IN THE SUPREME COURT OF IOWA
Supreme Court No. 24-1426
Polk County Nos. CVCV067799, CVCV067800, CVCV067804

NICHOLAS GLUBA, CHARLES ALDRICH, and MARCO BATTAGLIA,

Petitioners–Appellants,

vs.

STATE OBJECTIONS PANEL,

Respondent–Appellee,

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

Intervenors–Objectors.

Appeal from the Iowa District Court for Polk County
The Honorable Michael Huppert, Chief District Judge

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TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page(s)

Cases

TABLE OF AUTHORITIES—Continued

Page(s)

Statutes

TABLE OF AUTHORITIES—Continued

INTRODUCTION

Iowa has a comprehensive set of election laws to ensure free, fair, transparent, and orderly elections. And to ensure that elections proceed without a hitch there are specific roles empowering voters—beyond even the fundamentally important democratic act of voting.

Political parties also play an important role in our system. Political parties of all stripes—and sizes—motivate voters, support candidates in the arena, and ensure that voters have a choice between competing visions for Iowa's success. But with that important power comes responsibilities—responsibilities to the party's members to get their preferred candidates on the ballot, and responsibilities to the State to make sure that its neutral and fair election laws are followed.

At the district court, Petitioners alleged that citizens and voters sticking up for neutral process and procedure were being bullies. And that timely complaints made about Petitioners' admitted failures to follow the law were unfair. Not so. While candidate options are fundamentally important in democracy, so too is the concept that all parties and candidates play by the same rules. Without options for different candidates, elections could not happen. But for those elections to be not only free, but fair, open, and transparent, everyone must follow the same set of rules. And in Iowa, when a candidate or party fails to follow the rules, a voter can object. That is what happened here. This is not bullying. It is democracy in action.

NATURE OF THE CASE

The State Objections Panel rules on voters' objections to candidates' compliance with Iowa's election laws. Last month, voters objected that Petitioners' nominations for three congressional races were legally insufficient because their party did not follow Iowa's candidate-nomination laws. In response, Petitioners admitted that their party did not comply with law and the Panel sustained the objections—removing the candidates from the ballot.

Petitioners sued, seeking judicial review of the Panel's decision. Rather than argue that the Panel erred by concluding that their party failed to follow candidate-nomination laws, Petitioners raised a bevy of arguments challenging the objectors' so-called standing and the Panel's power to sustain the objections, and asserting that the Panel was required to issue a written notice of a "technical violation" instead of removing them from the ballot and that its decision violated the First Amendment.

Despite the quick timeline, the district court issued a 12-page opinion thoroughly analyzing and rejecting each of Petitioners' arguments. It concluded that the voters met the statutory requirements to lodge their objections because they were eligible to vote for the candidates, that the Panel was not required to issue a written notice, and that the candidate-nomination laws did not violate the First Amendment.

This expedited appeal followed.

BACKGROUND ON CANDIDATE NOMINATION

In Iowa, political parties have multiple ways of getting their candidates on the ballot. Parties that have not been formally recognized by the State as major political parties can nominate candidates through a "convention or caucus of eligible electors" that meets certain size requirements, Iowa Code § 44.1(1), or by a petition with enough signatures, *id.* § 45.1(1). But if a party's candidate for president of the United States or governor receives at least two percent of the votes, the party can apply to be recognized by the State as an official "political party." Iowa Code § 43.2(1)(*b*) (defining "political party"); Iowa Admin. Code r. 721—21.10(1) (laying out the application process).

While it is easier for political parties' candidates to get on the ballot, they still must follow certain procedural requirements in nominating candidates. For non-presidential candidates, nomination typically starts with a candidate filing nomination papers that identify the candidate's political party and office she is seeking and must include a certain number of signatures from eligible voters. *Id.* § 43.11; *id.* § 43.14. An "affidavit of candidacy" must be filed along with the nomination papers, in which the candidate attest that she is eligible to run for office and makes other declarations. *Id.* § 43.18. Those nomination papers allow a candidate to appear on the party's primary ballot. *Id.* § 43.13 (failure to file nomination papers results in exclusion from primary ballot). At the primary elections in June, the candidate with the most votes becomes the

party's nominee and appears on the ballot in the general election (assuming the candidate meets the 35% threshold, *id.* § 43.52). *Id.* §§ 43.7, 43.53, 43.65. No further certificate is needed unless the candidate won the most votes via the write-in process. *Id.* § 43.67.

