**No. \_\_\_\_\_\_\_**

In the Supreme Court of the United States

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Republican Party of Nevada,

*Petitioner*,

v.

Ross Miller, Nevada Secretary of State,

in his Official Capacity,

*Respondent*,

and

Kingsley Edwards,

*Intervenor-Respondent.*

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

On Petition for Writ of Certiorari

to the U.S. Court of Appeals

for the Ninth Circuit

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**BRIEF OF *AMICUS CURIAE***

**AMERICA’S PARTY, CONSTITUTION PARTY, INDEPENDENT AMERICAN PARTY**

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**CORPORATE DISCLOSURE STATEMENT**

*Amici* America’s Party, Constitution Party, and Independent American Party have no parent corporation or stock.

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**INTEREST OF *AMICUS CURIAE[[1]](#footnote-1)***

The *Amici* in this case; America’s Party, Constitution Party, and Independent American Party, are all separate and distinct political parties with specific and detailed platforms, constitutions, missions, and membership. *See* Appendix. All *Amici* would be considered “third political parties” or “minor political parties” as they are not affiliated with either of the two major political parties (the Democratic and Republican parties).

These *Amici* have a clear and distinct interest in the disposition of this case. First, the Ninth Circuit panel’s decision severely curtails their ability to challenge allegedly improper ballot options. Third parties are directly affected by the addition of ballot options (such as the option of “None of these Candidates” as legislated by Nev. Rev. Stat. § 293.296), and can provide a unique and valuable perspective on the questions presented. Second, the Ninth Circuit panel’s decision raises new obstacles for third parties to challenge allegedly unconstitutional provisions of statutory schemes that have a direct and substantial impact on these parties and their candidates. Third, this case is the right vehicle for the court to review these important issues of standing given the serious impact that this ballot inclusion will have on third parties. The questions presented raise issues of national jurisprudential significance and the *Amici* respectfully encourage this Court to grant the petition and issue a writ of *certiorari* in this case.

**REASONS FOR GRANTING THE WRIT**

**INTRODUCTION**

“Standing doctrine involves a blend of constitutional requirements and prudential considerations.” *Vote Choice, Inc. v. DiStefano*, 4 F.3d 26, 36 (1st Cir. 1993) quoting *Valley Forge Christian College v. Americans United for Separation of Church and State, Inc.*, 454 U.S. 752, 471 (1982). In 2012, the Nevada Republican Party, through the doctrine of competitive standing, attempted to challenge the constitutionality of a Nevada statute, Nev. Rev. Stat. § 293.296. One provision of that statute requires the inclusion of a certain ballot option, “None of these Candidates,” in statewide elections and, in a second provision, mandates how votes for that option are to be counted. Under the current law, if “None of these Candidates” wins a majority of votes, the second highest vote-getter would be elected to the position. Nev. Rev. Stat. § 293.296(2).

The Nevada Republican Party argued that “None of these Candidates” essentially invalidates votes under the current statutory scheme. The Ninth Circuit erroneously held that the Nevada Republican Party lacked standing to challenge the statute’s constitutionality because it had not met the Article III standing requirements for each provision of the challenged statute. The Ninth Circuit’s ruling not only created a new split in the circuits regarding the applicability of the competitive standing doctrine, but also exacerbated an existing split regarding the standing requirements for challenging a provision of an inseverable statute.

Both of these issues directly affect the interests of political parties, especially third parties, who often challenge the constitutionality or application of election laws at both the federal and state level. The Ninth Circuit’s decision not only makes it far more difficult to challenge allegedly unconstitutional provisions of inseverable statutes—including many statutory schemes governing minor political parties and third-party candidates—but jeopardizes the ability of parties to gain standing under the oft-utilized doctrine of competitive standing.

**I. THE NINTH CIRCUIT ERRED**

**AND CREATED A CIRCUIT**

**SPLIT BY CURTAILING**

**COMPETITIVE STANDING.**

If this ruling is allowed to stand, third parties will be hindered in their ability to ensure that all elections are conducted fairly, and prevent the inclusion of illegal and/or unconstitutional ballot options, which could have the effect of siphoning voters from their candidates and causes. Section A explains how political parties regularly use the doctrine of competitive standing to challenge election laws, specifically those limiting or regulating ballot issues. Section B discusses the wide-reaching, national importance of ballot issues and what effect the Ninth Circuit’s ruling will have on the ability of third parties to challenge these issues.

