

IN THE SUPREME COURT OF IOWA  
24-1426

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NICHOLAS GLUBA, LIBERTARIAN CANDIDATE FOR CONGRESS,  
DISTRICT 1, and CHARLES ALDRICH, LIBERTARIAN CANDIDATE FOR  
CONGRESS, DISTRICT 4

Appellants,

vs.

STATE OBJECTIONS PANEL,  
Appellee.

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

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APPELLANTS' BRIEF

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AND MARCO BATTAGLIA, LIBERTARIAN CANDIDATES FOR U.S.  
CONGRESS

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## **QUESTIONS PRESENTED**

- I. Whether Iowa Code Section 43.24 Applies Exclusively to Primary Elections?**
- II. Whether the Objection Panel and Objectors have the Statutory Standing Required Under Iowa Code Section 43.24**
  - A. Whether Individuals Can File Objections Pursuant to Iowa Code Section 43.24 If They Are Not Affiliated With The Political Party of the Candidate to Which They are Objecting?**
  - B. Whether the Objection Panel Violates the Procedural Due Process Rights of Candidates if it Fails to Provide Notice within 72-hours to the Candidates of an Objection Being Filed?**
- III. Whether a Party's Non-Compliance with Iowa Code Section 43.94 is a Technical Violation?**
- IV. Whether the Panel's Decision to Remove the Candidates from the Ballot Under These Circumstances Violates Their Substantive Constitutional Rights.**

## STATEMENT OF THE CASE

This is a judicial review proceeding filed by six Iowans (two in each Congressional district) who successfully objected to the nominating petition of Nicholas Gluba, Charles Aldrich, and Marco Battaglia, Libertarian candidates for United States Congress. Cert. of Nomination, Exhibits 6, 7, and 10. On August 7, 2024, the objectors challenged the validity of the candidates' Political Party Convention Certificates of Nomination based on Libertarian Party of Iowa not holding its county conventions. Objections to Candidates, Exhibits 2, 3, and 9. The Secretary of State set Objections Panel Hearing for August 28, 2024, requesting the candidates to produce any supporting documentation by August 23, 2024. On August 23, 2024, the candidates produced evidence that county conventions were held. On August 27, 2024, approximately at 6:30 pm, the objectors reframed their objections claiming that the county conventions were not held in a timely manner pursuant to Iowa Code Section 43.94. Objectors' reply, Exhibit 4.

On August 28, 2024, the State Objections Panel ruled in favor of the objectors, 2-1, with the State Auditor Sand dissenting. Sand Dissent, Exhibit 1. On August 30, 2024, Gluba and Aldrich filed their petitions for judicial review. On September 3, 2024, Battaglia filed his petition for judicial review, and all three cases were subsequently consolidated.

In their petition, the candidates focused on five (5) issues: *First*, the objectors lack standing to file objections to both petitions. *Second*, section 43.24 does not provide the Panel with the authority to sustain an objection on the basis that a party

has failed to comply with the requirements Iowa Code sections 43.4 or 43.97. *Third*, the objectors' petitions were deficient on their face and should have been rejected upon submission. *Fourth*, the Panel's finding that the Libertarian Party failed to hold either county conventions in a timely manner is incorrect and violates the First Amendment rights of speech and free association. *Finally*, the Panel exceeded its authority to deny Gluba ballot access due to the Libertarian Party's technical violation.

The district court held a hearing on the merits of the petition on September 5, 2024. On Saturday morning, September 7, the district court issued a ruling sustaining the Panel because it concluded that (1) the objectors had standing before the State Objection Panel, (2) the objectors had statutory standing in that they could vote for the candidates in the general election, (3) the decision of the panel does not violate substantive constitutional rights of the candidates, Party, or its members, and (4) the remedy chosen by the Objection Panel, the removal of the candidates from the general election ballot, was appropriate even though it had the ability to issue a technical infraction as an option. Dist. Ct. Ruling (Sept. 7, 2024)

The Candidates filed a notice of appeal on the same day. This Court ordered an expedited briefing schedule and oral arguments.

## 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. The party then filed the application for 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. DATE WE BECAME A major party

On January 15, 2024, the party held its first caucuses as the major party where delegates were elected for the first time. Candidate Objections, Petitioners Ex. 3, 4, and 9.. Immediately following the caucuses, the party held county conventions (181 minutes too early). All the delegates elected for county conventions were also elected to be state delegates. Petitioner's Exhibit 11

On July 29, 2024 presented the Iowa Secretary of State with certificates of nomination identifying Nicholas Gluba, Charles Aldrich, and Marco Battaglia as the Libertarian Party's candidates for the United States Representative for the First, Fourth, and Third Congressional Districts of Iowa, respectively. And their Certificates of Nomination were accepted by the State Commissioner. Petitioner's Exhibits 6,7, 10.

Six Iowans - Dan Smicker, Cynthia Yockee, Jack Sayers, Gerrett Anderson, Trudy Caviness, and Elaine Gaesser, then objected to Gluba's, Aldrich's, and

Battaglia’s nominating papers under section 43.24 of the Iowa Code. *See* Dist. Ct. Ruling. The gist of the objection is that the Libertarian Party of Iowa failed to comply with state law requiring a party to hold county nominating conventions. In their words, the Libertarian Party went straight from a handful of county caucuses to a state convention that purported to nominate Aldrich as the candidate for the Fourth Congressional District. The Secretary of State set Objections Panel Hearing for August 28, 2024, requesting the candidates to produce any supporting documentation by August 23, 2024. On August 23, 2024, the candidates produced evidence that county conventions were held. On August 27, 2024, approximately at 6:30 pm, the objectors reframed their objections claiming that the county conventions were not held in a timely manner pursuant to Iowa Code Section 43.94. Petitioner’s Exhibit 4. Following a hearing on the objection, the Panel voted 2-1 to sustain the objection and deny all three candidates access to the ballot for the 2024 general election.

