

No. 23-719

---

In the Supreme Court of the United States

---

DONALD J. TRUMP,

*Petitioner,*

v.

NORMA ANDERSON, ET AL.,

*Respondents.*

---

ON A WRIT OF CERTIORARI TO THE  
SUPREME COURT OF COLORADO

---

AMICI CURIAE BRIEF OF JUDICIAL WATCH,  
INC. AND ALLIED EDUCATIONAL  
FOUNDATION IN SUPPORT OF PETITIONER

---

ROBERT D. POPPER  
*Counsel of Record*  
ERIC W. LEE  
JUDICIAL WATCH, INC.  
425 Third Street, SW  
Washington, DC 20024  
(202) 646-5172  
rpopper@judicialwatch.org

T. RUSSELL NOBILE  
JUDICIAL WATCH, INC.  
P.O. Box 6592  
Gulfport, MS 39506  
(202) 527-9866

H. CHRISTOPHER COATES  
LAW OFFICES OF H.  
CHRISTOPHER COATES  
934 Compass Point  
Charleston, SC 29412  
(843) 609-7080

*Attorneys for Amici*

January 18, 2024

---

**TABLE OF CONTENTS**

TABLE OF AUTHORITIES ..... iii

IDENTITY AND INTERESTS  
OF AMICI CURIAE .....1

SUMMARY OF ARGUMENT .....2

ARGUMENT .....3

I. Under *Mathews v. Eldridge* and Its  
Progeny, Colorado’s Civil Proceeding Was  
Not an Appropriate Hearing Given the  
Demands of the Due Process Clause.....4

    A. The Interests at Stake in this Case  
    Include the Fundamental  
    Constitutional Rights of Millions of  
    Party Members and Voters, and the  
    National Interest in Governmental  
    Legitimacy .....6

    B. The Risk is High that Arbitrary and  
    Erroneous Outcomes from Various  
    State Proceedings Will Impair These  
    Interests..... 11

    C. The State of Colorado Has No  
    Important Interest in Employing Its  
    Own Statutory Procedures to  
    Disqualify President Trump from  
    The State Ballot..... 14

II. If the Decision of the Colorado Supreme Court is Allowed to Stand, Federal Presidential Elections Will Routinely Involve Section 3 Challenges .....	15
CONCLUSION.....	20

## TABLE OF AUTHORITIES

<b>Cases</b>	<b>Page(s)</b>
<i>Anderson v. Celebrezze</i> , 460 U.S. 780 (1983) ...	7, 9, 14
<i>Boddie v. Connecticut</i> , 401 U.S. 371 (1971) .....	5
<i>Cafeteria Workers v. McElroy</i> , 367 U.S. 886 (1961) .....	4
<i>Cal. Democratic Party v. Jones</i> , 530 U.S. 567 (2000) .....	7
<i>Cousins v. Wigoda</i> , 419 U.S. 477 (1975).....	14
<i>Crawford v. Marion County Election Bd.</i> , 553 U.S. 181 (2008) .....	10
<i>Eu v. S.F. Cnty. Democratic Cent. Comm.</i> , 489 U.S. 214 (1989) .....	7
<i>Ill. State Bd. of El. v. Socialist Workers Party</i> , 440 U.S. 173 (1979) .....	6, 7, 8
<i>Lubin v. Panish</i> , 415 U.S. 709 (1974) .....	7, 8
<i>Mathews v. Eldridge</i> , 424 U.S. 319 (1976) .....	2, 3, 4, 5, 13, 15
<i>Morrissey v. Brewer</i> , 408 U.S. 471 (1972) .....	4

*Mullane v. Cent. Hanover Bank & Trust Co.*,  
339 U.S. 306 (1950) ..... 4-5

*Norman v. Reed*, 502 U.S. 279 (1992)..... 8

*Powell v. McCormack*, 395 U.S. 486 (1969) ..... 6

*Turner v. Rogers*, 564 U.S. 431 (2011)..... 5

*Williams v. Rhodes*, 393 U.S. 23 (1968) ..... 8

**Constitutional Provisions**

U.S. CONST.  
amend XIV, § 3 .....2, 3, 6, 11, 12, 15, 16, 19

**Other**

Amanda Prestigiacomio, *‘We’re Gonna Fight Back’:  
DeSantis Says He’s Looking To Boot Biden  
Off Florida Ballot After States Go After Trump*,  
THE DAILY WIRE, Jan. 6, 2024..... 18