Section C traces how the Ninth Circuit’s ruling in the underlying case has created a split in the circuits on this doctrine of standing, which is a fundamental issue of law, and could cause a great deal of uncertainty for third parties in the future. *See Texas Democratic Party v. Bensiker*, 459 F.3d 582, 587 (5th Cir. 2006); *Becker v. FEC*, 230 F.3d 381, 386-87 (1st Cir. 2000); *Schulz v. Williams*, 44 F.3d 48, 53 (2nd Cir. 1994); *Vote Choice, Inc.*, 4 F.3d at 36-37; *Fulani v. Hogsett*, 917 F.2d 1028, 1030 (7th Cir. 1990); *see also Hollander v. McCain*, 566 F.Supp.2d 63, 68 (D.N.H. 2008); *Comm. for a Unified Independent Party, Inc. et al. v. FEC*, 2001 WL 1218395 (S.D.N.Y. 2001); *see especially* *Shays v. FEC*, 414 F.3d 76, 86-87 (D.C. Cir. 2005) (this case represents the broadest understanding and application of competitive standing). The Ninth Circuit’s ruling severely restricts the prior understanding of this doctrine, thereby curtailing the ability of third parties, among others, to challenge the inclusion of potentially illegal and unconstitutional ballot options. *Id.*

**A. The Doctrine of Competitive Standing is of Particular Importance to Political Parties.**

The ability of political parties to assert standing under the competitive standing theory has a strong history and national, wide-reaching importance.[[2]](#footnote-2) “Under the doctrine of competitive advocate standing, parties have standing to assert federal claims even if they have not been directly injured, provided they can prove that another group has received a competitive advantage as a result of the alleged activity.” *New Alliance Party v. F.B.I.*, 858 F. Supp. 425, 432 (S.D.N.Y. 1994). In the First, Second, and Seventh Circuits, the courts have applied a broader and less restrictive interpretation of the doctrine of competitive standing to grant third parties standing.

In *Becker*, a third party presidential candidate, Ralph Nader, challenged the Federal Election Commission’s (FEC) regulations allowing corporate sponsorship of presidential debates. *See* 230 F.3d at 381. Nader claimed that these regulations put him at a distinct disadvantage and caused him an actual injury because he had made it part of his campaign platform not to accept any corporate funds. *Id.* at 385. The court held that:

[t]he FEC regulations Nader challenges allow the CPD [Commission on Presidential Debates] to accept corporate funds; the CPD’s acceptance of corporate funds in turn presents Nader with a choice of whether to participate in corporate-sponsored debates. Thus, but for the regulations, Nader would not be coerced to make the choice. Granted, the coercion wrought by the regulations is indirect, but that makes no difference; the choice is still fairly traceable to the regulations.

*Id.* at 387. Despite the fact that the relief sought by the plaintiffs was not directly related to the challenged regulations. *Id.* Therefore, Nader was granted standing under the doctrine of competitive standing.

In *Schulz*,the Second Circuit held that the Conservative Party had standing to challenge the constitutionality of a court’s decision to invalidate New York’s voter registration list statute and statutes regarding ballot access, thereby allowing the Libertarian Party’s candidates ballot access. *See* 44 F.3d at 48. The Conservative Party sought to intervene in this case asserting that “the improper placing of an additional party, in this case the Libertarian Party of New York, on the state-wide ballot for Governor could siphon away votes from the Conservative Party line and therefore adversely affect the interests of the Conservative Party.” *Id.* at 53. The court held that the “well-established concept of competitors’ standing applies here.” *Id.* at 53. The injury was sufficiently particularized and actual, as the challenged statute would lead to increased competition on the ballot and a resulting loss of votes for the Conservative Party. *Id.* Moreover, causation and redressability were easily satisfied by simply looking at whether the court’s decision to either bar or grant the third party ballot access would address the alleged injury, which the court determined it would. *Id.* This case demonstrates the broad application of the competitive standing doctrine, especially when satisfying the causation and redressability prongs.

