No. 23-719

In the Supreme Court of the United States

DONALD J. TRUMP,

Petitioner,

v.

NORMA ANDERSON, ET AL.,

Respondents.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF COLORADO

AMICUS BRIEF OF CHRISTIAN FAMILY COALITION (CFC) FLORIDA, INC., A FLORIDA NOT-FOR-PROFIT CORPORATION, IN SUPPORT OF PETITIONER

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INTEREST OF AMICUS[1]

The Christian Family Coalition (CFC) Florida, Inc. ("Amicus"), hereby submits its Amicus Brief in support of Petitioner and the reversal of the decision of the Colorado Supreme Court barring President Trump from the presidential ballot.

Amicus, a non-profit corporation, is a human rights and social justice advocacy organization representing over 500,000 fair-minded voters. Amicus actively seeks to protect human rights and social justice in litigation and political forums. The performance of Amicus's function in legislative and executive forums depends upon the responsiveness of the political process and, in turn, upon the integrity and fairness of the elections by which legislators and executive officials are elected, including most prominently the President of the United States. The fair and responsive election of the President depends upon popular choice and upon the will of the electorate, without restrictions imposed by State officials or courts which artificially remove presidential candidates from the ballot based upon strained concepts of an "insurrection" or "rebellion" against the United States. The ability of the electorate to choose its favored presidential candidate is indispensible to the integrity and responsiveness of

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[1] No counsel or other representative or agent of any party in this case authored any part of this Amicus Brief or exercised any form of control or approval over this Amicus Brief or any portion of it. No person or entity, aside from Amicus or its counsel, made a monetary contribution to the preparation or submission of this Amicus Brief.

presidential elections and thus to the responsiveness of the overall political processes upon which Amicus depends to protect human rights and social justice.

SUMMARY OF ARGUMENT

Putting aside the dubiousness of characterizing as an "insurrection" the unruly break-in at the Capitol which lasted 2-3 hours, there are four fundamental reasons why this Court should reverse the decision of the Colorado Supreme Court. First, the text of the Fourteenth Amendment and precedent under it indicate a textually demonstrable constitutional commitment to Congress alone to set procedures for ballot disqualification under the Fourteenth Amendment. Congress has prescribed only criminal prosecution under 18 U.S.C. § 2383 to trigger this disqualification. Section 2383 has not been invoked against President Trump.

Second, there is an inherent need for nation-wide uniformity in the standards and procedures available to trigger candidate disqualification under the Fourteenth Amendment. Candidates for Congress often move across State lines to enhance their electability, and presidential candidates of necessity appear on multiple State ballots. The essential uniformity in defining an "insurrection" or "rebellion" and in the procedures used to apply these terms can only come from legislation enacted by Congress.

Third, the concept of an "insurrection" or "rebellion" against the United States necessarily involves an examination of the functions of the federal government to determine how or whether these functions have been impaired. Yet, the functions of

the federal government are not subject to State control or definition. State-by-State determination of the functions of the federal government equates to a form of State control which is simply not permissible. Congressionally prescribed procedures and standards are the only permissible alternative.

Finally, the potential mischief and overreach of permitting States to use their own procedures and standards to define an "insurrection" raises the ominous specter of non-mutual offensive collateral estoppel and endless litigation over it. The potential for a single State Judge to preclude nation-wide popular voting for a presidential candidate is simply mind-boggling and inherently inconsistent with our democratic values.

This Court should reverse the decision of the Colorado Supreme Court and should remand with directions to dismiss the complaint.

ARGUMENT

There are four fundamental reasons why this Court should reverse the decision of the Colorado Supreme Court.

I. The Text of Section 3 of the Fourteenth Amendment and Precedent Under It Indicate a Demonstrable Constitutional Commitment to Congress Alone to Set the Procedures and Standards for Ballot Disqualification

Section 3 of the Fourteenth Amendment reads:

> "No person shall be a Senator or Representative in Congress, or elector of

> President and Vice-President, or hold any office, civil or military, under the United States or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may, by a vote of two-thirds of each House, remove such disability."

U.S. Const. Amend. XIV, § 3

The text of Section 3 logically indicates a commitment to Congressional determination of how the section will be applied and of the standards and procedures to be used for that purpose. There is no automatic definition of "insurrection" or "rebellion" and no automatic well-defined notion of what a person needs to do to "engage in" one or the other. Someone or some entity needs to define these terms and to define the procedures and standards to be used for that purpose. Congress alone is the most obvious choice not only because of its express power under Section 5 of the Fourteenth Amendment to enforce it but more specifically because of its express and exclusive power under the last sentence of Section 3 to "remove such disability." If, as the last sentence of Section 3 provides, Congress alone has the power to remove "such disability," it must be Congress alone which decides in the first place whether the disability

exists and what the procedures and standards are for its determination. There is no other logical application of the terms of Section 3.