David Marcus, *Meet The Rioting Criminals Kamala  
Harris Helped Bail Out Of Jail*,  
THE FEDERALIST, Aug. 31, 2020..... 16

Federal Elections Commission, FEDERAL ELECTIONS  
2020: ELECTION RESULTS FOR THE U.S.  
PRESIDENT, THE U.S. SENATE AND THE U.S. HOUSE  
OF REPRESENTATIVES 5, Oct. 2022 ..... 8

Federal Elections Commission, FEDERAL ELECTIONS 2016: ELECTION RESULTS FOR THE U.S. PRESIDENT, THE U.S. SENATE AND THE U.S. HOUSE OF REPRESENTATIVES 5, Dec. 2017 .....	8
Gillian Flaccus, <i>Portland's grim reality: 100 days of protests, many violent</i> , AP, Sep. 4, 2020; Elise Takahama, <i>Timeline of Seattle's 2020 protests</i> , SEATTLE TIMES .....	16
H.L. Mencken, CHRESTOMATHY (1962) .....	19
Jayati Ramakrishnan, <i>Portland protesters set fires, damage federal courthouse; officers respond with tear gas, impact munitions</i> , THE OREGONIAN, Mar. 12, 2021 .....	17
Jeffrey M. Jones, <i>Independent Party ID Tied for High; Democratic ID at New Low</i> , GALLUP NEWS: POLITICS, Jan. 12, 2024 .....	9
Jennifer A. Kingson, <i>Exclusive: \$1 billion-plus riot damage is most expensive in insurance history</i> , AXIOS, Sep. 16, 2020 .....	16
Jonathan Lemire and Zeke Miller, <i>Trump Took Shelter in White House Bunker as Protests Raged</i> , AP, May 31, 2020 .....	17
Kate Plummer, <i>Republicans Threaten to Take Joe Biden Off Ballot in States They Control</i> , NEWSWEEK, Dec. 20, 2023 .....	18

Lois Beckett, *At least 25 Americans were killed during protests and political unrest in 2020*,  
THE GUARDIAN, Oct. 31, 2020..... 17

Marc A. Thiessen, *Opinion: If Trump incited Jan. 6, what about Schumer’s threats against Kavanaugh?*,  
WASH. POST, June 9, 2022 ..... 17, 18

Samuel Issacharoff, *Old Constitutional Provisions and Presidential Selection: The folly of exhuming Section 3 of the 14th Amendment*,  
JUST SECURITY, Jan. 5, 2024 ..... 16

United States Census Bureau, QUICKFACTS:  
UNITED STATES.....9

Yamiche Alcindor, *Attack Tests Movement Sanders Founded*,  
NEW YORK TIMES, June 14, 2017..... 18

## IDENTITY AND INTERESTS OF AMICI CURIAE<sup>1</sup>

Judicial Watch, Inc. (“Judicial Watch”) is a non-partisan, public interest organization headquartered in Washington, D.C. Founded in 1994, Judicial Watch seeks to promote accountability, transparency and integrity in government, and fidelity to the rule of law. Judicial Watch regularly files amicus curiae briefs and lawsuits related to these goals.

As part of its election integrity mission, Judicial Watch has a substantial interest in the proper enforcement of constitutional provisions and laws concerning voting and has participated in such cases both as counsel for parties and as amici in this and other courts. *See, e.g., Alexander v. S.C. State Conf. of the NAACP*, No. 22-807; *Parrott v. Lamone*, No. C-02-CV-21-001773 (Cir. Court Anne Arundel Cnty., Md. 2021); *Brnovich v. Democratic National Committee*, No. 19-1257; *Rucho v. Common Cause*, No. 18-422; *Benisek v. Lamone*, No. 17-333; *Husted v. A. Philip Randolph Institute*, No. 16-980; *North Carolina v. N.C. State Conf. of the NAACP*, No. 16-833; *Parrott v. Lamone*, No. 16-588; *Evenwel v. Abbott*, No. 14-940.

The Allied Educational Foundation (“AEF”) is a nonprofit charitable and educational foundation based in Englewood, New Jersey. Founded in 1964,

---

<sup>1</sup> Amici state that no counsel for a party to this case authored this brief in whole or in part; and no person or entity, other than amici and their counsel, made a monetary contribution intended to fund the preparation and submission of this brief.



