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

AMICI CURIAE BRIEF OF RYAN BINKLEY, BINKLEY FOR PRESIDENT 2024, WISCONSIN VOTER ALLIANCE, PURE INTEGRITY MICHIGAN ELECTIONS, AND MICHIGAN FAIR ELECTIONS IN SUPPORT OF NEITHER PARTY

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QUESTION PRESENTED

Whether states are preempted from disqualifying presidential candidates from their presidential ballots because the D.C. Code § 16–3501, along with the federal declaratory judgment act, 28 U.S.C. §§ 2201-02 (1970), provides exclusive jurisdiction to the U.S. District Court for the District of Columbia to issue a writ of quo warranty against a disqualified President or President-Elect.

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INTEREST OF THE AMICI CURIAE[1]

The amici curiae parties file this brief in support of neither party.

Ryan Binkley is a Republican candidate in the 2024 election to be U.S. President. Binkley for President 2024 is his campaign organization. Binkley has qualified for the presidential ballots of 30 states already. Binkley has 80,944 unique donors. Nonetheless, Binkley has recently been denied a place on the Minnesota presidential primary ballot, in part, because he was not a current or former President, U.S. Senate or House member, Governor or Mayor of a city of over 250,000. His exclusion from Minnesota's Republican primary ballot is similar to Trump's exclusion from Colorado's presidential ballot—just for different reasons.

Wisconsin Voter Alliance (WVA) is a Wisconsin non-profit corporation. WVA's vision statement is "[t]o facilitate and coordinate restoration of voting integrity in the State of Wisconsin." WVA's mission statement is "to effect change to law and policies surrounding elections. WVA will accomplish this goal by creating multi-faceted objectives to restore voter confidence, and integrity in the election process." WVA uses the following means to accomplish its goals: educating the

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[1] Pursuant to S. Ct. Rule 37.6, counsel for all parties have consented to the filing of this brief. No counsel for a party authored this brief in whole or in part and no person or entity other than amicus, its members, or counsel made a monetary contribution to its preparation or submission.

public and elected officials; working to establish best election practices; identifying and encouraging debate on election policy and law; and encouraging fairness during elections.

Pure Integrity Michigan Elections (PIME) is an incorporated 501(c)(4) nonprofit organization in Michigan. Pure Integrity for Michigan Elections started with a handful of concerned citizens in January 2021. Since then, the organization has grown to more than 1500 supporters across the state. PIME's mission is to help restore integrity to Michigan elections, and the group works to achieve maximum transparency, checks and balances, ethics, and integrity in election law and processes. PIME engages in investigation of Michigan's elections to ensure legal compliance, and it messages the results of its investigations to educate the public about ways to improve Michigan's elections. PIME analyzes bills and laws with an eye toward closing gaps and opportunities for abuse by those who would undermine free and fair elections. PIME is a peaceful, issue-based, nonpartisan organization that welcomes all who support election integrity and the U.S. and Michigan Constitutions.

Michigan Fair Elections Institute (MFE) is an incorporated nonprofit 501(c)(3) organization. MFE is an educational organization that works to ensure Michigan elections are conducted according to the law and consistent with the U.S. and states' constitutions. MFE provides educational support services to

local task force coalitions to help them organize their communities to restore fair and unbiased elections in Michigan. MFE has leaders in 34 Michigan counties and more than 2,000 supporters across the state.

SUMMARY OF THE ARGUMENT

D.C. Code § 16–3501, a Congressionally-enacted federal law applying the writ of quo warranto to national officers, provides exclusive jurisdiction to the U.S. District Court for the District of Columbia to issue a writ of quo warranto against a disqualified President-Elect. *Newman v. U.S. of America ex rel. Frizzell*, 238 U.S. 537, 552 (1915) (interpreting earlier version of D.C. Code § 16–3501 to apply to national officers of the United States). States misuse their Electors Clause powers by disqualifying presidential candidates from their presidential election ballots when these actions are preempted by federal law.

