

<p>SUPREME COURT STATE OF COLORADO 2 East 14<sup>th</sup> Avenue, Denver, CO 80202</p>	<p>DATE FILED: November 20, 2023 4:19 PM FILING ID: EEB47CEC336A1 CASE NUMBER: 2023SA300</p>
<p>Original Proceeding District Court, City and County of Denver, Colorado, Case No. 2023CV32577</p>	
<p><b>In Re:</b> <b>Petitioners-Appellees:</b> <b>NORMA ANDERSON, MICHELLE PRIOLA,</b> <b>CLAUDINE CMARADA, KRISTA KAUFER,</b> <b>KATHI WRIGHT, and CHRISTOPHER</b> <b>CASTILIAN,</b></p> <p>v.</p> <p><b>Respondent-Appellee:</b> <b>JENA GRISWOLD,</b> in her official capacity as Colorado Secretary of State,</p> <p>v.</p> <p><b>Intervenor-Appellee:</b> <b>COLORADO REPUBLICAN STATE</b> <b>CENTRAL COMMITTEE,</b> an unincorporated association, and</p> <p><b>Intervenor-Appellant</b> <b>DONALD J. TRUMP.</b></p>	<p style="text-align: center;">▲ COURT USE ONLY ▲</p>
<p><i>Attorneys for Intervenor and Appellant, Donald J. Trump:</i> Scott E. Gessler (28944), sessler@gesslerblue.com Geoffrey N. Blue (32684) gblue@gesslerblue.com GESSLER BLUE LLC 7350 E Progress Pl., Suite 100 Greenwood Village, CO 80111 Tel: (720) 839-6637 or (303) 906-1050</p>	<p>Supreme Court Case Number: 21 SC _____</p>

## APPLICATION FOR REVIEW AND ADJUDICATION

### Introduction

President Trump seeks review and adjudication of the Denver district court's *Final Order* in *Anderson v. Griswold*, Case No. 23CV32577 (Denv. Dist. Ct. Nov. 17, 2023). Under C.R.S. § 1-1-113 ("Section 113"), a district court decision may be "reviewed and finally adjudicated by the supreme court of this state, if either party makes application to the supreme court within three days after the district court proceedings are terminated."<sup>1</sup> President Trump is a party in the district court proceeding. The *Verified Petition* originally named him as a Respondent in the second claim for relief, and, following voluntary dismissal of that claim the district court, granted President Trump's motion to intervene on the first claim for relief. The district court proceeding terminated on November 17, 2023, following that court's issuance of its *Final Order*.

Procedurally, the Court confronts this matter for the second time. President Trump filed several motions to dismiss in the lower court, all of which were denied. On October 23, 2023, President Trump filed a *Petition for Relief* under C.A.R. 21 seeking review of two of the district court's orders. This Court denied that petition on

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<sup>1</sup> C.R.S. § 1-1-113(3).

October 27, 2023, stating that it sought to maximize efficiency by considering all issues on appeal. This Court explicitly reserved issuing an opinion on the merits of the *Petition for Relief*. Following adjudication of several other issues and a five-day hearing, the district court issued its *Final Order*, denying the Petitioners the relief they sought and ordering the Secretary to place President Trump on the ballot. But the district court nonetheless made legal and factual findings wholly unsupported in the law, and these errors demand review – especially if the Petitioners in this matter also seek review of the sole dispositive issue upon which President Trump prevailed.

The Petitioners in the matter below have confirmed that they will seek review and adjudication of the *Final Order*. President Trump seeks review to ensure that if this Court takes up this case on appeal, it will consider the full scope of the constitutional, interpretive, and evidentiary issues. To be sure, the district court grounded its ruling on a correct textual analysis of U.S. Const. amend XIV, § 3 (“Section Three”) when it held that Section Three of the Fourteenth Amendment does not apply to President Trump, but it nonetheless committed multiple grave jurisdictional and legal errors; those include adjudicating constitutional issues in a proceeding under Section 113, and creating new, unprecedented, and unsupported legal standards in applying Section Three.