But if no candidate files to be on a party's primary ballot, and there is not a write-in winner, parties can nominate candidates to fill those vacancies through a caucus-and-convention process. *Id.* § 43.4(1); *id.* § 43.78(1)(*b*); *id.* § 43.77 ("A vacancy on the general election ballot exists when any political party lacks a candidate for an office to be filled at the general election because . . . no person filed under section 43.11 as a candidate for the party's nomination for that office in the primary election.").

The foundation of this process is precinct caucuses, where "[d]elegates to county conventions of political parties and party committee members shall be elected." *Id.* § 43.4(1). To ensure, in part, that there is no overlap in delegates' terms, the term of a delegate "begin[s] on the day following their election at the precinct caucus." *Id.* § 43.94. Following the precinct caucuses, the party must report the names "of those elected as . . . delegates" at precinct caucuses to the county auditor, who serves as the county commissioner of elections. *Id.* § 43.4(4); *id.* § 47.2(1) ("The county auditor of each county is designated as the county commissioner of elections in each county.").

After precinct caucuses comes county conventions. "The county convention shall be composed of delegates elected at the last preceding precinct caucus." *Id.* § 43.90. And after county conventions comes a statewide convention. *Id.* § 43.107.

When a party has a vacancy for a congressional candidate, the party may hold district conventions to nominate congressional candidates. *Id.* § 43.102; *id.* § 43.78(1)(*b*) (establishing procedures for filling vacancies for congressional candidates). These district conventions are made up of delegates elected at county conventions. *Id.* § 43.85 (requiring county conventions to "select[] delegates" to district conventions).

At the end of the caucus-and-convention nomination process, parties must issue a certificate of nomination for each candidate. *Id.* § 43.88(1) ("[n]ominations made by state, district, and county conventions, shall . . . be forthwith certified to the proper officer by the chairperson and secretary of the convention, or by the committee, as the case may be").

ARGUMENT

The district court rejected each of Petitioners' arguments. D0056, Ruling on Pet. for Judicial Review (09/07/2024).[1] The Panel also briefed its response to each of Petitioners' arguments in the district court. D0010, Rest. to Petitioners' Mot. for Temp. Inj. Relief (09/03/2024); D0037, Resp.

[1] All record citations in this brief are to the lead case in this consolidated action, Case No. CVCV067799, unless otherwise noted.

to Mot. for Temp. Inj. Relief (09/04/2024). This Court's order explained that it will rely on that briefing so the Panel does not repeat those arguments here. Instead, the Panel highlights three points to further support its argument that the Court should affirm.

I. The district court correctly concluded that the Panel had power to sustain objections to Petitioners' certificates of nomination.

Petitioners argued in the district court that the Panel cannot sustain objections to the legal sufficiency of their certificates of nomination. Their arguments fall into two buckets. The district court correctly determined that both fail.

First, although the first sentence of section 43.24(1)(*a*) allows for objections to the "legal sufficiency of a . . . certificate of nomination," Petitioners argued that the Panel's authority to sustain objections is limited to objections on the grounds mentioned in the second sentence of section 43.24(1)(*a*): objections to nomination petitions and the affidavit of candidacy. D0056 at 6–8.

The district court correctly identified the problem with Petitioners' argument: it renders meaningless the Legislature's choice to allow objectors to bring challenges to the "legal sufficiency of a . . . certificate of nomination." D0056 at 7; *see also* D0010 at 11–17. That is because the grounds in section 43.24(1)(*a*)'s second sentence relate to the initial paperwork candidates must file to run: nomination petitions and an

affidavit of candidacy. *See* Iowa Code § 43.24(1)(*a*) ("Objections relating to incorrect or incomplete information for information that is required under section 43.14 or 43.18 shall be sustained."); *id.* § 43.14 (relating to "nomination petitions"); *id.* § 43.18 (relating to "affidavits of candidacy").