The Electors Clause, Article II, section 1, clause 2 provides that states must appoint presidential electors and the state legislature can choose the method of appointment. But, the Electors Clause does not give the states the power to disqualify presidential candidates. Instead, the Electors Clause reserves disqualifying presidential candidates—that is potential future President-Elects—beyond state enforcement of Article II, section 1, clause 5 presidential requirements of

natural born citizen, 35 years of age and 14 years of residency—to the federal government.

And, Congress has acted on its constitutional authority to remove President-Elects who are disqualified. The Congressionally-enacted D.C. Code § 16–3501 grants exclusive jurisdiction to the U.S. District Court for the District of Columbia to issue a writ of quo warranto to remove a person who "usurps, intrudes into, or unlawfully holds or exercises" the presidential office. D.C. Code § 16–3501. The U.S. Supreme Court has interpreted an earlier version of D.C. Code § 16–3501 that the quo warranto law is enforceable against national officers of the United States. *Newman*, 238 U.S. at 552 (1915). Plus, under the federal declaratory judgment act, 28 U.S.C. §§ 2201-02 (1970), the U.S. District Court could hear a case against an allegedly disqualified President-Elect who plans to "usurp, intrude into, or unlawfully hold or exercise" the presidential office. And, the U.S. Constitution, Twentieth Amendment, and 3 U.S. Code § 19, provide procedures to fill a vacancy if a President-Elect is not qualified for the presidential office.

Therefore, disqualifying a President-Elect, even a future President-Elect, i.e., a presidential candidate, is a federal power that could only be exercised by the federal government after the presidential candidate is elected as President-Elect. States are preempted from disqualifying presidential candidates from their presidential ballots because the D.C. Code § 16–3501 already provides exclusive jurisdiction to the U.S. District Court for the District of Columbia to issue a

writ of quo warranto against a disqualified President-Elect. If a disqualified presidential candidate is elected as President-Elect, under federal law, the disqualification procedure occurs after the presidential election in the U.S. District Court for the District of Columbia.

Accordingly, the Electors Clause and D.C. Code § 16–3501 preempt state action to disqualify presidential candidates. The only exceptions are the states, to avoid presidential ballot clutter, can disqualify presidential candidates who do not meet the Article II, section 1, clause 5 presidential requirements of natural born citizen, 35 years of age and 14 years of residency and can require thousands of candidate nomination petition signatures to qualify to be on the presidential ballot. Those exceptions do not apply here.

STATEMENT

Binkley filed a petition in the Minnesota Supreme Court to challenge his exclusion from Minnesota's presidential primary ballot. *Binkley v. Simon*, Minn. Sup. Ct. Case No. A23-1900. Binkley claimed that under the Electors Clause, a state's presidential primary cannot be used by the State to exclude presidential candidates who qualify under U.S. Constitution, Article II, § 1, clause 5. The Minnesota Supreme Court denied the petition on January 13, 2024. *Id.*, App. 1. Binkley intends to file a petition for writ of certiorari regarding the Minnesota Supreme Court decision prior to the February 5, 2024 hearing in this case. Binkley,

after the denial of his petition, is waiting for the Minnesota Supreme Court to issue a written decision as soon as possible because the presidential primary is scheduled for March 5, 2024. App. 2.

As previously mentioned, Binkley is a qualified presidential candidate. U.S. Const., art. I, § 1, cl. 5. He is a registered presidential candidate with the Federal Elections Commission and is a member of the Republican Party, and adheres to the ideology of that party. To date, Binkley has been successful in securing his name onto presidential ballots in 30 states. Binkley has 80,944 unique donors.

But, the Minnesota Secretary of State has excluded Binkley from the upcoming presidential primary ballot on March 5, 2024, even though he is a qualified presidential candidate under Article II, section 1, clause 5. The Republican Party of Minnesota (RPM) announced standards for ballot qualification for the Republican presidential primary ballot in Minnesota which disqualify Binkley. The Republican Party of Minnesota's standards for qualifying for the presidential primary ballot include either (1) meeting the threshold to appear in the first Republican National Committee debate in Milwaukee; or (2) having previously held or currently holding an elected office of President, Vice-President of the United States, United States Senator or Congressman, Governor in any state, or mayor of a United States city with a population of more than 250,000. The message the RPM conveyed to Binkley and his campaign, "Binkley for President 2024," is that Binkley did not meet the party's criteria

and Binkley will not be on the presidential primary ballot.