AEF is dedicated to promoting education in diverse areas of study. AEF regularly files amicus curiae briefs as a means to advance its purpose and has appeared as an amicus curiae in this Court on many occasions.

Amici submit that the Colorado Supreme Court's December 19, 2023 ruling disregards this Court's Due Process precedents and respectfully request that this Court reverse and render judgment for Petitioner.

### **SUMMARY OF ARGUMENT**

The Colorado Supreme Court's ruling disqualifying President Trump from the State's primary and general election ballots under Section 3 of the Fourteenth Amendment, on the ground that he engaged in insurrection, should be reversed for violating the basic Due Process requirements set forth in *Mathews v. Eldridge*, 424 U.S. 319 (1976) and its progeny. That case established that an appropriate hearing consistent with Due Process must account for the nature of the interests involved, the risk that those interests will be compromised, and the relevant government interest in conducting the proceeding without additional protections.

In this case, the interests at stake include the fundamental associational and expressive rights under the First Amendment of the many tens of millions of Americans who belong to the Republican Party or who may vote for President Trump. Also at stake is the national interest in legitimate elections

that reliably reflect the will of the voters. The piecemeal adjudication of the relevant legal issues in various state forums poses a considerable risk of arbitrary rulings that threaten to severely compromise these interests. Indeed, basic Due Process was woefully lacking in the Colorado trial court where this matter was heard. For its part, the State of Colorado has a negligible interest in adjudicating matters that primarily affect a nationwide presidential contest. Because the Colorado civil proceeding failed to provide the kind of hearing that was required by *Mathews*, its decision should be reversed.

Finally, if the Colorado Supreme Court's ruling is allowed to stand, an inevitable, practical consequence will be that Section 3 challenges to the eligibility of candidates for federal office will become common. The power to decide elections in this way will come at the expense of voters' power to decide elections by voting for the candidates they prefer.

## ARGUMENT

Remarkably, the Supreme Court of Colorado has devised a new way to divide an already bitterly divided national electorate. It has found a way for state officials to take the outcome of a presidential election, at least in part, and perhaps entirely, out of the hands of voters, by removing from Colorado's ballot a former president, and current front-runner for the 2024 Republican nomination, who received tens of millions of votes in the last two presidential elections. Its decision rewards local, partisan

interests, and clever lawyering. If allowed to stand, its decision will inaugurate a new, anti-democratic “race to the bottom,” as local partisan interests in state legislatures and executive offices strive to disqualify—rather than to defeat—their chief political opponents. It diminishes the role of voters in our democracy, and enhances the role of lawyers. It is not an innovation we need.

It is also contrary to this Court’s Due Process jurisprudence. As set forth below, Colorado’s procedure fails a straightforward application of long-settled rules regarding the kind of hearing that is appropriate given the magnitude of the interests involved.

**I. Under *Mathews v. Eldridge* and Its Progeny, Colorado’s Civil Proceeding Was Not an Appropriate Hearing Given the Demands of the Due Process Clause.**

Due Process, “unlike some legal rules, is not a technical conception with a fixed content unrelated to time, place and circumstances.” *Cafeteria Workers v. McElroy*, 367 U.S. 886, 895 (1961). Rather, it is “flexible and calls for such procedural protections as the particular situation demands.” *Morrissey v. Brewer*, 408 U.S. 471, 481 (1972).

“[A]t a minimum,” the Due Process Clause requires “that deprivation of life, liberty or property by adjudication be preceded by notice and opportunity for [a] hearing appropriate to the nature of the case.” *Mullane v. Cent. Hanover Bank & Trust*

Co., 339 U.S. 306, 313 (1950). “The formality and procedural requisites for the hearing can vary, depending upon the importance of the interests involved and the nature of the subsequent proceedings.” *Boddie v. Connecticut*, 401 U.S. 371, 378 (1971). The standards for determining the kind of hearing that particular interests will require are well settled. The “specific dictates of due process” are determined by examining “(1) the nature of ‘the private interest that will be affected,’ (2) the comparative ‘risk’ of an ‘erroneous deprivation’ of that interest with and without ‘additional or substitute procedural safeguards,’ and (3) the nature and magnitude of any countervailing interest in not providing ‘additional or substitute procedural requirement[s].’” *Turner v. Rogers*, 564 U.S. 431, 444-45 (2011) (citing *Mathews*, 424 U.S. at 335).