The district court agreed with the objectors.

## **ARGUMENT**

### **I. Iowa Code Section 43.24 Applies Exclusively to Primary Elections.**

Even if the objectors have standing to file an objection seeking relief from the State Objection Panel – which they do not – their objections fail for a more fundamental reason. The statutory scheme established by the General Assembly in Iowa Code Chapter 43 (Partisan Nominations – Primary Elections) for determining the various “political party” nominees to be placed on the general election ballot,

when read as a whole, and read in harmony with Chapters 44 and 45 of the Iowa Code, unambiguously precludes objections under Iowa Code Section 43.24 to candidate nominated by a “political party” at their state convention pursuant to Iowa Code Section 43.88. To the contrary, Iowa’s statutory scheme for political party nominations tends to support the notion that political parties are guaranteed a place on the general election ballot, unlike nonparty organizations that lack the minimum level of support to be classified as a “political party”. See Attachment 1: In the Matter of Objection to the Libertarian Party Nomination of Gary Johnson and James B. Gray for President and Vice President of the United States of America, p. 5 (“Nonparty organizations are not guaranteed a place on the ballot, unlike political parties.”).

There are three ways in which an individual can have their name and/or party appear on the general election ballot for a Congressional Office. First, an individual can be nominated by petition after acquiring 1,726 eligible electors with 47 signatures each from at least one-half of the counties that make up the congressional district. Iowa Code Section 45.1(3). Second, an individual can be nominated through a caucus or convention held by a “nonparty political organization” pursuant to Iowa Code Chapter 44. Third, an individual can be nominated by a “political party” pursuant to Iowa Code Chapter 43 after a primary election for that party or by being nominated at the party’s state convention. Iowa Code Section 43.67 (after primary election) & Iowa Code Section 43.88 (after



party's state convention).

Only “political parties” are required to nominate candidates for congressional offices for the general election ballot through a primary election process. Iowa Code Section 43.3. The candidate that wins a political party's primary shall be that party's nominee for the general election. Iowa Code Section 43.67. It is only chapter 43 (Partisan Nominations – Primary Elections) that contemplate primary elections because there are often several individuals who seek nomination from the same “political party” because of the increased likelihood that they will in fact be elected due to sheer number of people in a district that are registered with the party, as well as other advantages political parties receive. *Cf.* Iowa Code Section 49.31(1)(b) (preferential ballot placement at top for political parties). If there is no contest within a political party for the nomination, then the party has the option to forgo the primary election, and instead, nominate an individual at convention for the general election ballot. Iowa Code 43.88 (Nominations made by state, district, and county conventions, shall be printed on the official ballot the same as if the nomination had been made in the primary election).

If there is a vacancy on the general election ballot, parties have the ability to replace them with another candidate. Iowa Code Section 43.78. Vacancies on the general election ballot include (1) when there is no primary candidate, or all candidates for the party's nomination subsequently withdrew, lacked requisite

qualifications, or died before the primary election, and no candidate received a sufficient number of write-in votes to be nominated; (2) the primary election was inconclusive because no candidate received the percentage of the vote required depending on what level of election was held; (3) the person nominated in the primary election withdrew, was found to lack the requisite qualifications for the office, or died; or (4) if a vacancy within an office has occurred in one of the offices subject to biennial elections. Iowa Code Section 43.77. There is no vacancy by which a political party can fill when their candidate is removed from the general election ballot pursuant to Iowa Code Section 43.24.

In light of the statutory scheme which indicates that political parties are expected and are entitled to have their candidates on the general election ballot, and there is no explicit statutory text granting a political party the ability to replace a candidate if they are removed by an objection panel under 43.24, the logical conclusion is that 43.24 is exclusively intended to only apply to objections to candidates on the primary ballot and only made by those who are a member of the party that the candidate is seeking their nomination.

The General Assembly's intent to ensure a "political party" has a candidate for any congressional office on the general election ballot, if the party so desires, is unquestionably clear when you consider Iowa Code Section 43.79(2) and 49.58. Iowa Code Section 43.79 grants a party the ability to replace a candidate that dies between the deadline for a party to fill vacancies in the general election ballot up to

the date of the actual general election. Additionally, the votes cast in the general election for that office in which a political party's candidate died prior to the polls closing on election day shall not be canvassed and a winner shall not be determined in that general election. Iowa Code Section 49.58(1). Instead, that code section requires a special election to be held on the first Tuesday after the second Monday in December for the purpose of electing a person to fill that office, and explicitly allows the deceased candidate's political party to designate another candidate using substantially the same process for filling ballot vacancies. Iowa Code Section 49.58(2).

Under the district court's ruling, the three Libertarian Candidates for congressional office cannot appear on the ballot and the Libertarian Party cannot replace them because the objection panel sustained an objection to their candidacy by a non-Libertarian Party member on August 28, 2024, which was past the deadline for calling another state convention and the date for replacing vacancies pursuant to Iowa Code Section 43.77. But if the Libertarian candidates all died on August 28, 2024, instead, there would be a special election held on December 10<sup>th</sup>, 2024 pursuant to Iowa Code Section 49.48 and the Libertarian Party would be able to nominate candidates for that election.