Binkley does not meet the stated criteria. For example, Binkley is not a former President, Vice-President, Senator, Congressman or Mayor of a city with a population of more than 250,000. But, if he were one, he would be on Minnesota's Republican presidential primary ballot.

The RPM communicated to the Secretary of State, through the RPM's chair, not to place Binkley on Minnesota's March 2024 presidential nominating primary ballot. Then, the Secretary of State, based on the RPM's communication, excluded Binkley from the upcoming presidential primary ballot even though he is a qualified presidential candidate under Article II, section 1, clause 5.

Similarly, Donald J. Trump has been excluded from the Colorado presidential election ballot even though he is a qualified presidential candidate under Article II, section 1, clause 5.

ARGUMENT

The Colorado Supreme Court and Minnesota Supreme Court have legally erred under the Electors Clause and D.C. Code § 16–3501 by prematurely disqualifying presidential candidates from presidential elections. The Electors Clause and D.C. Code § 16–3501, which provide the U.S. District Court for the

District of Columbia exclusive jurisdiction to disqualify Presidents and President-Elects, preempt Colorado's and Minnesota's actions.

I. The actions of Colorado and Minnesota are preempted by the Electors Clause and D.C. Code § 16–3501.

There are two cornerstones of federal preemption jurisprudence. First, "the purpose of Congress is the ultimate touchstone in every pre-emption case." *Medtronic, Inc. v. Lohr*, 518 U.S. 470, 485 (1996) (internal quotation marks omitted); see *Retail Clerks v. Schermerhorn*, 375 U.S. 96, 103 (1963). Second, "[i]n all pre-emption cases, and particularly in those in which Congress has 'legislated . . . in a field which the States have traditionally occupied,' . . . we 'start with the assumption that the historic police powers of the States were not to be superseded by the Federal Act unless that was the clear and manifest purpose of Congress.'" *Lohr*, 518 U.S., at 485 (quoting *Rice v. Santa Fe Elevator Corp*., 331 U.S. 218, 230 (1947)).

Congress enacted D.C. Code § 16–3501 showing a clear and manifest purpose that the disqualification of Presidents was to be done in the U.S. District Court for the District of Columbia, not in the states prior to the election of the President-Elect. The fact that the federal officer quo warranto law is codified in the D.C. Code makes sense because the seat of the federal government is the District of Columbia. The Code of the District of Columbia is a compilation of the general and

permanent laws that relate to the District of Columbia. Congress enacts and revises the code.

The actions of Colorado and Minnesota are preempted under the Electors Clause and D.C. Code § 16–3501. The Electors Clause authorizes and requires states to appoint presidential electors, but does not authorize states to disqualify Presidents, President-Elects and presidential candidates. D.C. Code § 16–3501 authorizes the writ of quo warranto against national officers, providing exclusive jurisdiction to the U.S. District Court for the District of Columbia to issue a writ of quo warranto against a disqualified President-Elect. *Newman*, 238 U.S. at 552 (1915). Colorado and Minnesota have misused their Electors Clause powers by disqualifying presidential candidates from their presidential election ballots when their actions are federally preempted. Colorado has erred in disqualifying Trump. Minnesota has erred by disqualifying Binkley.

If one of the two presidential candidates—Binkley or Trump—is elected President, and is disqualified, under D.C. Code § 16–3501, the U.S. District Court for the District of Columbia can issue a writ of quo warranto preventing the President-Elect from taking office. The states are acting prematurely to preclude Binkley and Trump from presidential candidate ballots now.

To be sure, under the Electors Clause, the states, to avoid presidential ballot clutter, can disqualify presidential candidates who do not meet the Article II, section 1, clause 5 presidential requirements of natural

born citizen, 35 years of age and 14 years of residency and can require thousands of candidate nomination petition signatures to qualify to be on the presidential ballot.