Importantly, this matter encompasses multiple issues of first impression that affect Coloradans’ – and all Americans’ – ability to select a president, particularly if President Trump is barred from the ballot. A full review requires an analysis of the errors made the court below. Section 5, *infra*, identifies *eleven* issues for review.

Undersigned counsel recognizes that this is an unusually large number of issues, each of which itself is worthy to stand as single issue on appeal. But if this Court chooses to exercise discretionary review of the district court’s *Final Order*, a comprehensive review of the district court’s errors is necessary. Those errors affect weighty public policy considerations and serve as faulty interpretation of important constitutional issues. And as this Court earlier noted, considering all issues in one proceeding will maximize efficiency, in the event this matter is further appealed.

Because of the complexity and number of issues – as well as the possibility of further review -- President Trump asks this Court to set a briefing schedule and also to increase the allowable word limit to 19,000 words for both opening and answer briefs, and 8,500 words for the reply brief. This will allow full discussion of the issues before this Court.

## **1. Final Order on Appeal**

- This *Application for Review and Adjudication* seeks review of the district court’s final order issued on November 17, 2023.

- This *Application for Review and Adjudication* is filed under C.A.R. 3 and C.R.S. § 1-1-113(3).

**2. Magistrate Order?**

This case did not involve a magistrate.

**3. More Time to Appeal?**

- No additional time is requested.

**4. Post-Trial Motions?**

No post-trial motions have been filed.

**5. Possible Issues on Appeal**

**A.** The district court held a five-day hearing beginning October 30, 2023, but under Section 113 it prohibited discovery and allowed only five weeks to prepare a defense. This Court's rulings in *Frazier v. Williams*<sup>2</sup> and *Kuhn v. Williams*<sup>3</sup> directly prohibit litigation of constitutional claim in a Section 113 proceeding, because the district court is limited to ordering compliance with the Election Code, and because Section 113 procedures are incompatible with adjudication of constitutional issues. Should the district court's opinion be vacated for lack of jurisdiction?

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<sup>2</sup> *Frazier v. Williams*, 2017 CO 85.

<sup>3</sup> *Kuhn v. Williams*, 2018 CO 30M.

**B.** The district court ruled that Section Three did not apply to the presidency, because that position is not an “officer of the United States.” The district court nonetheless applied Section Three to President Trump, finding that he “engaged” in an “insurrection.” Should these findings be vacated because the district court self-admittedly lacked jurisdiction to apply Section Three to President Trump?

**C.** The district court correctly held that neither C.R.S. § 1-4-204 nor any other provision of the Election Code grants the Secretary authority to investigate or remove a presidential candidate under Section Three. But the Court nonetheless ruled that it could adjudicate candidate eligibility under Section Three and issue orders requiring compliance with the Fourteenth Amendment. Can a district court determine candidate qualifications under Section 1204, even when the Election Code does not provide the authority to order that relief?

**D.** Congress has not authorized state courts to enforce Section Three, and U.S. Const. amend XIV, § 5 specifically grants Congress the authority to implement provisions of the Fourteenth Amendment. Nonetheless, the district court held a hearing and made findings under Section Three. May a state district court adjudicate Section Three disqualification, absent a Congressional authorizing statute?

**E.** Does Presidential disqualification under U.S. Const. amend XIV, § 3 present a political question, nonjusticiable in a state court, as multiple state courts have held?

**F.** For the first time ever, the district court found that the phrase “engaged in,” as used in Section Three, includes “incited.” Was the District Court correct to define “engaged in” so broadly?

**G.** The district court ruled that President Trump’s political speech “incited” violence, even though the words he used never advocated violence. Instead, the district court found that President Trump’s supposed intent, and the effect of his words upon certain listeners, sufficed to render his speech unprotected under the First Amendment. Did the district court err in its application of First Amendment standards to President Trump’s speech?