Time-worn precedent supports this view. In *Griffin's Case,* 11 Fed. Case 7 (C.C.D. Va. 1869) (Case No. 5,815), the then Chief Justice Chase sitting in Circuit reached the same conclusion – that the text of the Fourteenth Amendment compels the view that Congress alone must set the standards and procedures for determining whether an "insurrection" or "rebellion" existed and whether a person "engage[d] in" one or the other. Chief Justice Chase wrote:

> "For in the very nature of things, it must be ascertained what particular individuals are embraced by the definition, before any sentence of exclusion can be made to operate. To accomplish this ascertainment and ensure effective results, proceedings, evidence, decisions, and enforcement of decisions, more or less formal, are indispensable; and ***these can only be provided for by Congress***….
>
> "[T]he final clause of the third section itself is significant. It gives Congress absolute control of the whole operation of the Amendment. These are its words: 'But Congress may, by a vote of two-thirds of each House, remove such disability.' Taking the third section then, in its completeness with this final clause, it seems to put beyond reasonable question the conclusion that the

> intention … was to create a disability to be removed in proper cases by a two-thirds vote, and ***to be made operative in other cases by the legislation of Congress in its ordinary course***."

Id., at 26 (emp.added).

The only Congressional legislation currently in effect to enforce Section 3 of the Fourteenth Amendment is 18 U.S.C. § 2383. It provides for criminal prosecution in cases of insurrection or rebellion against the United States. But Petitioner President Trump has never been charged with or convicted of any such crime. Nor has the Special Prosecutor dealing with the January 6 events ever sought or obtained an indictment against him under 18 U.S.C. § 2383. It is patently clear that Section 3 of the Fourteenth Amendment may not be used to exclude President Trump from the presidential ballot or office.

II. The Inherent Interests in National Uniformity, When Dealing With the Application of Federal Law to the President, Require a Uniform National Standard and Uniform National Procedures to Address Qualifications Under Federal Law for Presidential Ballot Access and Office Holding

In addition to the textually demonstrable constitutional commitment of Section 3 issues to Congress (pp.3-6 *supra*), the inherent interests in national uniformity, when dealing with the application of federal law to the President and to

presidential ballot access, preclude State intervention in this vital area. It is difficult to imagine a more disruptive and more confusing electoral quagmire than 51 separate standards and procedures for addressing the application of federal law (such as Section 3) to presidential qualifications and ballot access. While States may retain power to determine the manner of selecting presidential electors in their respective jurisdictions (U.S.Const. Article II, Section 1, Clause 2), federal law must remain supreme and uniform especially as to the President and his qualifications for office. *Cf. Powell v. McCormick,* 395 U.S. 486, 521-522 (1969) (uniform constitutional standards for seating members of Congress).

Congress alone has the power to enact uniform standards to implement Section 3 of the Fourteenth Amendment. It has not done so in any way which would exclude President Trump from the presidential ballot or office. As already discussed, 18 U.S.C. § 2383 has never been applied against President Trump. The decision of the Colorado Supreme Court should be reversed.

III. Varying State Definitions of What Constitutes an "Insurrection" or "Rebellion" Against the United States Are Tantamount to Varying State Definitions and Control Over the Federal Government Which is Constitutionally Impermissible

The concept of an "insurrection" or "rebellion" against the United States necessarily involves an examination of the functions of the federal government to determine how or whether these functions have been impaired or threatened. State-by-

State determination of the functions of the federal government equates to a form of State definition and control which is simply not permissible. Congressionally prescribed procedures and standards are the only permissible alternative. *Clinton v. Jones,* 520 U.S. 681, 691n.13 (1997) ("Because [of] the Supremacy Clause … any direct control by a state court over the President … may implicate concerns that are quite different from the inter-branch separation-of-powers questions");[2] *Johnson v. Maryland,* 254 U.S. 51 (1920) (State may not require U.S. Post Office mail-truck driver to obtain State driver's license); *Osborn v. Bank of United States,* 22 U.S. 738, 867-68 (1824) (State may not control or tax an entity of the federal government); *M'Culloch v. Maryland,* 17 U.S. 316, 429-30 (1819) (same).

IV. The Disastrous Potential For a Single State Judge to Trigger Non-Mutual Offensive Collateral Estoppel Against a Nation-Wide Presidential Candidacy is Inherently Contrary to Our Democratic Values and Counsels Reversal of the Decision of the Colorado Supreme Court

Non-mutual offensive collateral estoppel is a feature of federal law and is permitted under the Due Process Clause, subject to equitable limitations. *Park Lane Hosiery, Inc. v. Shore,* 439 U.S. 322, 331-335 (1979). The specter that a single State judge, applying

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[2] This Court in *Clinton v. Jones* expressly declined to decide whether a State court action could proceed against the President, 520 U.S. at 691, while strongly intimating that it may not. *Id.,* at 691n.13.

his/her own view of the Fourteenth Amendment, may trigger a nation-wide bar against a presidential candidacy through the use of non-mutual offensive collateral estoppel is mind-boggling and disastrous in the extreme. It is fundamentally inconsistent with the concepts of democratic popular election of the President and with limitations on State power. It is a recipe for constitutional disaster and social disorder. It places an additional premium on committing the application of Section 3 of the Fourteenth Amendment to Congress alone. Only Congress can set carefully considered uniform nation-wide standards and procedures to implement its provisions. There is no such Congressional enactment that has been invoked against President Trump.

CONCLUSION

This Court should reverse the decision of the Colorado Supreme Court and should remand the cause with directions to dismiss the complaint.

Respectfully submitted,

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Date: January 18, 2024