This case concerns a civil suit brought in state court to compel state officials to remove President Trump from Colorado’s Republican primary and general election ballot. A simple application of the Court’s Due Process case law establishes that this proceeding cannot possibly comply with the requirements of the Due Process Clause, given the sheer magnitude of the interests involved, the likelihood of arbitrary outcomes, and the absence of any countervailing interest in such a proceeding by the State of Colorado.<sup>2</sup>

---

<sup>2</sup> Amici respectfully submit that establishing the precise contours of a hearing that would comport with the dictates of the Due Process Clause is not necessary to decide this case. At a minimum, an appropriate hearing would take place in a federal

**A. The Interests at Stake in this Case Include the Fundamental Constitutional Rights of Millions of Party Members and Voters, and the National Interest in Governmental Legitimacy.**

“A fundamental principle of our representative democracy is ... ‘that the people should choose whom they please to govern them.’” *Powell v. McCormack*, 395 U.S. 486, 547 (1969) (citation omitted). “[T]his principle is undermined as much by limiting whom the people can select as by limiting the franchise itself.” *Id.* Accordingly, the legal and national interests at stake in any proceeding to determine whether a candidate should be barred from running for a national office like the presidency, either pursuant to Section 3 or for any other reason, are extraordinary. Those interests encompass the First Amendment associational rights of members of national political parties, as well as the rights of millions of voters to express their political preferences by voting for the parties’ candidates. Those interests also include the national interest in conducting elections perceived to be legitimate because they reflect the wishes of the voters.

The Court has held that laws restricting candidates’ access to the ballot “burden two distinct and fundamental” First Amendment rights. *Ill. State Bd. of El. v. Socialist Workers Party*, 440 U.S. 173, 184 (1979). First, the “freedom to associate as a

---

forum and would supply all of the procedural rights that Justice Samour’s dissent identified as lacking at the trial in this case. See App.157a-158a ¶¶340-342; see *discussion infra* at I.B.

political party” has “diminished practical value if the party can be kept off the ballot.” *Id.* (citation omitted). “It is well settled that partisan political organizations enjoy freedom of association protected by the First and Fourteenth Amendments.” *Eu v. S.F. Cnty. Democratic Cent. Comm.*, 489 U.S. 214, 224 (1989) (citation omitted). “In no area is the political association’s right to exclude more important than in the process of selecting its nominee.” *Cal. Democratic Party v. Jones*, 530 U.S. 567, 575 (2000).

Second, the First Amendment rights of all voters who might vote for a candidate are impaired when that candidate is removed from the ballot. The Court has observed that, where ballot restrictions burden “an individual candidate’s ... political opportunity,”

[t]he interests involved are not merely those of parties or individual candidates; the voters can assert their preferences only through candidates or parties or both, and it is this broad interest that must be weighed in the balance. The right of a party or an individual to a place on a ballot is entitled to protection and is intertwined with the rights of voters.

*Lubin v. Panish*, 415 U.S. 709, 716 (1974); see *Anderson v. Celebrezze*, 460 U.S. 780, 786 (1983) (“The impact of candidate eligibility requirements on voters implicates basic constitutional rights.” (citations omitted)). The obvious reason for this is that “limiting the choices available to voters ...

impairs the voters' ability to express their political preferences." *Socialist Workers Party*, 440 U.S. at 184. Accordingly, the Court has treated restrictions on *candidates'* access to the ballot as severe burdens on *voters'* First Amendment rights. *See, e.g., Norman v. Reed*, 502 U.S. 279, 288-89 (1992) (law "limiting the access of new parties to the ballot" was a "severe restriction" that must "be narrowly drawn to advance a state interest of compelling importance" (citations omitted)); *Lubin*, 415 U.S. at 716 ("the right to vote is 'heavily burdened' if that vote may be cast only for one of two candidates in a primary election at a time when other candidates are clamoring for a place on the ballot") (quoting *Williams v. Rhodes*, 393 U.S. 23, 31 (1968) (requiring compelling justification for law restricting minor party access to ballot)).