If pre-nomination issues were the only grounds on which the Panel could sustain objections, then the language in the first sentence allowing objectors to bring challenges to the "legal sufficiency" of "certificates of nomination" would be superfluous. *Id.* § 43.24(1)(*a*). But that is not how the Legislature writes statutes. *Id.* § 4.4(2) ("The entire statute is intended to be effective").

Second, Petitioners argued that the objectors' challenge was not an objection to the "legal sufficiency of a . . . certificate of nomination" because those objections can only concern the "four corners" of a certificate of nomination. D0056 at 7.

The district court properly rejected that argument, too. It reasoned that "[t]he 'legal sufficiency' of any nominating document must necessarily involve something other than the content of that document," and thus "must include whether the proper procedures required under the law were followed in generating that document." D0056 at 7. Put differently, Petitioners' certificates of nomination are legally insufficient because they were prepared by a group of individuals that were not authorized to nominate Petitioners in the first place because the group lacked authority to act as delegates. *See* D0010 at 14–15.

Even if Petitioners were right that objections to the legal sufficiency of a certificate of nomination are limited to the four corners of a certificate of nomination, the objectors' challenge would still be proper. Petitioners' certificates of nomination each contain an attestation that "all of the appropriate delegates or committee people met and selected the candidate named above" at the party's state convention. Attachment to D0021, Certificate of Nomination—Gluba at 2 (09/03/2024); Attachment to D0021, Certificate of Nomination—Aldrich at 2 (09/03/2024); Attachment to D0047, Battaglia Cert. of Nomination at 1 (09/05/2024).

That certification is false because the Party did not hold a valid county convention. The caucus-goers who met immediately following the precinct caucuses were not yet "delegates," and with no delegates there can be no county convention. Iowa Code § 43.4(1) ("Delegates to county conventions of political parties and party committee members shall be elected at precinct caucuses."); *id.* § 43.94 ("The term of office of delegates to the county convention shall begin on the day following their election at the precinct caucus."); *id.* § 43.90 ("The county convention shall be composed of delegates elected at the last preceding precinct caucus.").

And because the Party did not hold a valid county convention, it could not have (A) elected delegates or committee people to the state convention, or (B) elected delegates to a district convention. *See id.* § 43.108 (stating that the convention's chair "shall present a list of delegates" and "[i]f any county is not fully represented, the delegates

present from that county shall cast the full vote of the county"); *id.* § 43.97(3) (providing that county conventions "[e]lect delegates to the next ensuing regular state convention"); *id.* § 43.85 (requiring county conventions to "select[] delegates" to district conventions).

Thus, the Party could not have had "appropriate delegates or committee people" vote on nominations. Attachment to D0021, Certificate of Nomination—Gluba at 2.

II. The district court correctly rejected Petitioners' First Amendment argument.

The district court's ruling explains why Petitioners' First Amendment argument fails, and the Panel's resistance lays out its rationale more fully. D0056 at 9–12; D0010 at 17–24. The Panel highlights two extra points: *first*, Petitioners have clarified that they do not assert that the law fixing delegates' terms violates the First Amendment, so the Court need not analyze whether that law violates the First Amendment; and *second*, the State has ample compelling interests for requiring delegates' terms to begin the day after precinct caucuses.

A. Petitioners do not assert that the law setting delegates' terms violates the First Amendment.

Petitioners first failed to allege a First Amendment claim. *See* D0010 at 18 (Panel arguing that "Petitioners' one-paragraph long First Amendment analysis is so vague that the Court need not address it"). In their final reply brief in the district court, Petitioners provided some

clarity by stating that they were not challenging the laws setting delegates' terms or requiring a county convention on First Amendment grounds. D0047, Petitioners' Reply Br. at 7, 9 (09/05/2024) ("Petitioners are not challenging the application of those statutes to the Party."). Rather, they explained their argument was that "their First Amendment Rights have been violated is due to the Objection Panel's *utilization* of Iowa Code Section 43.94 as the grounds to sustain an objection"—not that the law itself was unconstitutional. D0047 at 7 (emphasis added). In short, Petitioners do not challenge the State's candidate-nomination laws, just the Panel's decision to enforce them.

Given Petitioners' clarification, this Court need not analyze whether the laws setting delegates' terms or requiring a county convention violate the First Amendment. Resolving Petitioners' argument turns on a straightforward question: did the Panel violate the First Amendment by enforcing laws that Petitioners do not claim violate the First Amendment?

