No. 23-719

In the Supreme Court of the United States

DONALD J. TRUMP, PETITIONER

v.

NORMA ANDERSON, ET AL.

ON WRIT OF CERTIORARI
TO THE SUPREME COURT OF COLORADO

BRIEF OF AMICUS CURIAE MICHIGAN SECRETARY OF STATE JOCELYN BENSON IN SUPPORT OF NEITHER PARTY

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INTEREST OF AMICUS CURIAE

Secretary of State Jocelyn Benson is the State of Michigan's chief election officer and supervises all election officials in the conducting of elections in the State. Mich. Comp. Laws §§ 168.21, 168.31. These duties include supervising Michigan's February 27, 2024, presidential primary election and the November 5, 2024, presidential election. For both these elections, Secretary Benson has the largely ministerial duty of certifying the names of candidates for president to be printed on the ballots. See, e.g., Mich. Comp. Laws §§ 168.42, 168.591, 168.614a, 168.615a, 168.619. In Michigan, the Secretary of State must certify the contents of the November general election ballot by September 6, 2024. See, e.g., Mich. Comp. Laws §§ 168.477, 168.480, 168.591, 168.648.

In *LaBrant* v. *Secretary of State*, several voters who sought to have former President Donald Trump disqualified as a candidate for President under § 3 of the Fourteenth Amendment sued Secretary Benson in the Michigan Court of Claims. That court held that Secretary Benson lacked authority under state law to declare the former President ineligible and bar him from appearing on the primary ballot, and that claims concerning the November 2024 general election were not ripe. The Michigan Court of Appeals affirmed.[1] The Michigan Supreme Court denied leave to appeal.[2] As a result, former President Trump will appear on

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[1] See *Davis* v. *Wayne Cnty. Election Comm'n*, No. 368615, 2023 WL 8656163 (Mich. Ct. App. Dec. 14, 2023); *LaBrant* v. *Sec'y of State*, No. 368628, 2023 WL 8656163 (Mich. Ct. App. Dec. 14, 2023).

[2] See *LaBrant* v. *Sec'y of State*, No. 166470 (Mich. Dec. 27, 2023).

Michigan's February 27, 2024 presidential primary ballot.

But, as a Michigan Supreme Court justice observed in her dissent, the Court of Appeals ruling "still allows appellants to renew their legal efforts as to the Michigan general election later in 2024 should Trump become the Republican nominee for President of the United States or seek such office as an independent candidate."[3] In other words, the State of Michigan and Secretary Benson could still be the targets of renewed efforts to disqualify the former President from appearing on the November ballot under § 3 of the Fourteenth Amendment. Therefore, the Secretary, as Michigan's chief election officer, has a substantial interest in having the application of § 3 completely resolved beforehand—questions that are squarely presented to this Court in this case.

INTRODUCTION AND SUMMARY OF ARGUMENT

For the first time since its adoption, courts, voters and state and local elections officials are confronted with serious claims that a leading presidential candidate is disqualified from holding that office under § 3 of the Fourteenth Amendment. It is vital that the Court answer the central questions of this case—whether the former President is disqualified from serving as President, and if so, whether a state has the power to exclude him from the primary or general election ballot on that basis. These questions must be fully answered now because election officials, like the Secretary, need to know whether the former President

[3] *Id*. (Welch, J., dissenting).

is eligible to appear on the ballot as a candidate, and voters deserve to know whether he is eligible to hold the office of President before casting their votes. The Secretary takes no position in this brief as to how these legal issues should be resolved, but for the good of our democracy, the Court should resolve them now.

There is no democratic act more venerable in this Nation than the election of the President of the United States. The integrity of this election, now more than ever, must be preserved for the good of the people and the well-being of democracy. The question of whether and how § 3 applies to the former President as a candidate for the office of President is of monumental significance. It is a constitutional question that only this Court can resolve with finality as to every state.

