

No. 23-696

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IN THE  
**Supreme Court of the United States**

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COLORADO REPUBLICAN STATE CENTRAL COMMITTEE,  
*Petitioner,*  
v.  
NORMA ANDERSON *et al.*,  
*Respondents.*

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

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**BRIEF *AMICUS CURIAE* OF BRIAN J. MARTIN  
IN SUPPORT OF ISSUANCE OF  
WRIT OF CERTIORARI**

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WRIT OF CERTIORARI**

Brian J. Martin respectfully submits this brief in support of the Court's issuance of a writ of certiorari to review the judgment of the Colorado Supreme Court.<sup>1</sup>

**INTERESTS OF *AMICUS CURIAE***

Mr. Martin is a retired attorney living in Stokes County, North Carolina. He is a registered unaffiliated voter in North Carolina who intends to vote in the Republican primary in that state. Pursuant to North Carolina statutory law, he has filed with the North Carolina State Board of Elections a challenge to the candidacy of Respondent Donald J. Trump in the North Carolina Republican primary. *See generally* N.C.G.S. art. 11B & § 163-127.2. The action is presently pending before the North Carolina General Court of Justice, Superior Division. *Martin v. North Carolina State Board of Elections*, No. 23CV037438-910 (N.C. Super. Ct., Wake Cty).

Mr. Martin brought his challenge to Respondent Trump's candidacy in North Carolina for three reasons: (1) North Carolina has a robust procedure in which a voter may challenge a person's candidacy for office before a state board with the power to determine constitutional eligibility; (2) he wants to be a voice for the Constitution; and (3) he wants to ensure the

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<sup>1</sup> Counsel of record for all parties received notice at least 10 days prior to the due date of the intention to file this brief. No counsel for a party authored this brief in whole or in part, and no counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than *amicus curiae* and his counsel made a monetary contribution to its preparation or submission.

integrity of elections run by the Board of Elections in North Carolina so as to allow voters in the Republican Primary to make an informed choice from among candidates who may actually hold the office of President.

The timing of this Court's decision whether or not to review the judgment of the Colorado Supreme Court, and the substance of the Court's decision on the merits should it undertake that review, would likely have a determinative effect on Mr. Martin's challenge in North Carolina.

### **SUMMARY OF ARGUMENT**

The fundamental question presented in this matter is one of national significance for which a uniform nationwide rule should be established.

### **ARGUMENT**

On December 16, 2013, Mr. Martin had a private but not confidential discussion with the late Justice Antonin Scalia about *Bush v. Gore* and why the Supreme Court took that case. Justice Scalia replied to the effect of, "What case could be more important than one raising a federal constitutional issue that concerns the election of a President." It is this Court's privilege and responsibility to decide issues of such nature and significance.

Already we have witnessed differing outcomes in a multitude of states in which challenges to Respondent Trump's constitutional qualification to hold the office of President of the United States have been brought. It cannot be acceptable that voters of some states are allowed to vote for (or against) a candidate for the office of President while the voters of other states do not have that choice. A uniform national rule is of vital

interest to our nation and can only be established through the decision of this Court.

The Colorado Supreme Court's ruling is a final judgment at this point, and Respondent Trump may be subject to collateral estoppel precluding him from relitigating in other courts issues of fact that were decided in Colorado – including the fact issue of whether he engaged in the insurrection of January 6, 2021. For example, North Carolina law provides that collateral estoppel bars the losing party from relitigating issues of fact determined in a final judgment, if: (a) the precise issue was necessary to the judgment, (b) the issue was actually litigated and determined, and (c) the party against whom estoppel is sought had a full and fair opportunity to litigate the issue. *See State v. Summers*, 351 N.C. 620, 528 S.E.2d 17 (2000); NORTH CAROLINA CONFERENCE OF SUPERIOR COURT JUDGES, at 18 (School of Government, Chapel Hill, N.C., Fall 2006).

Therefore, the North Carolina Board of Elections and North Carolina state courts are likely bound by fact issues decided in the Colorado final judgment if it remains in effect. Other tribunals and courts in other states may also be bound by the Colorado decision. Those tribunals and courts may, however, reach differing conclusions as to the proper legal construction of Section 3 of the Fourteenth Amendment of the U.S. Constitution. Consequently, absent resolution by this Court, the choices available to voters in the presidential primaries and general election will vary from state to state, depending on how each state has construed the Constitution. This Court's decision is necessary to establish a uniform national rule ensuring that all voters have the same options regardless of their state of residence.

The overriding interest of the states in the resolution of this issue was noted by Justice Gorsuch when he was on the United States Court of Appeals for the Tenth Circuit. In *Hassan v. Colorado*, 495 Fed. Appx. 947 (10th Cir. 2012), Colorado had determined that Hassan did not qualify for the office of President under Article II of the Constitution because he was a naturalized citizen. Hassan argued that the state was required to put him on the ballot even if he was not qualified to hold the office. The Court of Appeals rejected that contention. In the opinion for the Court, then-Judge Gorsuch wrote: “[A] state’s legitimate interest in protecting the integrity and practical functioning of the political process permits it to exclude from the ballot candidates who are constitutionally prohibited from assuming office.” *Id.* at 948. Thus, every state has a legitimate interest in protecting the integrity of the presidential primaries and election in the state, but only a decision from this Court will make certain that all states are on the same page in regard to Respondent Trump’s candidacy for the office of President.

Some pundits have urged the Court not to take review of the Colorado decision, asserting that any decision by the Court on this matter will cause further injury to its reputation and the regard in which it is held by the public, regardless of the outcome. Mr. Martin strenuously disagrees and respectfully submits that it is this Court’s obligation to decide issues of national import, *especially* when the decision may be unpopular. Many provisions of the Constitution, like Section 3 of the Fourteenth Amendment, are intentionally designed to place prohibitions on what would otherwise be popularly supported government action. Yet it is precisely in such circumstances that the courts generally, and this Court in particular, are called upon to act in defense of the Constitution. *See generally*,

JOHN HART ELY, DEMOCRACY AND DISTRUST: A THEORY OF JUDICIAL REVIEW (1980).

Mr. Martin served as law clerk to Chief Justice Warren E. Burger in the 1984 Term, and as Assistant to Solicitors General Fried and Starr under Presidents Ronald Reagan and George H.W. Bush. His experience in serving and appearing before this Court was thus for a conservative Chief Justice and two conservative Republican presidents. But the issue presented to the Court is one that transcends politics and ideology. The use of violence to interfere with the constitutional functioning of the federal government, including Congress's role in the peaceful transition of power in the office of the President of the United States, is not inherently a device of the left or the right. It is not the exclusive domain of any one political party or interest. Ensuring that the office of President of the United States is not occupied by a person who has engaged in such action is a non-partisan issue of paramount significance to our constitutional democracy. The present legal dispute over its application to Respondent Trump cries out for resolution by this Court.

As law clerk to Chief Justice Burger, Mr. Martin took an oath to support and defend the Constitution of the United States. That oath was administered to Mr. Martin by the Chief Justice of the United States, and Mr. Martin continues to take his oath seriously. He urges this Court to accept this case to make sure that candidates for the office of President do the same.



**CONCLUSION**

The Court should grant the petition for a writ of certiorari to the Colorado Supreme Court and set a uniform national rule for the meaning and application of Section 3 of the Fourteenth Amendment.

Respectfully submitted,

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