Additionally, the Objection Panel lacked jurisdiction over the objection to the Libertarian Party holding its county convention 181 minutes too early because none of the three Libertarian candidates received the required notice of that

specific objection within 72-hours, as is required under Iowa Code Section 43.24(2)(a). The original objection levied by the objectors alleged that the Libertarian Party did not hold county conventions at all. *Cf.* D0021, Ex. 2 Gluba Objection at 2-4. Once presented with evidence that the Libertarian Party did conduct county conventions, it was not until the night before the Objection Panel Hearing that the objectors raised for the first time that they were objecting to the Libertarian Party not complying with Iowa Code 43.94 when it held its county conventions. D0021, Ex. 4 Reply by Objectors at 2. The failure of the Objection Panel to provide the 72-hours notice of the new objection filed by the objectors violates the Candidates procedural due process rights, and the Objection Panel should have not considered or sustained the newly raised objection until August 30th at the earliest. This failure by the Objection Panel to provide the 72-hour precludes the Objection Board from taking action on the new objection

### **Specific Provisions of Iowa’s Elections Law Demonstrating Iowa Code Section 43.24 Applies Exclusively to Primary Elections.**

In addition to the foregoing analysis of Iowa’s nomination statutes, there are numerous code sections surrounding Iowa Code Section 43.24 that demonstrate the General Assembly’s intent to limit objections pursuant to 43.24 to primary candidates and objections by members of the same party as the candidate.

### **Deadlines for Filing Objections Pursuant to Iowa Code Section 43.24 Reference Code Sections that only apply to Primary Elections**

The various dates by which objections have to be filed with the appropriate

commissioner or official provide additional support that objections pursuant to Iowa Code Section 43.24 are exclusively for objecting to primary candidates. *See* Iowa Code Section 43.24(1)(b)(1) – (4). Iowa Code Section 43.24, subsection 1, paragraph a, subparagraphs (1) and (2) both include an alternative time for when the objections have to be made if done pursuant to Iowa Code Section 43.23. Iowa Code Section 43.23, in turn, relates solely to the death or withdrawal of a *primary candidate*. Subparagraph (3) relates to special elections, which is not at issue in this matter. Subparagraph (4) relates to city elections and explicitly states that the objections are to be made at least 36 days before the city *primary election*.

### **Objections which “Shall be Sustained” are Only for Primary Election Filings**

Iowa Code Section 43.24(1)(a) states that “objections relating to incorrect or incomplete information for information that is required under section 43.14 or 43.18 shall be sustained”. Iowa Code Section 43.14 delineates what is to be included in a person’s nominating papers for the *primary election*. It is clear that 43.14 relates only to the primary election because Iowa Code Section 43.14(1)(f) requires that the papers contain the “date of the primary election for which the candidate is nominated”. Similarly, Iowa Code Section 43.18 unambiguously applies to primary elections due to subsection 6 requiring a “declaration that *if the candidate is nominated* and elected the candidate will qualify by taking the oath of office.” Someone who is nominated by party convention pursuant to Iowa Code Section 43.88 is already a nominated candidate, and therefore, would not need to include in any affidavit of candidacy a

declaration that is conditions on “if the candidate is nominated” as is required in Iowa Code Section 43.18. Which is why Iowa Code Section 43.88 (nominations by party convention) requires that certificates for candidates nominated by convention shall be accompanied by an affidavit executed by the nominee in substantially the form required by section 43.67, which requires a declaration that *if elected* the candidate will qualify by taking the oath of office, and not an affidavit in substantially the form required by section 43.18, which requires a declaration that *if the candidate is nominated and elected* the candidate will qualify by taking the oath of office.

### **Certification of Ballots for the Primary Election vs. General Election**

Iowa Code Section 43.22 requires the State Commissioner to certify to all county commissioners, at least 69 days before a *primary election*, or as soon as practicable if an objection under section 43.24 is pending, the information for the candidates which the voters in each county have the right to vote for at the primary election. There is an explicit recognition of the ability to object to candidates for the primary election, and that the certification of the candidates on the primary ballot can be delayed beyond the 69 days required under law if there is still an objection pending.

More specifically, the certificate to be provided by the State Commissioner to the County Commissioners for the *primary election* in Iowa Code Section 43.22 specifically must include: “the name and post office address of each person for whom a nomination paper has been filed in the state

commissioner's office, *and for whom the voters of said county have the right to vote at said election*. Iowa Code 43.22(1). The “whom the voters of said county have the right to vote” language in 43.22(1) matches the limitation on whom can file objections pursuant to Iowa Code Section 43.24, which is limited to “any person who would have the right to vote for the candidate for the office in question”. Iowa Code Section 43.23(1)(a). These similarities between Iowa Code Sections 43.22 and 43.24 demonstrate that the Iowa General Assembly intended to limit objections pursuant to Iowa Code Section 43.24 to the *primary election*, and to limit the people who can file objections to only the members of the political party of the candidate being objected to.