By any reckoning, the number of U.S. voting-age citizens whose fundamental First Amendment rights will be affected by the outcome of this matter is enormous. Donald J. Trump received almost 63 million votes in 2016<sup>3</sup> and over 74 million votes in 2020.<sup>4</sup> Note also that the Census Bureau currently estimates the U.S. population as close to 335 million

---

<sup>3</sup> Federal Elections Commission, FEDERAL ELECTIONS 2016: ELECTION RESULTS FOR THE U.S. PRESIDENT, THE U.S. SENATE AND THE U.S. HOUSE OF REPRESENTATIVES 5, Dec. 2017, <https://www.fec.gov/resources/cms-content/documents/federaelections2016.pdf>.

<sup>4</sup> Federal Elections Commission, FEDERAL ELECTIONS 2020: ELECTION RESULTS FOR THE U.S. PRESIDENT, THE U.S. SENATE AND THE U.S. HOUSE OF REPRESENTATIVES 5, Oct. 2022, <https://www.fec.gov/resources/cms-content/documents/federaelections2020.pdf>.

persons.<sup>5</sup> About 262 million of them are over the age of 18.<sup>6</sup> In a recent Gallup poll, 43% of adults identified as Republican or Republican leaning.<sup>7</sup> Extrapolated to the national population, that poll suggests that perhaps 113 million adults are likely to be Republican or Republican leaning. A significant number of them may vote for President Trump if he is again the nominee. All of their interests are “present” here. As the Court has prudently observed, “the impact of the votes cast in each State is affected by the votes cast for the various candidates in other States,” so that access to the ballot in any one state “has an impact beyond its own borders.” *Celebrezze*, 460 U.S. at 795. To be specific, the impact of banning a national candidate like President Trump from the ballot in one state is felt nationwide, as his supporters, in *every* state, reassess his chances of winning and the value of turning out to vote for him. Accordingly, any proceeding to remove President Trump from the ballot in Colorado must account for the interests of millions of Republican party members and voters across the nation if it is to comport with the requirements of the Due Process Clause.

---

<sup>5</sup> United States Census Bureau, QUICKFACTS: UNITED STATES, <https://www.census.gov/quickfacts/fact/table/US/PST045223#PST045223>.

<sup>6</sup> *See id.* (estimating that 21.7% of the U.S. population, or about 73 million persons, are under the age of 18).

<sup>7</sup> Jeffrey M. Jones, *Independent Party ID Tied for High; Democratic ID at New Low*, GALLUP NEWS: POLITICS, Jan. 12, 2024, <https://news.gallup.com/poll/548459/independent-party-tied-high-democratic-new-low.aspx>.



Yet even more is at stake. The government of the United States, in common with all democratic governments, has an interest in the actual and perceived legitimacy of its national elections. The Court acknowledged a similar kind of interest when it upheld the dismissal of a challenge to an Indiana law requiring photo identification to vote in person. *Crawford v. Marion County Election Bd.*, 553 U.S. 181, 185 (2008). The Court recognized “the State’s interest in counting only the votes of eligible voters.” *Id.* at 196. But the Court added that Indiana had a separate interest “in protecting public confidence ‘in the integrity and legitimacy of representative government.’” *Id.* at 197. While “closely related to the State’s interest in preventing voter fraud, public confidence in the integrity of the electoral process has independent significance, because it encourages citizen participation in the democratic process.” *Id.* In the same manner, the United States has an interest in being able to credibly maintain that national elections are decided by voters who are persuaded, for various reasons, to cast their ballots for particular candidates. Where this is so, the outcome of the election may be relied on to reasonably reflect what the American people want. But this claim is undermined when it appears that the machinations of partisans, bureaucrats, and lawyers are more important in determining the outcome of an election than the will of voters.