The Electors Clause, Article II, section 1, clause 2 provides that states must appoint presidential electors and the state legislature can choose the method of appointment:

> Each State shall appoint, in such Manner as the Legislature thereof may direct, a Number of Electors, equal to the whole Number of Senators and Representatives to which the State may be entitled in the Congress: but no Senator or Representative, or Person holding an Office of Trust or Profit under the United States, shall be appointed an Elector.

But, the Electors Clause does not give the states the power to disqualify presidential candidates. Instead, the Electors Clause reserves disqualifying presidential candidates—beyond Article II, section 1, clause 5 presidential requirements of natural born citizen, 35 years of age and 14 years of residency which the states can do—to the federal government.

And, Congress has acted on its constitutional authority to remove Presidents and President-Elects who are disqualified. The Congressionally-enacted D.C. Code § 16–3501 grants exclusive jurisdiction to the U.S. District Court for the District of Columbia to issue a writ of quo warranto to remove a person who "usurps, intrudes into, or unlawfully holds or exercises" the

presidential office. D.C. Code § 16–3501. The U.S. Supreme Court has interpreted an earlier version of D.C. Code § 16–3501 that the quo warranto law is enforceable against national officers of the United States:

> This fact also shows that §§ 1538–1540 of the District Code, in proper cases, instituted by proper officers or persons, may be enforceable against national officers of the United States. The sections are therefore to be treated as general laws of the United States, not as mere local laws of the District. Being a law of general operation, it can be reviewed on writ of error from this Court.

Newman, 238 U.S. at 552 (citations omitted). And, under the federal declaratory judgment act, 28 U.S.C. §§ 2201-02 (1970), the U.S. District Court will hear a case against an allegedly disqualified President-Elect who plans to "usurp, intrude into, or unlawfully hold or exercise" the presidential office. And, the U.S. Constitution, Twentieth Amendment and 3 U.S. Code § 19, provide procedures to fill a vacancy if a President-Elect is not qualified for the presidential office.

Therefore, disqualifying a President-Elect, even a future one, is a federal power that can only be exercised through the U.S. District Court for the District of Columbia after the President-Elect is elected. States are preempted from disqualifying presidential candidates from their presidential ballots because the D.C. Code § 16–3501 already provides for the U.S. District Court for the District of Columbia to issue a writ of quo warranto against a disqualified President-Elect.

Accordingly, the Electors Clause and D.C. Code § 16–3501 preempt state action to disqualify presidential candidates. The only exceptions are the states, to avoid presidential ballot clutter, can disqualify presidential candidates who do not meet the Article II, section 1, clause 5 presidential requirements of natural born citizen, 35 years of age and 14 years of residency and can require thousands of candidate nomination petition signatures to qualify to be on the presidential ballot.

In summary, under the Electors Clause, a state running a statewide presidential election, primary or general election, is preempted from excluding any Article II, section 1, clause 5 qualified presidential candidate from any presidential ballot because the U.S. District Court for the District of Columbia has exclusive quo warranto jurisdiction after the President-Elect is elected to determine disqualification. D.C. Code § 16–3501.

Colorado and Minnesota err in their reliance on the Electors Clause or any other legal authority to claim a power to disqualify a potential future President-Elect by excluding them from statewide presidential ballots. Doing it the Colorado and Minnesota way results in inconsistent decisions among the states on whether a President-Elect is qualified to be President. How can Colorado and Minnesota decide alone for the nation who is disqualified from being President? D.C. Code § 16–3501 preempts premature, legally-inconsistent state presidential disqualifications by providing for the U.S. District Court for the District of Columbia with exclusive jurisdiction to issue a writ of

quo warranto against a purportedly disqualified President-Elect. *Newman*, 238 U.S. at 552.

II. Colorado and Minnesota have erred by prematurely disqualifying potential President-Elects from their presidential elections.