Iowa Code Section 43.73 requires the State Commissioner to certify to all county commissioners not less than 64 days prior to the *general election* the information of each person nominates as shown by the official canvass made by the executive council (primary election), or as certified to the State Commissioner by the proper persons when any person has been nominated by a convention or by a party committee, or by petition, and the office to which the person is nominated. There is no mention of objections in Iowa Code 43.73, or that a pending objection could delay the certification of the information of the candidates appearing on the primary election ballot prior to the election. The inclusion of objections in the statute requiring the State Commissioner to certify the candidates for the primary ballot, and the exclusion of objections in the statute requiring the State Commissioner to

certify the candidates for the general election demonstrates that it is only primary election candidates can be challenged under Iowa Code Section 43.24. "Meaning 'is expressed by omission as well as by inclusion .... See *Schmett v. State Objections Panel*, 973 N.W.2d 300, 304 (Iowa 2022) (citing *State v. Hall*, 969 N.W.2d 299, 309 (Iowa 2022)).

In order for the various sections of Iowa Code Chapter 43 to be read in harmony with one another, Iowa Code Section 43.24 can only be interpreted to apply exclusively to objections to primary candidates prior to the primary election being held. Iowa's election laws demonstrate a statutory scheme which can only be interpreted which precludes the Objections Panel from removing a major party's selected nominee from the *general* election ballot pursuant to Iowa Code Section 43.24 through an objection made by an individual who is not a member of the Libertarian Party.

The only two objection panel decisions to reach this Court on appeal were objections made during the primary election process. *Chiodo v. Section 43.24 Panel*, 846 N.W.2d 845, 847 (Iowa 2014) ("Chiodo requested the Secretary of State not to place Bisignano's name on the primary ballot."); *Schmett v. State Objections Panel*, 973 N.W.2d 300, 301 (Iowa 2022) ("We must decide whether two missing dates and one incorrect date require a candidate for the U.S. Senate to be removed from the June 7, 2022 primary ballot."). Orders by the district court for Polk County upon parties seeking judicial review from a 43.24 objection have unequivocally determined that "Iowa Code chapter 43 governs primary elections. Iowa Code § 43.1. It sets out



specific requirements that a candidate must meet before his or her name can be placed on the primary ballot.” Order Regarding Dismissal (D0012), *In the Matter of the Objection to the Nominating Petition of RON CORBETT, Republican Candidate for Governor*, CVCV056038 (Polk Co. Dist. Ct. April 4, 2018).

## **II. Objectors Lack Specific Standing Required Under Iowa Code Section 43.24.**

Even if objections pursuant to Iowa Code Section 43.24 can be utilized for objections to candidates appearing on the general election ballot – which it does not - only members of the Libertarian Party had the specific statutory standing contained in Iowa Code Section 43.24(1)(a) to levy such an objection.

Political parties are required to nominate candidates for the general election through the primary election process. Iowa Code Section 43.4. The other methods by for candidates to appear on the general election ballot, Iowa code Chapters 44 (nonparty organizations) and 45 (nominations by petition), do not have provisions for conducting primary elections. *See generally* Iowa Code Chapters 44 and 45. This difference demonstrates why the statutory difference between the objection procedures under chapters 44 & 45 versus the objection process under chapter 43 evidence the General Assembly’s intent to limit objections pursuant to Iowa Code Section 43.24 exclusively to primary elections.

Chapter 44 (nominations by nonparty political organizations) and chapter 45

(nominations by petition) both utilize the objection process laid out in Iowa Code Section 44.4 through Iowa Code Section 44.8. *See* Iowa Code Section 45.4 (the right to object to the legal sufficiency of nominations by petition, or to the eligibility of the candidate, shall be governed by the law relating to nominations by political organizations which are not political parties). An objection under chapter 44 or 45 “may be filed by any person who would have the right to vote for a candidate for the office in question”. Iowa Code Section 44.4(2). The General Assembly only requires a person be eligible to vote for “a candidate for the office in question” to object to a candidate who utilized chapters 44 and 45 for their nomination because those objections could only be for their name appearing on the general election ballot since only political parties have primaries.

Objection made under chapter 43 (for partisan nominations), on the other hand, “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 Section 43.24(1)(a). The General Assembly requires a person be eligible to vote for “the candidate for the office in question” to object to a candidate seeking a political party nomination under chapter 43 because those objections are for objecting to a person’s name on the primary ballot. And because the primary election shall be construed to be an election by the members of various political parties for the purpose of placing in nomination candidates for public office, it would be inappropriate and would automatically result in violations of a party’s and its member’s freedom of association if anyone

other than members of the party to which the candidate being objected to belongs was allowed to contest that person's candidacy in the primary election. Iowa Code Section 43.38 (elector shall be allowed to vote for candidates for nominations on ballot of the party which the elector is registered). *California Democratic Party v. Jones*, 530 U.S. 567, 575-76 (2000) (quoting *Tashjian*, 479 U.S., at 216) The moment of choosing the party's nominee, we have said, is "the crucial juncture at which the appeal to common principles may be translated into concerted action, and hence to political power in the community."); *See also Eu v. San Francisco County Democratic Central Comm.*, 489 U.S. 214, 235-236 (1989), (Scalia, J., dissenting) ("The ability of the members of the Republican Party to select their own candidate . . . unquestionably implicates an associational freedom"); *Timmons*, 520 U.S., at 359 ("[T]he New Party, and not someone else, has the right to select the New Party's standard bearer).

