

No. _____

In the Supreme Court of the United States

COLORADO REPUBLICAN STATE CENTRAL COMMITTEE,
Petitioner,

v.

NORMA ANDERSON, ET AL.,
Respondents.

On Petition for Writ of Certiorari to the
Supreme Court of Colorado

**MOTION TO EXPEDITE CONSIDERATION
OF THE PETITION FOR A WRIT OF CERTIORARI,
AND TO EXPEDITE MERITS BRIEFING AND ORAL
ARGUMENT IN THE EVENT THAT
THE COURT GRANTS THE PETITION**

Pursuant to Supreme Court Rule 21, the Colorado Republican State Central Committee (“Colorado Republican Party” or the “Party”) respectfully moves for the expedited consideration of its petition for a writ of certiorari to the Supreme Court of Colorado, filed simultaneously with this motion today.

A divided (4-3) Colorado Supreme Court held that it possesses authority, regardless of the lack of congressional authorization, to determine that a presidential candidate is disqualified under Section Three of the Fourteenth Amendment, and that former President Donald J. Trump is disqualified as an insurrectionist. The decision below poses a severe, immediate, and ongoing threat to the First Amendment associational rights of the Colorado Republican Party and, indeed, the electoral

process throughout the country. This is so even though the Colorado Supreme Court stayed its opinion effective upon the filing of the petition, because that Court majority's opinion has cast a shadow over one of the Colorado Republican Party's chosen candidates – the leading candidate – with obvious national implications.

Under the standard briefing schedules provided by this Court's rules, the case would not be argued and decided until well into 2024. Meanwhile, 2024 is a presidential election year, with the first primary elections and party caucuses scheduled to take place in January and more than half of the state primary elections to be concluded by the end of Super Tuesday on March 5, 2024.¹ If this matter is not resolved expeditiously, the Party, voters, and state Republican parties across the nation, will face profound uncertainty and the electoral process will be irrevocably damaged. Therefore, the Colorado Republican Party respectfully requests that this Court expedite its consideration of its petition for certiorari.

Should the Court grant the petition for certiorari, the Colorado Republican Party further requests that the Court set a briefing and argument schedule that permits the Court to resolve the case before March 5, 2024, Super Tuesday. Or, in the alternative, if that schedule is not viable, we request that the case be decided within this Term.

¹ The Iowa caucuses are January 15, 2024, and the New Hampshire primary election is January 23, 2024. *2024 Presidential Primary Dates and Candidate Filing Deadlines for Ballot Access*, Federal Election Commission (Dec. 15, 2023), <https://www.fec.gov/resources/cms-content/documents/2024pdates.pdf>.

STATEMENT

In September 2023, six Colorado electors filed a verified petition against Colorado Secretary of State Jena Griswold and President Trump in the Denver District Court. The electors sought an order under Colorado Revised Statute section 1-4-1204 declaring President Trump constitutionally disqualified from the presidency and directing the Colorado Secretary of State to exclude his name from the 2024 primary and general election ballots. The Colorado Republican Party intervened in Denver District Court with several claims:

- (1) The relief sought violates the Party's First Amendment Rights;
- (2) Section Three of the Fourteenth Amendment is not self-executing such that a state disqualification proceeding would lie, and Section Three does not apply to the President; and,
- (3) The Colorado Election Code does not allow for the Secretary of State to determine constitutional qualifications. The Party also adopted President Trump's motions to dismiss which made similar constitutional arguments regarding the Fourteenth Amendment. However, the Party uniquely argued the First Amendment associational rights claim.

An evidentiary hearing was held October 30 through November 3 during which the district court addressed all remaining issues, including whether President Trump engaged in an insurrection and could or would be disqualified from office.

The district court entered its final order on November 17, 2023, and ruled that President Trump is not within the class of persons disqualifiable under the Fourteenth Amendment. Specifically, the district court held that the President of the United States is not one of the "Officers of the United States" described in Section

Three of the Fourteenth Amendment. This holding, according to the district court, was premised on the absence of the President from the list of positions to which the Section applies along with the difference between the specified disqualifying oath and the President's oath. The court accordingly ordered the Colorado Secretary of State to place President Trump on the presidential primary ballot.

Despite this dispositive ruling on the law in favor of President Trump, the district court nevertheless also purported to make a factual finding that President Trump engaged in an insurrection.

Electors sought review by the Supreme Court of Colorado on November 20, 2023, and oral arguments were held on December 6, 2023. On December 19, 2023, the Colorado Supreme Court issued its judgment affirming in part and reversing in part the District Court's order in *Anderson v. Griswold*, No. 2023CV32577, 2023 Colo. Dist. LEXIS 362 (Colo. Dist. Ct. November 17, 2023). The Colorado Supreme Court held that "states have the constitutional power to assess presidential qualifications," that Colorado law authorizes such challenges and rulings, and that Section Three of the Fourteenth Amendment imposes such a qualification regarding insurrections. Reversing the district court, the Colorado Supreme Court held that Section Three does apply to the Office of the President.

The Colorado Supreme Court overruled the district court by ruling that Section Three of the Fourteenth applies to the President. In reaching that conclusion, the Colorado Supreme Court held (1) the presidency is an office under the United

States; (2) the president is an officer of the United States; (3) the presidential oath is an oath to support the constitution. Further, the Colorado Supreme Court ruled that Section Three of the Fourteenth Amendment is self-executing. Specifically, the court held that Congress need not pass implementing legislation for the disqualification provision to attach.