Colorado and Minnesota have erred under the Electors Clause by prematurely disqualifying presidential candidates from their presidential elections. The Electors Clause requires that the States appoint Presidential Electors to elect a President. U.S. Const. art. II, § 1, cl. 2. However, Colorado and Minnesota have no authority under the Electors Clause to disqualify and exclude candidates for presidential office, except under Article II, section 1, clause 5.

Accordingly, under the Electors Clause, a state running a statewide presidential election, primary or general, is constitutionally precluded from excluding any Article II, section 1, clause 5 qualified presidential candidate from the presidential ballot:

> No Person except a natural born Citizen, or a Citizen of the United States, at the time of the Adoption of this Constitution, shall be eligible to the Office of President; neither shall any Person be eligible to that Office who shall not have attained to the Age of thirty five Years, and been fourteen Years a Resident within the United States.

To be sure, a President-Elect, elected by the states' presidential electors, may still not be qualified for President. But, in those cases, the Twentieth Amendment, section 3, provides a procedure for succession if a President-Elect fails to otherwise qualify for the presidential office:

> If a President shall not have been chosen before the time fixed for the beginning of his term, or if the President elect shall have failed to qualify, then the Vice President elect shall act as President until a President shall have qualified; and the Congress may by law provide for the case wherein neither a President elect nor a Vice President shall have qualified, declaring who shall then act as President, or the manner in which one who is to act shall be selected, and such person shall act accordingly until a President or Vice President shall have qualified.

Pursuant to the Twentieth Amendment, Congress enacted 3 U.S. Code § 19—"Vacancy in offices of both President and Vice President; officers eligible to act." The federal statute provides an additional procedure to fill a vacancy if the President-Elect fails to "qualify" for the office:

> (a) (1) If, by reason of . . . failure to qualify, there is neither a President nor Vice President to discharge the powers and duties of the office of President, then the Speaker of the House of Representatives shall, upon his resignation as Speaker

> and as Representative in Congress, act as President . . .
>
> (c) An individual acting as President under subsection (a) or subsection (b) of this section shall continue to act until the expiration of the then current Presidential term, except that—(1) if his discharge of the powers and duties of the office is founded in whole or in part on the failure of both the President-elect and the Vice-President-elect to qualify, then he shall act only until a President or Vice President qualifies . . .

So, the constitutionally-mandated procedure, confirmed by 3 U.S. Code § 19 is any disqualification beyond the Article II, section 1, clause 5 requirement is determined after the President-Elect has been elected. Such disqualification is determined after the President-Elect is elected and prior to the commencement of the President-Elect's purported term of office.

Accordingly, a state running a statewide presidential election, primary or general, is constitutionally precluded from excluding any Article II, section 1, clause 5 qualified presidential candidate from the ballot. Any disqualifications of a President-Elect beyond Article II, section 1, clause 5, and the filling of any subsequent vacancy are determined after the President is elected by the states' presidential electors and by a process consistent with D.C. Code § 16–3501, the Twentieth Amendment, other constitutional provisions and 3 U.S. Code § 19.

But, in both Colorado and Minnesota, the states are prematurely excluding presidential candidates from presidential election ballots on grounds other than Article II, section 1, clause 5. First, the Colorado Supreme Court precludes presidential candidate Donald Trump as disqualified under the Fourteenth Amendment, section 3:

> Section 3 Disqualification from Holding Office. No person shall be a Senator or Representative in Congress, or elector of President and Vice-President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

Second, the Minnesota Supreme Court precludes Ryan Binkley as presidential candidate from the presidential primary on March 5, 2024, because of his failure to meet the state political party's requirements of either satisfying presidential debate requirements or "having previously held or currently holding an elected office of President, Vice-President of the United States, United States Senator or Congressman, Governor in any state, or mayor of a United States city with a population of more than 250,000."