In *Fulani*, a third party, the New Alliance, brought a challenge to the certification of the major party candidates and their subsequent inclusion on the ballot. *See* 917 F.2d at 1029. The Seventh Circuit held that the New Alliance had standing to challenge the certification. The inclusion of the major-party candidates on the ballot necessarily would harm the New Alliance by making it less likely that New Alliance candidates would win, and requiring the party to engage in additional campaigning and raise more funds. *See id.* at 1030. The court further held that this injury was sufficiently traceable to the Indiana Secretary of State’s decision to include the major party candidates on the ballot, and that a grant of damages and injunctive relief would redress the injury. *See id.* (“New Alliance’s injury is fairly traceable to the action of the Indiana officials who allowed the Democrats and Republicans on the ballot. A grant of damages would redress the increased outlay of campaign money to meet the competition, and declaratory relief would prevent future violation of Indiana certification law.”)*.*

In short, the Seventh Circuit held that New Alliance had competitive standing to challenge the inclusion of competing candidates on the ballot because, in their absence, the party’s candidates had a better chance of winning the election. *See* *id.*; *see also Committee for a Unified Independent Party, Inc.*, 2001 WL 1218395 (S.D.N.Y. 2001) (the District Court adopted a broad interpretation of the competitive standing doctrine, especially as to the causation and redressability prongs, holding that a “loss of competitive advantage” essentially satisfied all three standing requirements).

Finally, the DC Circuit has adopted the broadest definition of the competitive standing doctrine. In *Shays*, members of the House of Representatives sued the FEC asserting claims against the Bipartisan Campaign Reform Act. 414 F.3d at 86. In order to assert standing, the plaintiffs looked to how the proposed regulations would negatively impact the electoral environment. *See id.* In granting these parties standing, the D.C. Circuit held that the need to account for “additional rivals constitutes injury in fact” because of the added need to “account for additional practices….and additional campaign activity.” *See id.* “[A]dditional competitors and additional tactics…fundamentally alter the environment in which rival parties defend their concrete interests.” *See id.*

As to causation, the court rejected the FEC’s assertion that, because the “challenged rules merely permit conduct by others rather than restrict conduct” that the parties would undertake, there can be no harm. *Id.* at 92. The court, instead, found that there was sufficient causation as the challenged regulations would prohibit certain aspects of fair elections. *See id.* at 94. Lastly, it was undisputed that “where an agency rule causes the injury, as here, the redressability requirement may be satisfied by vacating the challenged rule.” *Id.* at 95. Overall, *Shays* demonstrates how broadly the competitive standing doctrine has been applied to grant parties the ability to challenge the certain statutes and regulations based on how those statutes and regulations will affect their prospects in electoral contests.

Similarly, major parties and candidates also rely on competitive standing to challenge the improper, illegal, or unconstitutional inclusion of choices on ballots. For example, in *Texas Democratic Party*, the state Democratic Party challenged the state Republican Party’s attempt to replace its nominee for Congress with a different, purportedly more popular, candidate. *See* 459 F.3d at 582. The court held that the Democratic Party had standing based on the potential injury it would suffer from having the replacement candidate on the ballot. *Id.* “Turning to causation and redressability, the [Republican Party]’s declaration of ineligibility and replacement of DeLay with a different candidate would be a but-for cause of the [Democratic Party] having to expend additional money on a new campaign strategy” and the sought injunction would redress this injury. *Id.* at 586. Again, as in the preceding cases, once a competitive disadvantage is shown, causation and redressability are satisfied if the desired relief would stop the competitive inequality.

These cases demonstrate how third parties, in particular, utilize competitive standing as a mechanism to challenge election laws, particularly those related to ballot options.

**B. Issues Regarding Election Ballots are of National Importance.**

Access to the ballot has traditionally been an issue challenged and litigated by third parties. *See* *Timmons v. Twin Cities Area New Party*, 520 U.S. 351, 351 (1997); *Green Party of Arkansas v. Martin*, 649 F.3d 675, 681 (8th Cir. 2011); *Libertarian Party of Ohio v.* Blackwell, 462 F.3d 579, 585 (6th Cir. 2006); Council *of Alternative Political Parties v. Hooks*, 179 F.3d 64, 70 (3rd Cir. 1999). Courts have regularly upheld the constitutional importance of ballot access rights when related to the ability of candidates and parties to achieve access to the ballot. *See* *Libertarian Party of New Hampshire v. Gardner*, 759 F.Supp.2d 215, 224 (D.N.H. 2010); *Libertarian Party of North Carolina v. State*, 365 N.C. 41, 49 (2011); *see also Libertarian Party of Michigan v. Johnson*, 905 F.Supp.2d 751, 758 (E.D.Mich. 2012) (candidate eligibility requirements implicate constitutional rights). Such rights are especially significant to third parties who often have to prove some modicum of support in order to achieve access to the ballot.