The answer is no, so this Court should reject Petitioners' First Amendment claim. After all, "limiting the choice of candidates to those who have complied with state election law requirements is the prototypical example of a regulation that, while it affects the right to vote, is eminently reasonable." *Burdick v. Takushi*, 504 U.S. 428, 440 n.10 (1992); *see also Hunter v. Hamilton Cnty. Bd. of Elections*, 635 F.3d 219, 244 (6th Cir. 2011) ("States are primarily responsible for regulating

federal, state, and local elections, and have a strong interest in their ability to enforce state election law requirements." (citations omitted)).

B. The State has ample compelling interests for requiring that delegates' terms begin the day after precinct caucuses.

The district court construed Petitioners' First Amendment challenge as an implied challenge to the State's candidate-nomination procedure and applied the sliding-scale *Anderson-Burdick* framework to reject the argument. D0056 at 9–12 (citing *Democratic Senatorial Campaign Comm. v. Pate*, 950 N.W.2d 1, 7 (Iowa 2020)).

The district court's analysis, identification of applicable standard, and application of that standard were all correct. "[T]here must be a substantial regulation of elections if they are to be fair and honest and if some sort of order, rather than chaos, is to accompany the democratic processes." *Anderson v. Celebrezze*, 460 U.S. 780, 788 (1983) (quotation marks omitted). And because "[a]ll election laws involve some burdens," *Democratic Senatorial Campaign Comm.*, 950 N.W.2d at 7, only those laws that impose "severe" burdens are subject to strict scrutiny, *Burdick v. Takushi*, 504 U.S. 428, 434 (1992). Otherwise, States' "important regulatory interests are generally sufficient to justify reasonable, nondiscriminatory restrictions." *Anderson*, 460 U.S. at 788.

The district court correctly concluded that the requirement that delegates' terms start on the day after precinct caucuses, Iowa Code

§ 43.94, "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." D0056 at 11–12. That conclusion is bolstered by rulings upholding timing requirements that impose much greater burdens on political parties and candidates. *See Clements v. Fashing*, 457 U.S. 957, 967 (1982) (plurality op.) (characterizing a requirement that a public official wait two years before running for office as imposing a "de minimis burden"); *Rosario v. Rockefeller,* 410 U.S. 752, 762 (1973) (upholding a statute requiring voters to enroll in a political party at least 30 days before the previous general election in order to vote in the next party primary); *Chimento v. Stark*, 414 U.S. 802 (1973) (summarily affirming a 7-year durational residency requirement to run for office). The Panel addressed the issue more thoroughly in its resistance as well. D0010 at 19–24.

Because the law establishing delegates' terms does not impose a severe burden, the State does not need to assert a compelling interest to justify it. *See Burdick*, 504 U.S. at 434. All that is required is a "legitimate interest." *Id.* at 440. Here, the State's interest in delegates' terms starting the day after precinct caucuses is both legitimate and compelling.

First, the requirement that delegates' terms "shall begin on the day following their election at the precinct caucus," Iowa Code § 43.94, ensures that delegates' terms do not overlap. That ensures orderly

elections and protects against intra-party conflict which might arise, for example, through dueling certificates of nomination presented by different sets of delegates. Delegates' terms must start and end at some point in time "if some sort of order, rather than chaos, is to accompany the democratic process." *Storer v. Brown*, 415 U.S. 724, 730 (1974) (explaining why "there must be a substantial regulation of elections"). And "[m]aintaining a stable political system is, unquestionably, a compelling state interest." *Eu v. San Francisco Cnty. Democratic Cent. Comm.*, 489 U.S. 214, 226 (1989).

Second, starting newly elected delegates' terms on the day following the precinct caucuses means that county conventions cannot be held on the same day as precinct caucuses. *See* Iowa Code § 43.4(1) ("Delegates to county conventions of political parties and party committee members shall be elected at precinct caucuses."). Staggering precinct caucuses and county conventions serves several compelling State interests. It ensures that a small group cannot take control of a party by holding precinct caucuses and county conventions back-to-back. The State has the "right to prevent distortion" of this type. *See Anderson*, 460 U.S. at 788.