Both Colorado and Minnesota are unconstitutionally precluding presidential candidates from their presidential ballots on disqualifications beyond Article II, section 1, clause 5. Even assuming it is true that Trump and Binkley may be disqualified for reasons other than Article II, section 1, clause 5, those matters are only to be resolved later after the states' presidential electors have chosen a President. That is the constitutional period to challenge a President-Elect for not being qualified to hold the office for reasons beyond the requirements of Article II, section 1, clause 5. Colorado and Minnesota have erred under the Electors Clause by prematurely disqualifying presidential candidates.

III. The Electors Clause prohibits the states' exclusion of presidential candidates from presidential elections.

The states are unconstitutionally precluding presidential candidates from their presidential ballots on disqualifications beyond Article II, section 1, clause 5. If a presidential candidate is to be disqualified for reasons other than Article II, section 1, clause 5, those matters are only to be resolved by the U.S. District Court for the District of Columbia after the states' presidential electors have chosen a President. That is the constitutional forum and period for a state to challenge a President-Elect for not being qualified to hold the office.

In the last presidential election, the Eighth Circuit, in *Carson v. Simon*, 978 F.3d 1051, 1059–60 (8th Cir. 2020) declared that "[b]y its plain terms, the Electors Clause vests the power to determine the manner of selecting electors exclusively in the 'Legislature of each state.' U.S. Const., art. II, § 1, cl. 2; *McPherson v. Blacker*, 146 U.S. 1, 27 (1892) ('The constitution. . . . leaves it to the legislature exclusively[.]'). And this vested authority is not just the typical legislative power exercised pursuant to a state constitution. Rather, when a state legislature enacts statutes governing presidential elections, it operates 'by virtue of a direct grant of authority' under the United States Constitution. *Bush v. Palm Beach Cnty. Canvassing Bd.*, 531 U.S. 70, 76 (2000)." Since the presidential election process *begins* with the presidential nominating primary process in Minnesota, the authority of the state legislature under the Electors Clause is controlling. In *Carson*, party certified nominees as presidential electors challenged a Minnesota state court's consent decree that extended the deadline for counting absentee ballots beyond election day as violating the Electors Clause. *Carson*, 978 F.3d at 1054. Minnesota law dictated election officials could only count ballots received by election day. *Id.* The Secretary of State had entered into the consent decree that had the effect of allowing absentee ballots to be counted beyond the mandated statutory deadline. By doing so, the consent decree essentially made the statutory deadline inoperative. *Id.* The Eighth Circuit declared that "only the Minnesota Legislature, and not the Secretary, has plenary

authority to establish the manner of conducting the presidential election in Minnesota." *Id.* at 1060.

The Electors Clause arises from one of the key compromises of the Constitutional Convention. Delegates adopted this plan late in Convention as a compromise to elect the President and Vice-President, neither by popular vote of the people, nor by leaving it to Congress,[2] hence, the electoral college. Justice Joseph Story, in his *Commentaries on the Constitution of the United States*, explained that the Framers viewed having an electoral college select the President rather than Congress would commit the decision "to persons, selected for that sole purpose . . . instead of persons, selected for the general purposes of legislation" and would "avoid those intrigues and cabals, which would be promoted in the legislative body by artful and designing men, long before the period of the choice, with a view to accomplish their own selfish purposes." Joseph Story, *Commentaries on the Constitution* 3: § 1450 (1833).

However, while Joseph Story had noted that the Framers viewed the electoral college as a method to keep the presidential selection process from becoming "the mere tool of the dominant part in congress," the rise of political parties in the early years of the Republic, found that the party roles in nominating presidential candidates and designating electors were subject

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[2] *See* The Records of the Federal Convention of 1787, at 21, 68-69, 80-81, 176-76, 230, 244 (Max Farrand ed., 1911). 1 *id.* at 29-32, 57-59, 63-64, 95.

to partisan politics.[3] The result was the Twelfth Amendment. The Amendment provided that electors would vote separately for President and Vice President, and as ratified in 1804, says:

> The Electors shall meet in their respective states and vote by ballot for President and Vice-President . . . ; they shall name in their ballots the person voted for as President, and in distinct ballots the person voted for as Vice-President, and they shall make distinct lists of all persons voted for as President, and of all persons voted for as Vice-President, and of the number of votes for each, which lists they shall sign and certify, and transmit sealed to [Congress, where] the votes shall then be counted."