In addition, the Colorado Supreme Court held that the Colorado Republican Party's First Amendment rights were not violated by excluding from the primary ballot a candidate the state determined, through its courts, to be disqualified.

Finally, the Colorado Supreme Court affirmed the trial court's factual findings and legal conclusions that President Trump had engaged in insurrection and so was disqualified from the primary ballot.

The state supreme court stayed its order facilitate review in this Court:

[W]e stay our ruling until January 4, 2024 (the day before the Secretary's deadline to certify the content of the presidential primary ballot). If review is sought in the Supreme Court before the stay expires, it shall remain in place, and the Secretary will continue to be required to include President Trump's name on the 2024 presidential primary ballot until the receipt of any order or mandate from the Supreme Court.

Pet. App. 224a. Three justices dissented, arguing that the Colorado Supreme Court lacked jurisdiction to decide this insurrection challenge. The Party's petition for certiorari followed, and this motion to expedite was filed to address the electoral havoc in Colorado and throughout the nation.

ARGUMENT

For the first time in American history, a former President has been disqualified from the ballot, a political party has been denied the opportunity to put forward the presidential candidate of its choice, and the voters have been denied the ability to choose their Chief Executive through the electoral process. This unprecedented decision urgently merits this Court’s review to prevent “the potential chaos wrought by an imprudent, unconstitutional, and standardless system in which each state gets to adjudicate Section Three disqualification cases on an ad hoc basis. Surely, this enlargement of state power is antithetical to the framers’ intent.” Pet. App. 316a (Samour, J., dissenting).

By excluding President Trump from the ballot, the Colorado Supreme Court engaged in an unprecedented usurpation of the rights of the people to choose their elected officials. The drastic effects of the Colorado Supreme Court’s decision and the mischief it works upon the 2024 primary election – with national implications – necessitate this Court’s immediate review. The prompt hearing of this case is necessary to prevent the Colorado Supreme Court’s decision from having an irreparable effect on the electoral process.

The Colorado Supreme Court’s decision misapplied or ignored this Court’s precedent in a host of ways. As most relevant here, it failed to apply precedent repeatedly holding that the Fourteenth Amendment is not a self-executing sword, *see, e.g., Ownbey v. Morgan*, 256 U.S. 94, 112 (1921), precedent establishing the First

Amendment rights of political parties, and precedent that the President is not an “officer of the United States,” *see, e.g., United States v. Mouat*, 124 U.S. 303, 307 (1888).

It is the radical effects of the Court’s decision that particularly necessitate this Court’s immediate review. The Colorado Supreme Court has decided “to bar former President Donald J. Trump (‘President Trump’)—by all accounts the current leading Republican presidential candidate (and reportedly the current leading overall presidential candidate)—from Colorado’s presidential primary ballot.” Pet. App. 244a (Samour, J., dissenting). Rejecting a long history of precedent, a state’s highest court has now concluded that individual litigants, state courts, and state election officials in all 50 states plus the District of Columbia possess legal authority to enforce Section Three of the Fourteenth Amendment to remove presidential candidates. With the number of challenges now pending in other states, ranging from lawsuits to administrative proceedings, there is a real risk the Colorado Supreme Court majority’s flawed and unprecedented analysis will be borrowed, and the resulting grave legal error repeated. The Colorado Republican Party respectfully urges this Court to put a stop to this undemocratic injustice immediately.

The district court was correct that any doubts regarding these interpretative questions should be resolved in favor of the democratic process. The Colorado Republican Party seeks expedited review because, if the Colorado Supreme Court majority’s decision is not reviewed and overturned immediately, the decision will

itself damage the democratic process in ways that cannot be undone. The decision looms over not just Colorado, but the entire nation.

The risk is not conjecture. The very purpose of the legal challenges in this case, and the others, is to interfere with an election. The Colorado Supreme Court majority made that goal a reality. If not corrected, the uncertainty caused by the judgment below will result in a nationwide distortion of the 2024 presidential election process, as voters decide not to vote in the primary election, think twice about voting or caucusing for a candidate who may not be allowed to appear on a general election ballot, or in frustration, decline to participate in the process at all. The Colorado Supreme Court's decision concerning Section Three of the Fourteenth Amendment needs to be reviewed and reversed now to avoid further erosion and confusion in the electoral process.

CONCLUSION

For these reasons, the Colorado Republican Party respectfully requests that the Court expedite consideration of its petition for certiorari and distribute the petition for consideration by the Court at its earliest conference. If the Court grants the petition, the Colorado Republican Party requests that the Court set an expedited briefing and oral argument schedule that permits the Court to hear this case before

Super Tuesday, March 5, 2024, or in the alternative during this Term.

Respectfully submitted,

MICHAEL W. MELITO
MELITO LAW LLC
ROBERT A. KITSMILLER
PODOLL & PODOLL, P.C.

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

CHRISTINA A. COMPAGNONE
OLIVIA F. SUMMERS
GARRETT A. TAYLOR
AMERICAN CENTER FOR
LAW & JUSTICE

[REDACTED]
[REDACTED]
[REDACTED]

JAY ALAN SEKULOW
Counsel of Record
JORDAN A. SEKULOW
STUART J. ROTH
ANDREW J. EKONOMOU
JANE SERENE RASKIN
WALTER M. WEBER
BENJAMIN P. SISNEY
NATHAN MOELKER
AMERICAN CENTER FOR
LAW & JUSTICE

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Counsel for Petitioner-Movant

December 27, 2023