Maintaining access to the ballot and protecting the integrity of that ballot placement is of paramount importance to third parties. *See e.g.,* *Schulz,* 44 F.3d at 53; *Fulani*, 917 F.2d at 1030. These parties, who lack the resources and support of the two major political parties, are disproportionately affected by the addition of ballot options. As such, third parties have a distinct interest in their ability to achieve standing to challenge statutory schemes that purport to mandate the inclusion of potentially illegal and/or unconstitutional ballot options.

Moreover, courts have consistently recognized the public’s right to cast an effective vote. *See e.g. Libertarian Party of Ohio*, 462 F.3d at 585 (“The right to cast an effective vote is of the most fundamental significance under our constitutional structure.”) (internal quotations omitted)(citing other cases). “Though the right to vote is fundamental to our system of democracy, it is well-settled that the right to vote in any manner is not absolute.” *Libertarian Party of New Hampshire*, 759 F.Supp.2d at 224. The “None of these Candidates” statute essentially invalidate the effectiveness of the public’s vote, as votes cast for this option will be awarded to the second place finisher if “None of these Candidates” wins the election. Nev. Rev. Stat. § 293.296. By undercutting the value of these votes, the Nevada statute is in direct conflict with the well-established body of case law upholding the importance of a meaningful and effective vote. *See Libertarian Party of New Hampshire*, 759 F.Supp.2d at 224; *Libertarian Party of Ohio*, 462 F.3d at 585. Third parties have a distinct interest in maintaining and protecting the value of votes by challenging these allegedly unconstitutional statutes and preventing the inclusion of these types of ballot options.

Therefore, the constitutional importance of protecting and challenging ballot access laws and regulations is well established in election law jurisprudence. By curtailing the application of the doctrine of competitive standing, the Ninth Circuit has jeopardized the ability of these parties to assert their constitutional rights in the face of potentially illegal ballot access laws. Such a result could ultimately leave the administration of state and federal elections essentially unchecked.

**C. The Ninth Circuit’s Decision Creates an Untenable Split on the Doctrine of Competitive Standing.**

The Ninth Circuit in the underlying case, however, distinguishes away the consistent precedent supporting competitive standing, and established its own, new, stringent test—the strictest in the nation. It held that the Nevada Republican Party could not challenge the inclusion of “None of These Candidates” on the ballot because the party did not claim that such an alternative was inherently unconstitutional or illegal. Rather, the party wished to challenge the inclusion of that option on the ballot because an inseverable provision of state law barred the Secretary of State from giving such ballots any legal effect. *Townley*, 2013 WL3455671, \*5-6. The panel held that all prior competitive standing cases were distinguishable because the challenged statutes dealt with the inclusion of a candidate on the ballot. *Id.* This interpretation discounts the very real and significant impact that the inclusion of an allegedly improper, illegal, and/or unconstitutional ballot alternative would have on third parties and their candidates by potentially siphoning off votes from them and diluting their chances for success. This is the exact type of competitive disadvantage contemplated in the cases cited by the Ninth Circuit as “distinguishable.” *See Fulani*, 917 F.2d at 1029; *Schulz*, 44 F.3d at 52-53; *Texas Democratic Party*, 459 F.3d at 586.

The Ninth Circuit panel rejected the broad understanding of competitive standing that other circuits have recognized and applied. *See Texas Democratic Party*, 459 F.3d at 587; *Shays*, 414 F.3d at 86-87; *Becker*, 230 F.3d at 386-87; *Schulz*, 44 F.3d at 53; *Vote Choice, Inc.*, 4 F.3d at 36-37; *Fulani*, 917 F.2d at 1030; *see also Hollander*, 566 F.Supp.2d at 68; *Comm. for a Unified Independent Party, Inc. et al.*, 2001 WL 1218395. As applied in other Circuits, when a statute or regulation is found to create a competitive disadvantage, the causation and redressability prongs of standing are satisfied if enjoining the enforcement of the statute or regulation would halt the inclusion of the allegedly illegal ballot alternative. *See id.* Here, inclusion of “None of these Candidates” harmed the Nevada Republican Party—as well as third parties on the ballot—by creating an additional alternative against which those candidates must run. The removal of that alternative, which would be accomplished by enjoining the enforcement of the statute, would redress the competitive harm suffered by the Nevada Republican Party and Nevada’s third parties.