When Iowa's election laws are viewed wholistically, as demonstrated in the previous section of this brief, it is clear that an objection filed pursuant to Iowa Code Section 43.24 are for the purposes of contesting a person's eligibility to be on the *primary ballot*. When you specifically account for the difference in language chosen by the General Assembly regarding who has the ability to levy objections for partisan nominations versus nonpartisan nominations, the only logical conclusion is that only members of the party of the candidate being objected to pursuant to Iowa Code Section 43.24 would satisfy the statutory standing necessary to levy the objection. Therefore, the objectors do not have the necessary standing to object to

the Libertarian candidates because they had no right to vote for them in the primary election or participate in their nomination at the Libertarian Party State Convention. "Freedom of association would prove an empty guarantee if associations could not limit control over their decisions to those who share the interests and persuasions that underlie the association's being." La Follette , 450 U.S. at 122

### **The State Objections Panel Exceeded its authority denying Libertarian Candidates ballot access due to a technical violation on the part of the Libertarian Party of Iowa**

The Election Misconduct and Penalties Act “recognizes that instances may arise in which technical infractions of chapters 39 through 53 may occur” and “such instances, administrative notice from the state or county commissioner of elections is sufficient.” Iowa Code Section 39A.1(2). If the state commissioner becomes aware of an apparent technical violation of a provision of chapters 39 through 53, the state commissioner may administratively provide a written notice and letter of instruction to the responsible person regarding proper compliance procedures. Iowa Code Section 39A.6(1). A political party holding county conventions a few minutes early in January should be considered technical and not warrant removing candidates properly nominated in June. To follow the objectors’ logic, because the time for county conventions has passed, all actions of the Libertarian Party of Iowa are moot for the next two years until the next precinct caucuses are held. That cannot be the standard of law. The panel should have overruled the objection based on the alleged

violation being

technical and issued a Notice to Cure, as required under Iowa Law.

The Iowa Legislature has looked at and made amendments to the Iowa Election code generally and election misconduct specifically 3 times since 2019. (See Acts 2019 (88 G.A.) ch. 148, H.F. 692, § 9, eff. May 16, 2019; Acts 2021 (98 G.A.) ch 12 S.F. 413, §§ 9, 10, eff March 8, 2021; Acts 2023 (90 G.A.) ch. 19, S.F. 514, § 2061, eff, April 4, 2023.) The Election Misconduct and Penalties Act sets for the types of actions that warrant penalty and the remedies that may be undertaken. (See I.C.A § 39A.2 through 39A-6) “The purpose of this chapter is to identify actions which threaten the integrity of the election process and to impose significant sanctions upon persons who intentionally commit those acts.” I.C.A §39A.1(2) The infractions range from destroying or defacing a sample ballot posted at a voting center (a simple misdemeanor) to voter registration fraud (a class D felony). (See I.C.A § 39A.1 through 39A-6) Specifically. [t]he general assembly also recognizes that instances may arise in which technical infractions of chapters 39 through 53 may occur which do not merit any level of criminal sanction. In such instances, administrative notice from the state or county commissioner of elections is sufficient. I.C.A. § 39A.1(2)

“If the state commissioner ... becomes aware of an apparent technical violation of a provision of chapters 39 through 53, the state commissioner...may administratively provide a written notice and letter of instruction to the responsible person regarding proper compliance procedures. I.C.A §39A.6(1) By maintaining

the category of technical violation and the notification remedy for such, each time the legislature looked at the Iowa Election code, it is clear that the legislature sought to limit remedy the commissioner may apply. *See State v. Hall*, 969 N.W. 2d 299, 309 (Iowa 2022)(“Meaning “is expressed by omission as well as by inclusion, and the express mention of one thing implies the exclusion of others not so mentioned. *Marcus v. Young*, 538 N.W. 2d 285, 289 (Iowa 1995). The State Objections Panel has not been granted interpretive authority over the relevant statutes. *Schmett v. State Objections Panel*, 973 N.W. 2d 300, 303 (Iowa 2022)

The State Election Commissioner promulgated administrative rules to address and correct technical violations, “[if] the state commissioner becomes aware of an apparent technical violation of a provision of Iowa Code chapters 39 through 53, the state commissioner may administratively provide a written notice and letter of instruction to the...responsible person regarding proper compliance procedures.” Iowa Admin. Code 721-21.100(39A). He failed to do so.

The district court admitted that the option to issue a notice of technical infraction pursuant to Iowa Code Section 39A.6(1) was available, but rejected the notion that it was the exclusive remedy under the circumstances of this case. Ruling on Pet. for Judicial Review, p. 8, n. 6 (Sept. 7, 2024). The district court, however, failed to recognize that the Objection Panel itself has consistently ruled that “statutes governing nomination procedures should be liberally construed to the benefit of the electors in order to provide every lawful opportunity for the electors to express their

preference at the ballot box.” *In the Matter of the Objection to the Nominating Petition of Thomas A. Greene*, Panel Decision (2016) (quoting *In the Matter of the Objection to the Nominating Petition of Paul W. Johnson*, Findings of Fact, Conclusions of Law, Decision and Order, p. 9 (2004)).