Finality must come now so that the states and their election officials can conduct efficient and meaningful elections. Neither purpose would be served by a decision from this Court that left open questions about the proper application of § 3. Indeed, that lack of clarity could lead either to people voting for a presidential candidate who could subsequently be disqualified from holding office if elected, or to being prohibited from voting for an otherwise qualified presidential candidate of their choice. So, regardless of how this Court may resolve the merits of the case, this Court should directly and completely resolve § 3's application to the former President.

ARGUMENT

I. This Court's full and complete resolution of any question regarding the application of Section 3 of the Fourteenth Amendment is necessary to avoid confusion and uncertainty in the elections process.

Elections are "of the most fundamental significance under our constitutional structure." *Ill. Bd. of Elections* v. *Socialist Workers Party*, 440 U.S. 173, 184 (1979). This elections case presents "important" issues with "serious arguments on the merits" that are "almost certain to continue arising until the Court definitively resolves" them. *Moore* v. *Harper*, 142 S. Ct. 1089, 1089 (2022) (Kavanaugh, J., concurring in the denial of application for stay). How § 3 of the Fourteenth Amendment ought to operate and whether it applies to the former President are constitutional questions of enormous significance that can only be—and must be—settled by this Court.

Although seemingly a dusty relic of a bygone era, the events of January 6, 2021, breathed new life into § 3 of the Fourteenth Amendment. The newfound relevance began with a few challenges to various state and federal candidates in 2022. See, e.g., *Hansen* v. *Finchem*, No. CV-22-0099-AP, 2022 WL 1468157 (Ariz. May 9, 2022) (state office); *State* v. *Griffin*, No. D-101-CV-2022-00473, 2022 WL 4295619 (N.M. Dist. Ct., Sept. 6, 2022) (state office); *Greene* v. *Raffensperger*, 599 F. Supp. 3d 1283 (N.D. Ga. 2022) (federal office); *Cawthorn* v. *Circosta*, 590 F. Supp. 3d 873 (E.D.N.C. 2022), rev'd *Cawthorn* v. *Amalfi*, 35 F.4th 245 (4th Cir. 2022) (federal office). Now, with the impending presidential election, more than 40 lawsuits

across the country, including in Michigan, have sought to disqualify the former President under § 3.

These cases, which have been filed in both state and federal courts, have resulted in mixed rulings. Some have been dismissed for lack of standing. See, e.g., *Castro* v. *Scanlan*, 86 F.4th 947, 959 (1st Cir. 2023) (affirming dismissal for lack of standing). In Michigan and Minnesota, state courts concluded that former President Trump's eligibility to hold office was not relevant to his ability to participate in those states' presidential primaries, but declined to rule on his eligibility to appear on the general election ballot. See *Growe* v. *Simon*, 997 N.W.2d 81 (Minn. 2023); *Davis* v. *Wayne County Election Comm'n*, No. 368615; 2023 WL 8656163 (Mich. Ct. App. Dec. 14, 2023).

Conversely, in the instant case, the Colorado Supreme Court held that Trump is disqualified from holding the office of President under § 3 of the Fourteenth Amendment because he engaged in an insurrection on January 6, 2021. *Anderson* v. *Griswold*, No. 23SA300; 2023 WL 8770111, at *2 (Colo. Dec. 19, 2023). Acknowledging that the case thrust the court into "uncharted territory," the court discharged its "solemn duty to apply the law" and engaged in a lengthy, detailed analysis that led it to bar the former President from the Colorado primary. *Id*. at *2–3.