**B. The Risk is High that Arbitrary and Erroneous Outcomes from Various State Proceedings Will Impair These Interests.**

The piecemeal adjudication of candidate disqualification under Section 3 by state courts or officials is likely to lead to divergent outcomes, under vastly different rules, procedures, and burdens of proof. Consider first, as Colorado Supreme Court Justice Samour does in dissent, that “because most other states don’t have the Election Code provisions we do, they won’t be able to enforce Section Three.” App.126a ¶274. Consider as well that states have different requirements for standing and justiciability, which can lead to the same claim going forward in one state while being dismissed in the next. The relevant determinations may be the subject of either a civil claim or a criminal charge, which obviously proceed under different evidentiary standards and are reviewed differently on appeal. In the alternative, the determinations may be made in an administrative hearing, or even by a single executive agent, whose findings may be subject to different state standards of agency deference. Of course, seemingly minor differences in state rules of procedure or evidence often turn out to be dispositive in an actual proceeding. Thus, judges and officials of different states may be confronted with the same facts, and may even view the facts and the law the same way, while reaching opposite conclusions about the appropriate legal outcome because of the different statutory regimes under which an issue was presented. As Justice Samour concludes, differences in state laws “will inevitably lead to the

disqualification of President Trump from the presidential primary ballot in less than all fifty states, thereby risking chaos in our country.” App.126a ¶274.

In the real world, moreover, judges and officials from different states often do *not* view the same facts the same way or reach the same legal conclusions. See, e.g., App.61a ¶125 (noting majority’s disagreement with Michigan court regarding political question doctrine). Divergent outcomes are especially likely given the undefined and inherently political character of the critical phrase, “engaged in insurrection or rebellion.” U.S. CONST. amend XIV, §3.<sup>8</sup> And disputes between states will multiply as litigants seek to enforce (or to resist the enforcement of) preferred judgments in the courts of other states.

It is little wonder that Justice Samour was “disturbed about 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.” App.160a ¶347 (dissenting). As noted, if even one state bans President Trump from the ballot, its actions have an outsized effect on his chances

---

<sup>8</sup> Indeed, the Colorado majority’s idiosyncratic approach to the term “insurrection” is unlikely to garner support in the courts of other states. The court says the term “encompass[es] a concerted and public use of force or threat of force by a group of people to hinder or prevent the U.S. government from taking the actions necessary to accomplish a peaceful transfer of power.” App.86a ¶184. Amici submit that the drafters of the Fourteenth Amendment, which was a response to the Civil War, would have found the Colorado majority’s definition bizarre.

nationwide—and, consequently, on the rights of his partisans and supporters. A system of state-by-state adjudication of the relevant issues is not sufficient to protect their Due Process rights.

The Court has noted that “procedural due process rules are shaped by the risk of error inherent in the truthfinding process as applied to the generality of cases, not the rare exceptions.” *Mathews*, 424 U.S. at 344. Amici have been guided by this admonition. As a final point, however, it is important to note that Justice Samour in dissent described the *actual* trial in this case as more or less devoid of ordinary Due Process. As he put it:

the aggressive deadlines and procedures ... stripped the proceedings of many basic protections that normally accompany a civil trial ... There was no basic discovery, no ability to subpoena documents and compel witnesses, no workable timeframes to adequately investigate and develop defenses ... There was no fair trial either: President Trump was not offered the opportunity to request a jury ... experts ... theorized about the law ... and the court received and considered a partial congressional report, the admissibility of which is not beyond reproach. ... I have been involved in the justice system for thirty-three years now, and what took place here doesn't resemble anything I've seen in a courtroom.

App.157a-158a ¶¶340-342.

**C. The State of Colorado Has No Important Interest in Employing Its Own Statutory Procedures to Disqualify President Trump from the State Ballot.**

Colorado has no significant interest in using its own legal procedures to disqualify President Trump from the State's ballot, nor any interest in upholding a system where such determinations are made state by state. Indeed, because Colorado's actions concern a national election, the State's interests are at a low ebb.

In *Celebrezze*, the Court observed that “in the context of a Presidential election, state-imposed restrictions implicate a uniquely important national interest. For the President and the Vice President of the United States are the only elected officials who represent all the voters in the Nation.” 460 U.S. at 794-95. The Court held that “the State has a less important interest in regulating Presidential elections than statewide or local elections, because the outcome of the former will be largely determined by voters beyond the State's boundaries.” *Id.* at 795. In striking down a state filing deadline, the Court noted that it “does more than burden the associational rights of independent voters and candidates. It places a significant state-imposed restriction on a nationwide electoral process.” *Id.*; see *Cousins v. Wigoda*, 419 U.S. 477, 490 (1975) (invalidating regulation of a party convention because “the pervasive national interest in the selection of candidates for national office ... is greater than any interest of an individual State”). The

interests of party members and voters and the national interest described above are likewise greater than any interest of Colorado.