The Amendment thus brought the Electoral College's voting procedures into line with the Republic's new party system. *Chiafalo v. Washington*, 140 S.Ct. 2316, 2321 (2020).

Senator Thomas Hart Benton, observed in 1826 that while the Framers had intended electors to be persons of "superior discernment, virtue, and information," selected to be free from partisan influence, "this invention has failed of its objective in every election. . . ." He further observed that "[I]t ought to have

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[3] *See* James Ceasar, *Presidential Selection: Theory and Development* (1979); Neal Pierce, *The Peoples President: The Electoral College in American History and the Direct-Vote Alternative* (1968); https://constitution.congress.gov/browse/essay/artII-S1-C2/ALDE_00013799/ (last visited Dec. 18, 2023).

failed . . . for such independence in the electors was wholly incompatible with the safety of the people. [It] was in fact, a chimerical and impractical idea in any community."[4]

As a result, by the 20th century, citizens in most states voted for the presidential candidate instead of ballots listing electors. *Chiafalo*, 140 S.Ct. at 2321. Indeed, parties ultimately chose the slate of electors, and states appointed the electors proposed by the party whose presidential nominee won the popular statewide vote. *Id.*

Nevertheless, under the Electors Clause, the U.S. Constitution granted state legislatures the authority to determine the manner of conducting the presidential selection process in their respective slates. Thus, when a legislature passes laws regulating presidential elections, it acts pursuant to "a direct grant of authority made under [the Presidential Electors Clause]," quoting *McPherson v. Blacker*, 146 U.S. 1 (1892). The U.S. Supreme Court explained that the Presidential Electors Clause's "insertion" of an express reference to the legislature "operat[es] as a limitation upon the State in respect of any attempt to circumscribe the legislative power." *Palm Beach Cnty. Canvassing Bd.*, 531 U.S. 70, 76 (2000) (quoting *McPherson*, 146 U.S. at 25).

And, in Minnesota, not only does the state direct the manner of the selection process, but also how delegates are to be granted to the primary presidential

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[4] *Id.* S. Rep. No. 22, at 4 (1826).

winner. Under Minn. Stat. § 207A.12(d), the law requires that the political primary result "binds" the state's GOP national convention delegates to vote for the presidential primary winner:

> The results of the presidential nomination primary must bind the election of delegates in each party.

The statutory provision reflects how primary presidential elections in Minnesota, as meticulously regulated, amounts to state action as Minn. Stat. § 207A.12(d) compels the political party to perform a particular act. *See Terry v. Adams*, 345 U.S. 461, 462 (1953) (Democratic Party rules excluded blacks from voting in party's primary violated the Fifteenth Amendment. While no state law directed such an exclusion, the Court's decision pointed out that many party activities were subject to considerable statutory control.) Indeed, as a "closed" primary where voters are required to affirm their support of the principles of the party whose ballot they wish to cast, and that information will be recorded and distributed to each party, the voters are binding delegates to a particular presidential candidate well before any general presidential election. Because the legislature mandates the binding of party delegates to the results of a primary election, the parties and, in turn, the state cannot limit a presidential nominating primary ballot to a particular group of candidates to the exclusion of others per an arbitrary and discriminatory list of criteria.

Here, Binkley is excluded from influencing the presidential nomination process as it relates to binding delegates because he has not held elected office as President, Vice President, Senator, Congressman or Mayor of a large city. The RPM announced that because Binkley has not held an elected office or met any other criteria, as previously described, he cannot appear on the primary ballot.

But, as a state actor, the RPM cannot discriminate against a prospective presidential candidate seeking to elicit binding delegates of the party in the presidential election process as mandated by the legislature. The RPM cannot engage in a form of political patronage that results in state-based favoritism by the exclusion of Binkley as a presidential primary candidate just because he has not previously held an elected office or met some other arbitrary criteria in Minnesota. *E.g., Cook v. Gralike*, 531 U.S. 510, 525-26 (2001) (holding that requiring ballot designation reflecting candidates' views on term limits fell "far from regulating the procedural mechanisms of elections" and instead attempted to dictate electoral outcomes).