Staggering precinct caucuses and county conventions also encourages open and transparent elections because it allows the party time to comply with the requirement that they "certify to the county commissioner the names of those elected as party committee members and delegates to the county convention." Iowa Code § 43.4(4). That

reporting requirement encourages transparency and election integrity by creating an audit trail. "A State indisputably has a compelling interest in preserving the integrity of its election process." *Eu*, 489 U.S. at 231.

Finally, staggering precinct caucuses and county conventions indirectly ensures that statewide political parties have at least a "modicum of support." *California Democratic Party v. Jones*, 530 U.S. 567, 572 (2000) ("[A] State may require parties to demonstrate 'a significant modicum of support' before allowing their candidates a place on that ballot." (citation omitted)). Requiring two separate meetings means a basic level of logistical competence and party support, and ensures political parties have the organizational capacity to take on the benefits and burdens of being recognized as a major political party. The United States Supreme Court's cases "establish with unmistakable clarity that States have an undoubted right to require candidates to make a preliminary showing of substantial support in order to qualify for a place on the ballot." *Munro v. Socialist Workers Party*, 479 U.S. 189, 194 (1986).

For these reasons, the district court correctly recognized that the State's interests were sufficient. D0056 at 12. At bottom, establishing a term of delegates is a commonplace, reasonable, and nondiscriminatory law that is supported by ample State interests. *See Anderson*, 460 U.S. at 788.

III. Petitioners forfeited any substantial compliance argument, but even if they did not, it fails on the merits.

If Petitioners argue for the first time on appeal that Chapter 43 contains an exception for candidates who substantially comply with the nomination requirements, this Court need not address the argument because Petitioners forfeited it. Even so, the argument fails on the merits.

A. Petitioners forfeited any substantial-compliance argument.

In the district court, Petitioners did not argue substantial compliance—even after the Panel pointed out that they had forfeited the argument by not raising it. In their initial petitions, Petitioners did not raise a substantial-compliance argument. *See* D0001, Gluba Pet. for Judicial Review (08/30/2024); D0001 (CVCV067800), Aldrich Pet. for Judicial Review (08/30/2024); D0001 (CVCV067804), Battaglia Pet. for Judicial Review (09/03/2024).

After the Panel asserted that Petitioners forfeited the argument in its resistance, Petitioners filed another brief in support of their injunction request. Again, they did not argue substantial compliance. D0010, Rest. to Petitioners' Mot. for Temp. Inj. Relief at 25 ("Nor may Petitioners backtrack to argue substantial compliance—an argument they forfeited by omitting from their brief here."); *see* D0021, Petitioners' Mem. of Authorities (09/03/2024).

The next day, in response to the district court's briefing order, Petitioners filed another brief. Once again, they did not raise the

argument or respond to the Panel's assertion that they had forfeited it. *See* D0029, Addt'l Mem. of Authorities (09/04/2024); D0046, Battaglia Joinder (09/04/2024). In response, the Panel once again pointed out that Petitioners had forfeited any substantial compliance argument. D0037 at 3.

This timeline shows that Petitioners forfeited any argument that their election-law violations are excused due to substantial compliance. Petitioners had to meaningfully advance the argument in the district court to preserve it, and they did not do so. *Cf. Taft v. Iowa Dist. Ct. ex rel. Linn Cnty.*, 828 N.W.2d 309, 322–23 (Iowa 2013) ("A party cannot preserve error for appeal by making only general reference to a constitutional provision in the district court and then seeking to develop the argument on appeal.").

To be sure, in their last reply brief in the district court, Petitioners did spend one paragraph on the argument. D0047 at 10. And the district court did consider and reject the argument in its ruling. D0056 at 8–9. But Petitioners' passing reference to the argument at the last minute—especially after failing to respond to the Panel's assertion that Petitioners forfeited it—is not enough to preserve the argument for appeal. *Cf. Taft*, 828 N.W.2d at 322–23.

