Applicant respectfully seeks, pending further review in this Court, an immediate injunction ordering Secretary Benson to remove Mr. Kennedy's name from the ballot for the upcoming election.

Respectfully submitted,

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