Under the Presidential Qualifications Clause, Binkley is a qualified presidential candidate. U.S. Const., art. II, § 1, cl. 5. He has met all the constitutional requirements for being a presidential candidate. What Binkley wants is an opportunity to win Minnesota's delegates to the national convention. This is not a trivial interest, and the state actor, here, the RPM, cannot create arbitrary barriers that exclude an

otherwise qualified presidential candidate from being on a binding presidential primary ballot.

The State's law binding delegates as authorized under the Electors Clause includes a legal requirement that there be a fair competition for Minnesota's delegates to the national convention. Minn. Stat. § 207A.12(d). Minnesota under the Electors Clause is legally unauthorized to hold a binding presidential primary and then to have a process excluding otherwise qualified presidential candidates from the competition. The RPM's arbitrary criteria deprives Binkley what the State has granted to Binkley under the Electors Clause: a chance to win in a binding presidential primary. The Electors Clause prohibits this result.

Similarly, Colorado under the Electors Clause is legally unauthorized to hold a presidential election and then to have a process excluding otherwise qualified presidential candidates from the competition. The Colorado Supreme Court decision deprives Trump of a chance to win the presidential electors in Colorado. The Electors Clause prohibits this result.

IV. States determining which presidential candidate is qualified or not will lead to inconsistent decisions among the states on whether a future President-Elect is disqualified.

Doing it the Colorado and Minnesota way results in inconsistent decisions among the states on whether a President-Elect is qualified to be President. The court

battles end up overshadowing the presidential voting process—and become the issue. Whereas, following D.C. Code § 16–3501 will lead to an orderly federal court process to disqualify a President-Elect who is not qualified. And, if the President-Elect is disqualified, there is a federal procedure to fill the presidential vacancy too. U.S. Const., amend. XX; 3 U.S. Code § 19.

V. The Court should acknowledge, to avoid ballot clutter, that the states can enforce the requirements of Article II, section 1, clause 5 and require thousands of candidate nomination petition signatures to be placed on presidential ballot.

The Court should acknowledge that to avoid ballot clutter, the states under the Electors Clause may preclude presidential candidates who do not meet the requirements of Article II, section 1, clause 5 and who do not meet any state law requirements of thousands of candidate nomination petition signatures to be on the presidential ballot. But, other than these narrow exceptions, the states must not disqualify presidential candidates from the presidential ballots. The Electors Clause and D.C. Code § 16–3501 preempt the states from doing anything more in disqualifying presidential candidates from presidential election ballots.

Finally, the issue of whether a state, under the Electors Clause, can preclude non-party members from running in a party's binding presidential primary is

left for another case. It is an interesting legal issue, but does not affect the legal analysis above.

CONCLUSION

The bottom line is Colorado and Minnesota have erred by prematurely disqualifying presidential candidates from their presidential election ballots. Disqualifying a President-Elect, even a future one, is a federal power only to be exercised by the federal government after the President-Elect is elected and before the commencement of the presidential four-year term. D.C. Code § 16–3501; U.S. Const., amend. XX; 3 U.S. Code § 19. The only exceptions are states, to avoid ballot clutter, can exclude presidential candidates from presidential elections who do not meet the requirements of Article II, section 1, clause 5 or any requirements of thousands of candidate nomination petition signatures to be on the presidential ballot. And, those exceptions do not apply in Colorado nor Minnesota. Otherwise, it is a violation of the Electors Clause and D.C. Code § 16–3501 to exclude otherwise-qualified presidential candidates from presidential election ballots. Since Trump and Binkley satisfy the requirements of Article II, section 1, clause 5, the Electors Clause and D.C. Code § 16–3501 preempt the states of Colorado and

Minnesota, respectively, from excluding Trump and Binkley from their respective states' presidential ballots.

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