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 Colorado Supreme Court

BRIEF OF *AMICUS CURIAE* WILLIAM JONES, IN SUPPORT OF PETITIONER

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QUESTION PRESENTED

Whether the Colorado Supreme Court properly may order that petitioner's name not appear on the 2024 presidential ballot, by virtue of the Fourteenth Amendment Section 3 "insurrection-disqualification" provision?

INTEREST OF *AMICUS CURIAE*

Amicus Curiae is an African American individual who has a strong interest that the Fourteenth Amendment be properly applied, and that the single argument he makes here be considered by the Court, because he is concerned that it will not be raised by the parties or by other *Amici*.[1]

SUMMARY OF ARGUMENT

Because there is no enabling legislation, pursuant to the Fourteenth Amendment's Section 5 to implement Section 3, Respondent may not implement Section 3.

ARGUMENT

The Court Should Grant The Petition, Because There Is No Statute Enabling Enforcement Of Section 3 Of The Fourteenth Amendment.

Section 5 of the Fourteenth Amendment provides for Congress to enact a statute to enforce the provisions of Section 3 of the Amendment. Congress has not done so.

[1] There are no other contributions to this Brief and it was authored entirely by counsel for *Amicus*, who never has made any contributions to any party or other *Amici*.

In 1866, Congress enacted the Ku Klux Klan Act, a criminal statute aimed at preventing and punishing Southern government officers from conspiring with or assisting the Klan in terrorizing and murdering recently-freed slaves. It made it "unlawful for two or more persons to agree to injure, threaten, or intimidate a person in the United States in the free exercise or enjoyment of any right or privilege secured by the Constitution or laws of the United States[,]" punishable by up to life in prison or death.

In 1868, Congress passed the Fourteenth Amendment, whose Section 3 provided that "[n]o person shall . . . hold any office, civil or military, under the United States, . . . who, having previously taken an oath, as a member of Congress, or as an officer of the United States . . . shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof." This provision is not self-effectuating, and Congress provided a mechanism for that in Section 5: "The Congress shall have the power to enforce, by appropriate legislation, the provisions of this article." This authorized Congress to pass additional laws to effectuate the provisions of Section 3.

In 1871, Congress did exercise that power, when, modeled on the 1866 civil rights, criminal statute, it passed a civil counterpart to it, that provided for civil suits for damages against persons who "under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction

thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law." This was codified in Title 42 United States Code at § 1983, and it enabled the enforcement of Section 1 of the Fourteenth Amendment.

The same is the case for Section 3 of the Fourteenth Amendment, because it too, like Section 1, requires that Congress shall have passed enabling legislation, like § 1983. But Congress never did that.

It is for this reason that Section 3 of the Fourteenth Amendment presently is unenforceable. In order for there to be enforcement of Section 3, there must have been enabling legislation.

For this reason, this Court should decide that Section 3 may not be enforced, as the Colorado Supreme Court did, because there is no statutory authorization for its enforcement.

In an analogous context, this Court relatively recently stifled any enforcement of constitutional rights that is not supported by statutory authorization.

In 1971, the Court allowed for enforcement of Fourth Amendment search and seizure rights in the famous case called *Bivens v. Six Unknown Named Agents of the Federal Bureau of Narcotics*. In only two decisions after *Bivens* did the Court allow for any expansion of a constitutional right to sue, as granted by *Bivens*.

In 2017, in the case of *Ziglar v. Abbasi*, the Court put a final end to any expansion of the *Bivens* case, and held that no new *Bivens*-context lawsuits could be brought, because there was no congressional legislation that allowed for that.

The Court should not reverse its disallowance of constitutional cases that have no statutory basis, and the Colorado Section 3 ruling should not be allowed to stand, because Congress never enacted a statute to permit that.

This is an available and easy, non-controversial way in which the Court will may reverse the Colorado Supreme Court's disallowance of Donald Trump to be on the Colorado ballot.

CONCLUSION

For the reason set forth, the petition for a writ of certiorari should be granted.

Respectfully submitted,

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January 16, 2024