Additionally, if the district court’s conclusion that the technical non-compliance with Iowa Code Section 43.94 (delegate terms) justifies the removal of the Libertarian party’s candidate from the general election ballot, then the Libertarian Party is effectively prevented from ever nominating any candidate for any vacancy or special election that may come into existence if that nomination is to be made by the Libertarian Party at a district convention or state convention. This is the case because there is no process in Code by which the county convention can be reconvened for the purposes of nominating district and/or state convention delegates. *See* Iowa Code Section 43.85 (When a nomination is directed to be made by a district convention composed of more than one county, and the county convention in any county of the district has adjourned without selecting delegates to such convention, the county convention shall be reconvened for the purpose of making such selection). The Libertarian party county conventions adjourned after selecting district convention and state convention delegates, so it would not be able to reconvene under this statute, which is limited only to district conventions. There is no process whatsoever in the Code for a county convention to reconvene in order to re-select delegates for the party’s state convention. Issuing a technical infraction, instead of removing Libertarian candidates from the ballot in the upcoming general

election avoids this additional burden that the Libertarian party, its candidates, and its members will face if the district court ruling is affirmed.

This Court has held that as a general rule, “unless the statute expressly declares that the particular act in question is essential to the validity of the election or that its omission shall render the election void, statutory provisions in regard to nominations are not regarded as mandatory in the sense that noncompliance with them vitiates the election, but only in the sense that officers or persons to whom they apply are obligated and may be compelled to comply with them prior to an election and are subject to the penalties prescribed by the statutes relating to offenses against election laws”. *Wingert v. Urban*, 250 N.W.2d 731, 733 (Iowa 1977). There is nothing in chapter 43 or any other statute that explicitly states that compliance with Iowa Code Section 43.94 (terms for county delegates) is essential to the validity of the Libertarian Party’s primary election and nomination. “In determining how far irregularities in party nominations for office will affect the result of the general election, the fundamental inquiry is whether the irregularity complained of has prevented a full, fair, and free expression of the public will. An election in which the voters have fully, fairly, and honestly expressed their will is not invalid even though a wrong method is followed in the nomination of candidates”. *Id.* There are no members of the Libertarian Party which object to the three candidates the Objection Panel removed from the ballot, only people who do not associate with the Libertarian Party and the Libertarian Party does not associate with. Therefore, it cannot be said that the holding of the county conventions three hours too early prevented a full, fair,



and free expression of the public will.

**III. The State Objections Panel’s findings that the Libertarian Party did not hold county conventions prior to nominating Gluba and Aldrich as candidates are incorrect and violate the First Amendment right to speech and free association.**

If, the Court believes that the objectors had the statutory standing required to levy an objection against another political party’s candidate nominated at convention, and believes that Iowa Code Section 43.24 allows objections to general election candidates, the act of the Objection Panel sustaining an objection made by an individual that is not a member of the Libertarian Party which resulted in the removal of the Libertarian Party’s nominees from the general election ballot violated the fundamental rights of association, the right to vote, and the right to free speech of the Libertarian Party, the Candidates removed from the ballot (the Appellants), the members of the Libertarian Party, and all Iowa voters. “The freedom to join together in furtherance of common political beliefs "necessarily presupposes the freedom to identify the people who constitute the association." *Tashjian v. Republican Party of Connecticut*, 479 U.S. 208, 214-15 (1986) (quoting *Democratic Party of United States v. Wisconsin ex rel. La Follette*, 450 U.S. 107, 122 (1981). “Interference with the freedom of a party is simultaneously an interference with the freedom of its adherents.” *Democratic Party of United States*, 450 U.S. at 122 (quoting *Sweezy v. New Hampshire*, 354 U.S. 234, 250 (1957)).*Timmons v. Twin Cities Area New Party*, 520 U.S. 351, 359 (1997).

It is well settled that partisan political organizations enjoy freedom of association protected by the First and Fourteenth Amendments. *Eu v. San Francisco County Democratic Central Committee*, 489 U.S. 214, 224 (1989). Freedom of association means not only that an individual voter has the right to associate with the political party of her choice, *Tashjian v. Republican Party of Connecticut*, 479 U.S. 208, 214 (1986), but also that a political party has the right to “identify the people who constitute the association”, *Democratic Party of United States v. Wisconsin ex rel. La Follette*, 450 U.S. 107, 122 (1981), and to select a candidate who best represents the party’s ideologies and preferences, *California Democratic Party v. Jones*, 530 U.S. 567 (2000),

The U.S. Supreme Court made it clear, on multiple occasions, that the government cannot dictate the manner in which political party chooses its convention delegates and ultimately its party’s nominee to appear on the general election ballot. *Democratic Party of U. S. v. Wis. ex rel. La Follette*, 450 U.S. 107, 121 (1988); *Eu v. San Francisco Cnty. Democratic Cent. Comm.*, 489 U.S. 214, 215, (1989); *Tashjian v. Republican Party of Conn.*, 479 U.S. 208, (US 1986). The Court has continuously affirmed the special place the First Amendment reserves for, and the special protection it accords, the process by which a political party selects a standard bearer who best represents the party’s ideologies and preferences. *California Democratic Party v. Jones*

530 U.S. 567, 575 (2000); *Eu v. San Francisco* at 224. The moment of choosing the

party's nominee is "the crucial juncture at which the appeal to common principles may be translated into concerted action, and hence to political power in the community. *Id.* (citing *Tashjian*, 479 U.S. at 216). The notion that a major political party has a right to select its own candidate is uncontroversial, so far as it goes. *Timmons v. Twin Cities Area New Party*, 520 U.S. 351, 359 (1997); See, e.g., *Cousins v. Wigoda*, 419 U.S. 477 (1975) (Party, not State, has right to decide who will be State's delegates at party convention).