On the heels of that decision, and citing it as support, the Secretary of State for the State of Maine determined that Trump failed to meet the qualifications of the office of President and could not appear on that state's primary ballot because he was ineligible under § 3 of the Fourteenth Amendment. See *In re: Challenges of Kimberly Rosen, Thomas Saviello, and Ethan*

Strimling; Paul Gordon; and Mary Ann Royal to Primary Nomination Petition of Donald J. Trump, Republican Candidate for President of the United States.[4] That administrative decision has now been appealed to the state courts.[5]

There is every reason to expect more challenges to Trump's eligibility until there is a determination by this Court that provides clear instruction on how § 3 applies to the former President. The Court's expedited treatment of this case demonstrates that the Court is very much aware of the necessity of rapid review of these questions. But it is not only necessary that this Court decide this matter quickly, but also vital that the Court address and resolve the issues related to § 3 as directly and fully as possible.

The former President's petition raises arguments under the Electors Clause and suggests that individuals who would be barred by § 3 from holding office may nonetheless be permitted to appear on the ballot as candidates. While the Secretary of State takes no position on the merits of any of the petition's arguments, she nonetheless emphasizes that a ruling on those grounds would offer no useful instruction to election officials, courts, or voters about the scope and application of § 3 to the former President. Deciding this case on that basis would merely assure that the questions would persist and would be raised again in

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[4] See https://www.maine.gov/sos/news/2023/Decision in Challenge to Trump Presidential Primary Petitions.pdf (accessed January 16, 2024).

[5] See https://www.washingtonpost.com/documents/fa4f72ba-0dc0-462d-8f2d-55db54aea707.pdf?itid=lk_inline_manual_4 (accessed January 16, 2024).

the coming weeks or months. Delayed answers to these questions, however, would exacerbate the risks of confusion and disruption. The Secretary of State urges this Court to squarely decide the questions of how § 3 operates and whether it applies to former President Trump, rather than deciding this case in a way that delays final determination of those questions until even closer to the November 2024 presidential election.

Even if some other ground would be sufficient to resolve this case, resolving the central § 3 issues now would be consistent with this Court's precedent. Although the Court usually avoids resolving constitutional questions unless required to do so, that is not its uniform practice. In *NFIB* v. *Sebelius*, for example, the Court concluded the Affordable Care Act's individual mandate was not a constitutional exercise of the Commerce power even though its conclusion that the mandate was a valid exercise of the taxing power was "sufficient" to resolve Congress's power to impose the mandate. 567 U.S. 519, 570 (2012). In election-related cases, in particular, the Court has recognized the value of resolving constitutional issues even when "no effective relief can be provided to candidates or voters" so that the parties and others may benefit from the guidance. See *Storer* v. *Brown*, 415 U.S. 724, 737 n.8 (1974) (applying mootness exception for cases capable of repetition yet evading review).

This approach makes sense in elections cases. This Court has long disfavored last-minute judicial intervention in election matters in order to avoid disrupting election processes and confusing voters. *Purcell* v. *Gonzalez*, 549 U.S. 1, 4–5 (2006) ("Court orders

affecting elections . . . can themselves result in voter confusion. . . . As an election draws closer, that risk will increase."). See also *North Carolina* v. *League of Women Voters of N.C.*, 574 U.S. 927 (2014) (granting stay to prevent interference with election procedures roughly one month before election); *Williams* v. *Rhodes*, 393 U.S. 23, 34 (1968) (declining to order new ballots printed at a "late date" even where existing ballots unconstitutionally excluded a certain candidate).

Disruption concerns apply with particular force here. Without a swift conclusive determination regarding the applicability of § 3, the risk of confusion and disruption in the administration of elections will only grow. Voters should not be compelled to cast their votes for President without knowing whether their vote can or will be given effect. Such uncertainty will breed distrust among the electorate over the election's validity. This outcome must be avoided, and it can be avoided only through a decision that fully resolves the questions presented and provides clear guidance to election officials, courts, and the voting public about how and when § 3 applies to former President Trump.

CONCLUSION

This Court should decide whether § 3 of the Fourteenth Amendment disqualifies former President Trump from the office of President, and whether, as a result, states may exclude former President Trump from the ballot.

Respectfully Submitted,

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