In general, the Ninth Circuit panel’s bizarre interpretation and application of *Lujan*’s causation and redressability dramatically limit the ability of political parties and candidates to adopt competitive standing, and is a break from other circuits. 504 U.S. at 560.

**II. THE NINTH CIRCUIT’S DECISION CREATES FURTHER UNCERTAINTY WITH REGARD TO THE ABILITY OF PARTIES TO CHALLENGE PARTS OF AN INSEVERABLE STATUTORY OR REGULATORY SCHEME.**

This Court also should grant *certiorari* to resolve the circuit split about whether plaintiffs may satisfy Article III’s requirements based on the inseverability of a statute’s provisions. This split has been exacerbated by the Ninth Circuit’s decision in the underlying case and seriously jeopardizes the ability of third parties to challenge multi-part election laws. This issue has broad consequences in nearly every area governed by statutes and regulations.

The Ninth Circuit panel examined each provision of Nev. Rev. Stat. § 293.296 in a vacuum. It held that the Party could not establish standing because it attempted to establish injury based on one subsection (which required the inclusion of “None of These Candidates” on the ballot), while attempting to satisfy causation and redressability based on a different subsection (which prohibits the State from counting ballots cast for that option). It ignored the Party’s repeated insistence that the statute was—and must be treated as—an inseverable whole. *Townley*, 2013 WL3455671, \*5-6. By requiring individuals and parties to establish all three elements of standing for each provision that it wishes to challenge of an allegedly unseverable statute or regulation, the panel’s decision slams the courthouse door in the faces of plaintiffs with substantively valid claims. *See* *id*.

**A. The Ninth Circuit’s Failure to Recognize the Consequences of a Statute’s Inseverability Deepens an Existing Circuit Split.**

The ability of parties to satisfy standing requirements based on the inseverability of a statute remains the subject of a circuit split, with two circuits expressly applying it, *see Local 514 Transportation Workers Union of America v. Keating*, 358 F.3d 743 (10th Cir. 2003); *Catholic Social Serv. v. Shalala*, 12 F.3d 1123, 1124 (D.C. Cir. 1994), and two circuits expressly rejecting it, *National Federation of the Blind of Texas, Inc. v. Abbott*, 647 F.3d 202 (5th Cir. 2011); *Townley*, 2013 WL3455671, \*5-6.

For example, the Tenth Circuit in *Local 514 Transportation Workers Union of America v. Keating*, 358 F.3d 743, 750 (10th Cir. 2003) and the D.C. Circuit in *Catholic Social Serv. v. Shalala*, 12 F.3d 1123, 1124-26 (D.C. Cir. 1994) both allowed plaintiffs to successfully establish standing when they sought to challenge one provision of a statutory scheme that injured them, based on constitutional or legal defects in a different, closely related and allegedly inseverable provision of that scheme. Both courts concluded that the plaintiffs had satisfied Article III because the inseverable statutory scheme must be viewed as a unified whole. *See* *Local 514 Transportation Workers Union of America*, 358 F.3d at 750; *Catholic Social Serv. v. Shalala*, 12 F.3d at 1125-26.

Conversely, the Fifth and now Ninth Circuits have expressly refused to perform a severability analysis when determining a plaintiff’s standing, and thereby ignoring the necessary consequences of severability for standing purposes. In *National Federation of the Blind of Texas, Inc. v. Abbott*, 647 F.3d 202 (5th Cir. 2011), the Fifth Circuit overturned the district court’s injunction against allegedly unconstitutional statutory provisions that did not directly injure the plaintiffs, but were inseverable from other provisions that did injure them. It explained:

[A] severability analysis should almost always be deferred until after the determination that the portion of a statute that a litigant has standing to challenge is unconstitutional.

*Id*. at 211 (citations and quotation marks omitted).

Thus, in *National Federation of the Blind*, 647 F.3d at 206; and the Ninth Circuit panel opinion, *Townley*, 2013 WL3455671, \*5-6; the Fifth and Ninth Circuits have held that a plaintiff must establish each element required for Article III standing—injury, causation, and redressability—for each provision of a statute that it wishes to challenge, even if such provisions are part of an allegedly inseverable statutory scheme.