Removing the Libertarian candidates from the ballot due to the Libertarian Party holding county conventions 181 minutes too early is a constitutional violation of their First Amendment right of association, right to be on a ballot, and their free speech rights. *California Democratic Party v. Jones*, 530 U.S. at 575. Additionally, such removal violates every single Libertarian member of their right to have their party's standard-bearer appear on the ballot and their right to associate. *Eu v. San Francisco Cnty. Democratic Cent. Comm.*, 489 U.S. at 215. These burdens and Constitutional harms caused by the Objection Panel by removing the Libertarian Party's candidates from the general election ballot was done without any benefit to the people or increasing the efficiency or integrity of elections. Commencing the county delegates term to the "next day" serves no legitimate government purpose and is arbitrary without any election-related purpose. Iowa Code Section 43.94. The code section regulates matters that are reserved for the parties and its application in this case renders it unconstitutional. *Smith v. Iowa District Court for Polk County*, 3 NW3d 524, 539 (Iowa 2024).

Voting is a fundamental right in Iowa, indeed the nation. *Chiodo v. Section 43.24 Panel*, 846 N.W.2d 845, 848 (Iowa 2014) (citing *Devine v. Wonderlich*, 268 N.W.2d 620, 623 (Iowa 1978)). It occupies an irreducibly vital role in our system of government by providing citizens with a voice in our democracy and in the election of those who make the laws by which all must live. *Id.* (citing *See Wesberry v. Sanders*, 376 U.S. 1, 17 (1964)). The right to vote is found at the heart of representative government and is “preservative of other basic civil and political rights.” *Id.* (citing *Reynolds v. Sims*, 377 U.S. 533, 562 (1964)). Although the right to vote, the freedom of speech, the freedom of association, and the right to equal protection and application under the law are deemed fundamental, challenges to election laws are analyzed under an intermediate level of scrutiny. *Id.*

Whether premised on free speech or equal protection, challenges to voting regulations as burdening individual voters' access to the polls are more properly considered based on the severity of the burden under the *Anderson-Burdick* balancing approach. *Smith v. Iowa District Court for Polk Cnty.*, No. 22-0401, 24 (Iowa Feb. 23, 2024); *See Crawford v. Marion Cnty. Election Bd.*, 553 U.S. 181, 204 (2008) (Scalia, J., concurring in judgment) (“To evaluate a law respecting the right to vote—whether it governs voter qualifications, candidate selection, or the voting process—we use the approach set out in [*Burdick*].”). The *Anderson-Burdick* balancing approach requires a court to perform an analytical process that parallels

its work in ordinary litigation. *Anderson v. Celebrezze*, 460 U.S. 780, 789 (1983).

The steps of this analysis, as laid out in *Anderson*, are as follows:

It must first consider the character and magnitude of the asserted injury to the rights protected by the First and Fourteenth Amendments that the plaintiffs seek to vindicate. It then must identify and evaluate the precise interests put forward by the State as justifications for the burden imposed by its rule. In passing judgment, the Court must not only determine the legitimacy and strength of each of those interests, it also must consider the extent to which those interests make it necessary to burden the plaintiff's rights. Only after weighing all these factors is the reviewing court in a position to decide whether the challenged provision is unconstitutional. *Anderson v. Celebrezze*, 460 U.S. 780, 789 (1983).

Mr. Gluba and Mr. Aldrich were removed from the general election ballot on August 28, 2024, after the Objections Panel determined that their nominations by the Libertarian Party at their State Convention were not legitimate because the county delegates nominated delegates to the State convention 181 minutes before their term started under Iowa Code 43.94. This action by the Objection Panel operated to stop all political participation by an identifiable political group whose members share a particular viewpoint, associational preference, and policy preferences. The United States Supreme Court has recognized the constitutional right of citizens to create and develop new political parties. *See Anderson v. Celebrezze*, 460 U.S. 780, 793-794 (1983). The right derives from the First and Fourteenth Amendments, and advances the constitutional interest of like-minded voters to gather in pursuit of common political ends, thus enlarging the opportunities of all voters to express their own political preferences. *See Id.*; Illinois Elections Bd.

v. Socialist Workers Party, 440 U.S. 173, 184 (1979); Williams v. Rhodes, 393 U.S. 23, 30-31 (1968). Although it is Mr. Gluba and Mr. Adlrich who are bringing this petition based on the harm they suffered by their removal from the general election ballot, their access to the ballot necessarily carries with it the right of all Libertarian voters or any other voter who may wish to vote for them (or for anyone who is not a member of the two major parties).

This significant burden and injury suffered by the Libertarian candidates, the Libertarian Party, Libertarian party members, and all other Iowa voters must be compared to the State's interest in requiring the terms of county delegates to begin the "day following their election at the precinct caucuses" pursuant to Iowa Code Section 43.94, and then utilizing that requirement to remove them from the general election ballot.

The district court stated the The regulatory interests which form the basis for the establishment of a one-day break between the holding of precinct caucuses and the beginning of the terms of delegates elected at the caucuses have been expressed at avoiding overlapping terms of delegates, the prevention of dueling certificates of nomination and to provide some time to entertain internal challenges to a candidacy within the party. Dist. Ct. Ruling at 12. The Court further concluded that the process which formed the basis for the challenges to the Libertarian Party candidates being on the general election ballot is not a severe burden on either the party's or the voters' associational rights and represents a reasonable, nondiscriminatory restriction on a

party's ability to place their candidate before the voting public. *Id.* at 11-12.