In sum, Colorado's civil proceeding, at which it was determined that President Trump is disqualified from appearing on the State's ballot, was inconsistent with the requirements of Due Process set forth in *Mathews*.

## **II. If the Decision of the Colorado Supreme Court is Allowed to Stand, Federal Presidential Elections Will Routinely Involve Section 3 Challenges.**

For the reasons set forth in part I.A, the Colorado Supreme Court's decision will impair the First Amendment rights of millions of Americans and inflict incalculable damage on the nation's political culture. One aspect of this harm will surely arise from the fact that Section 3 challenges will become routine. As one commentator noted regarding the actions of Maine's secretary of state,

Left to local administration, with limited fact-finding by a single judge or state official, the risk is that Trump's exclusion in Maine will beget a political tit-for-tat in which Biden is in turn excluded in a red state, or candidates of either party are

pulled from the ballot in future. Down that path lies nothing good for democracy.<sup>9</sup>

In a basically standardless legal discussion, charges of insurrection can be levelled by imaginative partisans on the basis of many different kinds of inflammatory political actions or speech. Consider:

1. Vice-President Kamala Harris promoted a bail fund that helped to free “those protesting on the ground in Minnesota” in the wake of the murder of George Floyd.<sup>10</sup> The protests in 20 states following that murder were among the costliest in U.S. history,<sup>11</sup> persisting in some cities for months,<sup>12</sup> and

---

<sup>9</sup> Samuel Issacharoff, *Old Constitutional Provisions and Presidential Selection: The folly of exhuming Section 3 of the 14th Amendment*, JUST SECURITY, Jan. 5, 2024, <https://www.justsecurity.org/91009/old-constitutional-provisions-and-presidential-selection-the-folly-of-exhuming-section-3-of-the-14th-amendment/>.

<sup>10</sup> David Marcus, *Meet The Rioting Criminals Kamala Harris Helped Bail Out Of Jail*, THE FEDERALIST, Aug. 31, 2020, <https://thefederalist.com/2020/08/31/meet-the-rioting-criminals-kamala-harris-helped-bail-out-of-jail/>; *Kamala Harris: For the People: Donate to the Minnesota Freedom Fund*, <https://secure.actblue.com/donate/kdh-social-minnesota-freedom-fund?refcode=tw200601>.

<sup>11</sup> Jennifer A. Kingson, *Exclusive: \$1 billion-plus riot damage is most expensive in insurance history*, AXIOS, Sep. 16, 2020, <https://www.axios.com/2020/09/16/riots-cost-property-damage>.

<sup>12</sup> Gillian Flaccus, *Portland's grim reality: 100 days of protests, many violent*, AP, Sep. 4, 2020; Elise Takahama, *Timeline of Seattle's 2020 protests*, SEATTLE TIMES, <https://projects.seattletimes.com/2020/local/protest-timeline/>.

resulting in at least 25 deaths.<sup>13</sup> Protesters attacked federal property and set fire to a federal courthouse.<sup>14</sup> Protests also caused President Trump to evacuate the White House to a secure underground location, as rioters assaulted police officers outside the White House gates.<sup>15</sup>

2. Discussing an anticipated abortion ruling, Senate Majority Leader Chuck Schumer told a rally on the steps of the U.S. Supreme Court on March 5, 2020, “I want to tell you Gorsuch. I want to tell you Kavanaugh. You have released the whirlwind and you will pay the price. You won’t know what hit you if you go forward with these awful decisions.”<sup>16</sup> His comments were reproved by the Chief Justice of this Court as “dangerous.”<sup>17</sup> Two years later a man was

---

<sup>13</sup> Lois Beckett, *At least 25 Americans were killed during protests and political unrest in 2020*, THE GUARDIAN, Oct. 31, 2020, <https://www.theguardian.com/world/2020/oct/31/americans-killed-protests-political-unrest-acled>.

<sup>14</sup> Jayati Ramakrishnan, *Portland protesters set fires, damage federal courthouse; officers respond with tear gas, impact munitions*, THE OREGONIAN, Mar. 12, 2021, <https://www.oregonlive.com/portland/2021/03/federal-officers-deploy-impact-munitions-tear-gas-at-downtown-portland-protesters.html>.