B. Substantial compliance does not apply here.

Even so, the district court correctly concluded that substantial compliance is inapplicable here. D0056 at 8–9. The court recognized that

the requirement that delegates' terms start the day after precinct caucuses uses the word "shall," and that word is "generally associated with a statute being mandatory in nature." D0056 at 8; Iowa Code § 43.94 ("The term of office of delegates to the county convention *shall* begin on the day following their election at the precinct caucus, and shall continue for two years and until their successors are elected." (emphasis added)). The court determined that "[t]he requirement in Iowa Code §43.24 is therefore mandatory in nature and requires strict compliance." D0056 at 9. This was correct.

There is another reason why the district court got it right—a reason that appears in the text of Chapter 43. "The general rule is that, unless there is language allowing substantial compliance, election statutes are mandatory and must be strictly complied with." *State ex rel. Simonetti v. Summit County Bd. of Elections*, 85 N.E.3d 728, 734 (Ohio 2017); *see also Neal v. Bd. of Sup'rs, Clarke Cnty.*, 53 N.W.2d 147, 150 (Iowa 1952) ("[S]tatutory directions as to time and manner of giving notice of an election are mandatory and will be strictly upheld where the action is brought prior thereto.").

Chapter 43 itself shows that the Legislature knows how to write election laws that have substantial-compliance exceptions if it wants to. Section 43.14(1) states that nomination petitions "shall be eight and one-half by eleven inches in size and *in substantially the form prescribed* by the state commissioner of elections." Iowa Code § 43.14(1) (emphasis

added). Section 43.88(3) states that "[n]ominations certified to the proper official under this section shall be accompanied by an affidavit executed by the nominee in *substantially the form required* by section 43.67." Iowa Code § 43.88(3) (emphasis added); *see also Democratic Senatorial Campaign Comm.*, 950 N.W.2d at 7 n.7 (discussing a Colorado case in which the court "applied a substantial-compliance standard" because it appeared "in several Colorado statutes" (citing *Erickson v. Blair*, 670 P.2d 749, 754 (Colo. 1983) (en banc)).

If the Legislature intended for the delegate-timing rule to have a substantial-compliance exception, similar language would appear in section 43.94. A statute's "[m]eaning 'is expressed by omission as well as by inclusion, and the express mention of one thing implies the exclusion of others not so mentioned.'" *State v. Hall*, 969 N.W.2d 299, 309 (Iowa 2022) (quoting *Marcus v. Young*, 538 N.W.2d 285, 289 (Iowa 1995)). The Legislature's "conscious omission" of substantial-compliance language from section 43.94 is a clear expression that the requirement that delegates' terms start the day after precinct caucuses is mandatory. *See id.*

But even if this Court concludes that section 43.94 allows for substantial compliance, Petitioners' conduct does not meet that standard here. "Substantial compliance is 'compliance in respect to essential matters necessary to assure the reasonable objectives of the statute.'" *Burnam v. Bd. of Rev. of Davis Cnty.*, 501 N.W.2d 553, 554 (Iowa 1993)

(quoting *Superior/Ideal, Inc. v. Board of Review,* 419 N.W.2d 405, 407 (Iowa 1988)). Examples include "slight typographical error[s]" or "misdescription[s]," such as "Walnut Creek" instead of "North Walnut Creek." *Gorman v. City Dev. Bd.*, 565 N.W.2d 607, 611 (Iowa 1997) (collecting cases) (citations omitted).

By contrast, as the district court pointed out, the delegate timing requirement "is clearly a provision that goes to the essence of what a delegate can and cannot do," D0056 at 9—in other words an "essential matter" necessary to achieve the statute's objective of staggering the precinct caucus and county convention, *Burnam*, 501 N.W.2d at 554. Consider a newly elected United States Senate that meets 181 minutes before its term begins and confirms several judges. Though the Senate's actions were close in time to being legally valid, nobody would say that its conduct was excusable due to substantial compliance.

CONCLUSION

The judgment should be affirmed.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

This brief complies with the typeface requirements and type-volume limitation of Iowa Rs. App. P. 6.903(1)(*g*) and 6.903(1)(*i*)(1) because this brief has been prepared in a proportionally spaced typeface using Century Schoolbook in size 14 and contains 4,319 words, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(*i*)(1).

/s/Patrick C. Valencia
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CERTIFICATE OF FILING AND SERVICE

I hereby certify that on the 9th day of September, 2024, I, or a person acting on my behalf, filed this brief and served it on counsel of record to this appeal via EDMS.

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