**B. Election Law Statutory Schemes are Commonly Inseverable.**

Election laws at both the state and federal level are often made up of complex and interconnected provisions, which, taken together, create a statutory scheme or provision. *See e.g.,* *Natural Law Party of U.S. v. FEC*, 111 F.Supp.2d 33, 42 (D.D.C. 2000); *VoteChoice, Inc.*, 4 F.3d at 37; *Schulz*, 44 F.3d at 53. Courts, when addressing the standing of individuals or parties who are challenging such election law provisions, often look to whether the individual or party can establish the three elements of standing with regard to the statutory scheme, rather than each provision of the scheme. *See e.g.,* *Vote Choice, Inc.*, 4 F.3d at 37; *Schulz*, 44 F.3d at 53.

In *Vote Choice, Inc.*, the First Circuit, when assessing the standing of an unsuccessful Republican gubernatorial candidate to challenge certain provisions of Rhode Island’s campaign finance laws and their enforcement, looked at the challenged provisions “in the context of the whole statutory scheme.” *Id.* at 33 citing *Storer v. Brown*, 415 U.S. 724, 737 (1974) and other cases. The First Circuit did not require the candidate to establish all three prongs of standing for each challenged provision, but instead found that, because there was a proven competitive disadvantage that “can be traced directly to the state’s actions: the statutory provisions, and the Board’s implementation of them” then she had shown “the necessary causal connection between the injury alleged and the relief requested.” *Id.* at 37; *see also* *Natural Law Party of U.S.*,111 F.Supp.2d at 42 (the court looked at the totality of the regulation when determining whether the plaintiff party had established standing, rather than at each provision).

To require parties to establish all three elements of standing for every challenged provision would lead to a severe limitation on standing, and irrational statutory results. Parties are not necessarily going to be able to establish standing for each and every interrelated and interconnected provision of each challenged statutory provision, therefore, they, like the Nevada Republican Party, may not be able to bring important constitutional challenges to allegedly illegal provisions. Such a stringent standing requirement would seriously limit the ability of parties to bring cases. Even if a party is able to satisfy these standing requirements and succeeds in invalidating a provision, the remaining interconnected and interrelated provisions will remain, which could lead to nonsensical results. This Court should grant *certiorari* to resolve this issue of standing, especially as it is most applicable to challenges to complex, multi-part statutory schemes, such as the election laws commonly challenged by third parties.

**III. THIS CASE IS THE BEST VEHICLE FOR THE COURT TO RESOLVE THESE FUNDAMENTAL ISSUES OF STANDING.**

This case is the proper and most effective vehicle for the court to decide these vital issues of standing. The challenged Nevada statutory scheme is a perfect example of the types of laws that political parties must have the ability to challenge in order to maintain some form of checks and balances on the administration of both the state and federal elections. Without the doctrine of competitive standing, these parties would not have the ability to challenge these laws, which would leave the administration of elections essentially unchecked.

This case deals directly with the fundamental right to vote. The right to cast an effective vote “is of the most fundamental significance under our constitutional structure.” *Burdick v. Takushi*, 504 U.S. 428, 433 (1992). The Nevada statute in question undermines the value of Nevada voters’ votes for “None of these Candidates,” rendering such votes essentially worthless as they will be counted for the second-place candidate. This is an issue of national and constitutional importance, and warrants judicial review. Such a statutory scheme seriously jeopardizes the right to cast an effective ballot and third parties, who will be disproportionately affected by the inclusion of this allegedly illegal ballot option, should have the ability to challenge this potentially unconstitutional statute.

If left standing, “None of these Candidates” threatens to illegally and impermissibly siphon away votes from third parties and their candidates. Notwithstanding the way “None of these Candidates” impermissibly invalidates votes, it also has the potential to create a significant and inequitable competitive disadvantage for third parties and their candidates who stand to lose votes to this ballot alternative. Such a scenario directly mirrors the cases discussed above where political parties and candidates were granted standing to challenge the inclusion of other candidates and parties. *See Fulani*, 917 F.2d at 1029; *Schulz*, 44 F.3d at 52-53; *Texas Democratic Party*, 459 F.3d at 586. By barring the Nevada Republican Party from asserting standing to challenge “None of these Candidates,” it and other political parties face a significant disadvantage in the electoral contests that will remain unaddressed with no potential remedy.