The first two interests stated by the court, the avoidance of overlapping delegates and dualing certificates, are not interests that are furthered by application of Iowa Code Section 43.94 to the Libertarian Party in 2024 and for these three candidates. As the Objection panel correctly states, because the Libertarian Party's candidate for governor in the 2022 general election received more than 2% of the total votes cast for Governor, the Libertarians are considered a formal political party under Iowa Code Section 43.2. Objection Panel Decision at 2. The Libertarian Party, which became a political party after the 2022 election, did not have any holdover delegates for county conventions. Therefore, there is zero risk of overlapping county delegates and no risk of dueling certificates.

The third, and last interest of applying Iowa Code 43.94 stated by the district court, to provide some time to entertain internal challenges to a candidacy within the party, is not an interest that is actually achieved by delaying the terms of county delegates to the "following day". The process utilized by the Libertarian Party resulted in the county conventions being held at 9:00 pm. Complying with Iowa Code Section 43.94 would have required the county conventions to be held at 12:01 am (181 minus later). If there is any interest the State would have gained by the Libertarian Party having the additional 3 hours to contemplate internal challenges from 9:00 pm to 12:00 am, such interest is minimal at best. But even that interest should not be recognized as a legitimate interest because the statute's explicit

language would allow precinct caucuses and county conventions to occur as little as 1 second apart. No statute would have prevented the Libertarian Party from voting for county delegate at their precinct caucus at 11:59 pm, adjourning, and then calling the county convention to order at 12:01 am the “following day”. The state’s interest evaporates to the extent the parties are able to avoid it, if they so desire.

The constitutional right to have access to the ballot, the right to vote for the person of a Party’s choice, and the freedom of association are significantly burdened by the removal of the Libertarian Candidates from the general election ballot. The justification or interest of the State in imposing that burden, that a party have sufficient support and participation when transitioning from the caucus to the county conventions, is virtually non-existent due to the ease in which a party can avoid the Statutes purpose by waiting until 11:59 pm to select the county delegates at the caucus.

**IV. The Certificates of Nomination are “Legally Sufficient” and the Panel exceeded its authority by extending its inquiry outside the Certificates themselves.**

The State Objection Panel decision is beyond the authority delegated to the agency by any provision of Iowa Code Chapter 43, as the legal sufficiency of a certificate of nomination is limited to the four corners of that certificate pursuant to Iowa Code § 43.88. Objections to the caucus and convention processes of a political party are outside the scope of “the legal sufficiency of a nomination petition or



certificate of nomination” governed by that section. Iowa Code §43.94 (2024). The “legal sufficiency” of the certificate of nomination is outlined in Iowa Code § 43.88, which defines what is of necessity included in a certificate of nomination, namely, “name, place of residence, and post office address of the nominee, and the office to which nominated, and the name of the political party making the nomination,” which is then certified by the proper convention officer. Iowa Code § 43.88 (2024). This Court has not yet considered the parameters for “legal sufficiency” under Iowa Code Chapter 43. Intervenor asks this Court to expand the definition of legal sufficiency beyond the parameters of Iowa Code § 43.88, and so other precedent defining those parameters as limited to the actual contents of the certificate is instructive here.

This narrow interpretation of “legal sufficiency” is supported by Iowa case law regarding legal sufficiency of a petition at law. *See e.g. Meade v. Christie*, 974 N.W.2d 770, 775 (2022). Most recently this Court identified the parameters of a challenge to legal sufficiency by narrowing its inquiry to “the contents of the petition and matters of which the court can take judicial notice.” *Id. quoting Southard v. Visa U.S.A. Inc.*, 734 N.W.2d 192, 194 (Iowa 2007). In civil litigation, the Iowa Rules of Civil Procedure direct filing a motion to dismiss when questioning the legal sufficiency of a petition at law. In ruling on a motion to dismiss, the court accepts the facts alleged in the petition as true, and views the allegations in the light most favorable to the plaintiff, *Haupt v. Miller*, 514 N.W.2d 905, 911 (Iowa 1994) (en banc). Iowa Courts may dismiss a claim “only if the petition shows no right of

recovery under any state of the facts." *Southard*, 734 N.W.2d at 194 (quoting *Comes v. Microsoft Corp.*, 646 N.W.2d 440, 442 (Iowa 2002)).

This Court should State Objection Panel decision is based upon an erroneous interpretation of a provision of law – namely the sufficiency of the Libertarian Party caucus and convention procedures – whose interpretation has not clearly been vested by any provision of Iowa Code § 43.24 in the discretion of the panel. *See* Iowa Code § 17A.19(10)(c).

## V. CONCLUSION

None of the Libertarian Candidates were nominated through a primary election. They were nominated by and through the Libertarian Party State Convention. See Petitioners Ex. 6 & 7.

The Objections Panel had no statutory jurisdiction to hear the objections because the objectors lacked the specific standing required under Iowa Code Section 43.24 in that they lacked the “right to vote for *the* candidates to which they objected as they were not members of the Libertarian party. The Objection Panel lacked the ability to decide the Objection levied on August 27, 2024 after the Libertarian Party provided sufficient proof that doomed the first objection levied by objectors on August 5th, 2024, because it failed to provide notice to the candidates within 72-hours as required by Iowa Code Section 43.24(2)(a).

Not only did the decision of the Objection Panel remove one of the three “political parties” nominees for congressional office from general election ballot, it



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