**H.** The district court relied upon the President’s alleged delay in deploying the National Guard as a basis to determine that President Trump recklessly endangered people and “engaged” in insurrection. The United States Supreme Court has repeatedly made clear that courts may not second-guess a President’s discretionary decision-making in this area. Did the district court’s decision improperly invade the province of the federal Executive branch?

**I.** The district court defined insurrection as “(1) a public use of force or threat of force (2) by a group of people (3) to hinder or prevent execution of the

Constitution of the United States.” This definition, however, is new and without precedent. Did the district court adopt the proper definition of “insurrection,” in holding that the events of January 6, 2021, constituted an insurrection?

**J.** When particularly important individual interests such as a constitutional right are at issue, the proper standard of proof requires more than a preponderance of the evidence. The district court, however, rejected this standard, reasoning that the liberty interests at stake do not require a higher standard of proof. Does potential disqualification under Section Three to hold federal or state office implicate important liberty interests, thus requiring as a matter of due process a burden of proof greater than preponderance of the evidence?

**K.** Even before the January 6th Committee began its work, every Committee member previously determined – through public announcements and an impeachment vote – the supposedly “obvious fact” that President Trump “incited” an “insurrection.” The Committee contained no members who disagreed, allowed no minority staff, and hired a television producer to package the Committee’s conclusions for maximum political impact. Did this bias, highly unusual procedures and structure, and the report’s extensive use of multi-level hearsay, render the report inadmissible to serve as the basis for the district court’s determination that President Trump “engaged in an insurrection?”

## 6. Transcript

Transcripts are necessary to review the issues on appeal. The parties have already ordered and received trial transcripts.

## 7. Party Information

- Petitioners Norma Anderson, Michelle Priola, Claudine Cmarada, Krista Kafer, Kathi Wright and Christopher Castilian.

Represented by:

- Eric Olson (Reg. No. 36414), Sean Grimsley (Reg. No. 36422), Jason Murray (Reg. No. 43652), Olson Grimsley Kawanabe Hinchcliff & Murray, LLC, 700 17<sup>th</sup> Street, Suite 1600, Denver, CO 80202; (303) 535-9151;
- Mario Niolais (Reg. No. 38589), KBN Law, LLC, 7830 W. Alameda Ave., Suite 103-301, Lakewood, CO 80226; (720) 773-1526;
- Martha M. Tierney (Reg. No. 27521), Tierney Lawrence Stiles, LLC, 225 E. 16<sup>th</sup> Ave., Suite 350, Denver, CO 80203; (303) 356-4870;
- Donald Sherman (*admitted pro hac vice*); Nikhel Sus (*admitted pro hac vice*); Jonathan Maier (*admitted pro hac vice*), Citizens for

Responsibility and Ethics in Washington, 1331 F. Street NW,  
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- Respondent Jena Griswold, in her official capacity as the Colorado Secretary of State.

Represented by:

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- Intervenor Colorado Republican State Central Committee.

Represented by:

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- Jane Raskin (*admitted pro hac vice*); Benjamin Sisney (*admitted pro hac vice*); Nathan J. Moelker (*admitted pro hac vice*); Jordan Sekulow (*admitted pro hac vice*); Jay A. Sekulow (*admitted pro hac vice*); Stuart J. Roth (*admitted pro hac vice*); American Center for Law and Justice.

**8. Attachments**

- A copy of the final order being appealing.
- The \$223 filing fee, paid via CCES.
- (no motions for post-trial relief were filed).

**9. Copies Delivered**

I certify that on November 20, 2023, undersigned counsel ensured that a copy of this document was emailed or served via CCES to:

**The Honorable Sarah B. Wallace**  
**Denver District Court**  
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**10. Signature & Date**

Respectfully submitted 20<sup>th</sup> day of November 2023,

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By: s/ Geoffrey N. Blue  
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**CERTIFICATE OF SERVICE**

I certify that on this 20th day of November 2023, the foregoing was electronically served via e-mail or CCES on all counsel and parties of record.

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