<sup>15</sup> Jonathan Lemire and Zeke Miller, *Trump Took Shelter in White House Bunker as Protests Raged*, AP, May 31, 2020, <https://apnews.com/article/donald-trump-ap-top-news-george-floyd-politics-a2326518da6b25b4509bef1ec85f5d7f>.

<sup>16</sup> Marc A. Thiessen, *Opinion: If Trump incited Jan. 6, what about Schumer’s threats against Kavanaugh?*, WASH. POST, June 9, 2022, <https://www.washingtonpost.com/opinions/2022/06/09/democrat-s-cant-blame-trump-jan-6-absolve-schumer-threatening-kavanaugh/>.

<sup>17</sup> *Id.*



arrested for threatening behavior directed at Justice Kavanaugh.<sup>18</sup>

3. Recently a number of Republican officials have proposed retaliating for the instant lawsuit by seeking to remove President Biden from their state ballots for abetting an “invasion of eight million” at the southern border of the United States.<sup>19</sup>

4. On June 10, 2017, Sen. Bernie Sanders called President Trump “the worst and most dangerous president in the history of our country.”<sup>20</sup> Four days later, one of his supporters opened fire on congressional Republicans at a baseball practice, wounding four, including Rep. Steve Scalise.<sup>21</sup>

All of these facts are fodder for interested partisans seeking to disqualify opposing candidates. If the nation does go “down that path,” presidential elections in the United States will become a more ugly business. Legal maneuvers to remove President

---

<sup>18</sup> *Id.*

<sup>19</sup> Amanda Prestigiacomo, *‘We’re Gonna Fight Back’: DeSantis Says He’s Looking To Boot Biden Off Florida Ballot After States Go After Trump*, THE DAILY WIRE, Jan. 6, 2024, <https://www.dailywire.com/news/were-gonna-fight-back-desantis-says-hes-looking-to-boot-biden-off-florida-ballot-after-states-go-after-trump>; Kate Plummer, *Republicans Threaten to Take Joe Biden Off Ballot in States They Control*, NEWSWEEK, Dec. 20, 2023, <https://www.newsweek.com/republicans-threaten-take-joe-biden-off-ballot-trump-colorado-1854067>.

<sup>20</sup> Yamiche Alcindor, *Attack Tests Movement Sanders Founded*, NEW YORK TIMES, June 14, 2017, <https://www.nytimes.com/2017/06/14/us/politics/bernie-sanders-supporters.html>.

<sup>21</sup> *Id.*

Trump from the ballots of various states, and the retaliatory maneuvers they provoke, will create a new, anti-democratic front in the partisan wars. To be blunt, “blue states” will apply Section 3 to harass “red” candidates, while “red states” will apply that provision to harass “blue” candidates. Elections may be decided by the vagaries of litigation, or else by the vagaries of partisan control of key state judicial or executive institutions, especially in swing states. The catalyst for an attempted disqualification will consist of any unguarded or awkward statement by a candidate that is subject to partisan misinterpretation, or that can be credibly connected to an act of violence. Presumably these suits will be aided by efforts in partisan-controlled state assemblies to pass legislation like that in Colorado.

The losers in this process, as here, will be the voters.

The Court should foreclose this kind of warfare now. Amici respectfully submit that the Court should refuse to ratify these maneuvers, and should instead adopt as its policy the observation that “[t]he cure for the evils of democracy is more democracy.”<sup>22</sup>

---

<sup>22</sup> H.L. Mencken, *CHRESTOMATHY* 155 (1962).

**CONCLUSION**

For the foregoing reasons, amici curiae respectfully request the Court reverse and render judgment for Petitioner.

Respectfully submitted,

ROBERT D. POPPER  
*Counsel of Record*  
ERIC W. LEE  
JUDICIAL WATCH, INC.  
425 Third Street, SW  
Suite 800  
Washington, DC 20024  
(202) 646-5172  
rpopper@judicialwatch.org  
elee@judicialwatch.org

T. RUSSELL NOBILE  
JUDICIAL WATCH, INC.  
P.O. Box 6592  
Gulfport, MS 39506  
(202) 527-9866  
rnobile@judicialwatch.org

H. CHRISTOPHER COATES  
LAW OFFICES OF H.  
CHRISTOPHER COATES  
934 Compass Point  
Charleston, SC 29412  
Phone: (843) 609-7080  
curriecoates@gmail.com

*Attorneys for Amici*