Moreover, election statutory and regulatory schemes are notoriously interconnected and complicated. To require plaintiff political parties to assert all three elements of standing for each and every challenged statutory and/or regulatory provision would effectively suffocate the ability of parties to challenge such schemes.

Further, if single provisions are invalidated, the remaining provisions are often rendered ineffective as the scheme is only effective with all its parts. For example, in the present case, if the provision that essentially invalidates the effect of votes cast for “None of these Candidates” is determined to be unconstitutional, there would be a remaining provision requiring the placement of this option on the ballot, with no guidance as to what would happen if that option received a plurality or majority of the vote. Such a result is nonsensical. These two provisions are meant to be read together and in tandem, as are most election statutes and regulations.

Overall, the Court should grant *certiorari* in this case because it will give the Court the opportunity to resolve serious questions relating to fundamental issues of standing. If the Court chooses not to resolve these issues, the split in the circuits will most certainly deepen and the uncertainties and limitations on the ability of parties and other individuals to challenge the constitutionality of statutes and regulations will be exacerbated.

**CONCLUSION**

For these reasons, the *Amici* urge this Court to grant the petition and issue a writ of *certiorari* in this case.

Respectfully submitted,

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**APPENDIX**

Below is a brief description of each *amici* with reference to their individual websites, which contain substantially more information.

1. America’s Party

<http://www.selfgovernment.us/>

America’s Party, originally known as the America’s Independent Party, was founded in August of 2008.

In its platform, America’s Party seeks a “return of our nation to a set of foundational principles.” In an effort to change the American political culture, America’s Party does not accept financial contributions. America’s Party does not affiliate with either the National Republican or Democratic Party.

1. Constitution Party

<http://www.constitutionparty.com/>

The Constitution Party was founded in 1992 and claims to be the fastest growing political party in terms of voter registration.

The Constitution Party ascribes to the following seven principles:

* Life: For all human beings, from conception to natural death;
* Liberty: Freedom of conscience and actions for the self-governed individual;
* Family: One husband and one wife with their children as divinely instituted;
* Property: Each individual's right to own and steward personal property without government burden;
* Constitution And Bill Of Rights: interpreted according to the actual intent of the founding fathers;
* State's Rights: Everything not specifically delegated by the Constitution to the federal government, nor prohibited by the Constitution to the states, is reserved to the states or to the people.
* American Sovereignty: American government committed to the protection of the borders, trade, and common defense of Americans, and not entangled in foreign alliances.

1. Independent American Party

<http://www.independentamericanparty.org/>

Originally founded as the Utah Independent American Party in 1993, the national Independent American Party was formed in 1998. The party ascribes to the following principles:

* To uphold and revere our Constitution in the tradition of our Founding Fathers as the only and supreme law of this land.
* To restore our Constitutional Republic, restore Constitutional Law, and restore all rights, liberties, and properties rightfully belonging to the people and to the states.
* To identify and reverse legislation, case law, regulations, and treaties, etc., that are unconstitutional or an offense to God and our Founding Fathers.
* To permanently restore American sovereignty and independence from foreign entanglements, and mandates.
* To return the control of government back to the people as intended.
* To greatly minimize taxes, and to limit the size, power, and function of government to the intended constraints established within the original Constitution and Bill of Rights.
* To advance the principles of freedom, patriotism, and traditional family values.
* To preserve and honor our Judeo-Christian heritage, and the rights of all religions.
* To identify and defeat all efforts to undermine and overthrow the Constitution.
* To achieve at all levels in government, superior ethics, integrity and accountability.
* To restore fair and responsible redress of grievances, as allowed in the Constitution.
* To unite the independent votes, the silent majority, grassroots organizations, and other patriots and lovers of liberty under one umbrella, while keeping our separate identities, standing united as sovereign people.

1. No party has contributed, monetarily or otherwise, to the preparation or filing of this brief, which was authored entirely by counsel for *Amicus*. Copies of consents of all parties to the filing of this brief are filed with the Clerk of this Court. [↑](#footnote-ref-1)
2. Pursuant to *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992), a plaintiff must establish three elements to have Article III standing to challenge a statute’s constitutionality. Those elements are: (1) that the plaintiff has suffered an “injury-in-fact”; (2) that the injury is fairly traceable to the challenged provision (commonly known as “causation”); and (3) that a favorable decision likely will redress the plaintiff’s injury (commonly known as “redressability”). *Id.* [↑](#footnote-ref-2)