

**FILED**

September 27, 2023

No. A23-1354

STATE OF MINNESOTA IN SUPREME COURT

OFFICE OF  
APPELLATE COURTS

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JOAN GROWE, *et al.*,  
PETITIONERS,

v.

STEVE SIMON, MINNESOTA SECRETARY OF STATE,  
RESPONDENT.

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**CITIZENS FOR RESPONSIBILITY AND ETHICS IN WASHINGTON'S  
REQUEST FOR LEAVE TO PARTICIPATE AS *AMICUS CURIAE*  
IN SUPPORT OF PETITIONERS**

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TO: The Minnesota Supreme Court and to all counsel of record:

Pursuant to Minnesota Rule of Civil Appellate Procedure 129, Applicant Citizens for Responsibility and Ethics in Washington (“CREW”) requests leave to participate in this action as *amicus curiae* in support of Petitioners. Petitioners ask this Court to hold that Section 3 of the Fourteenth Amendment to the United States Constitution disqualifies Donald J. Trump from holding the Office of President of the United States and therefore, pursuant to the process set out in Minnesota Statute Section 204B.44, he must be excluded from the ballot in the State of Minnesota for the March 5, 2024 presidential nomination primary election and November 5, 2024 general election. In its Order dated September 20, 2023, this Court asked the parties to brief, among other things, “whether Section 3 of the Fourteenth Amendment is self-executing.” This request for leave to participate as *amicus curiae* describes CREW’s interest in the matter, sets

forth its legal position, and identifies why the Court may benefit from hearing its views.

**I. The Prospective *Amicus*'s Interest.**

CREW is a nonprofit, nonpartisan corporation organized under Section 501(c)(3) of the Internal Revenue Code. Through a combined approach of research, advocacy, public education, and litigation, CREW works to ensure that Americans have a government that is ethical, accountable, and open. Since its founding in 2003, CREW has achieved successes in holding to account those who abuse the system, compelling the government to be more open and transparent, and driving secret money and influence into the light.

Two examples of CREW's recent work specifically demonstrate why CREW should be admitted as *amicus* here. First, in 2022, CREW and co-counsel represented three New Mexico residents in *New Mexico ex rel. White v. Griffin*, successfully enforcing Section 3 of the Fourteenth Amendment ("Section 3") against a government official for the first time in more than 150 years. No. D-101-CV-2022-00473, 2022 WL 4295619 (N.M. Dist. Ct. Sep. 6, 2022), *app. dismissed*, No. S-1-SC-39571 (N.M. Nov. 15, 2022).

Second, CREW and co-counsel also currently represent six Republican and unaffiliated Colorado voters in litigation against Colorado Secretary of State Jena Griswold and former President Trump to prevent the Secretary from taking any action to place Trump on Colorado's primary or general election ballot due to his disqualification from office under Section 3. *See Anderson v. Griswold*, No. 2023-CV-32577 (Dist. Ct. of Denver Colo., filed Sept. 6, 2022). Accordingly, CREW has an interest in this case.

## II. The Prospective *Amicus*'s Position.

In support of Petitioners, CREW will argue that Section 3 of the Fourteenth Amendment is “self-executing” insofar as it can be enforced through state law and does not require any implementing federal legislation. *See* Order at 3 (Minn. Sept. 20, 2023). In fact, the state provides an explicit statutory mechanism to adjudicate the qualifications the Constitution directly imposes on holding office.

Moreover, just as no federal statute is required to activate other sections of the Fourteenth Amendment (including the Due Process and Equal Protection Clauses) or other constitutional qualifications for office (including the qualifications for the Office of the President set forth in Article II and the 22nd Amendment), no federal statute is required give force to Section 3. It is a constitutional command with independent legal force, dictating that “[n]o person *shall*” hold public office if the disqualifying conditions are met.<sup>1</sup> Section 3’s text, historical practices regarding enforcement (including shortly after its adoption), and modern Supreme Court precedent all support the conclusion that Section 3 is “self-executing.” And under the Constitution’s Supremacy Clause, state courts have an affirmative duty to enforce Section 3 pursuant to applicable state law procedures.

If granted leave, CREW will provide fulsome argument that Section 3 can be enforced through state law and that under the processes set out by the Minnesota

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<sup>1</sup> *See* William Baude & Michael Stokes Paulsen, *The Sweep and Force of Section Three*, 172 U. Pa. L. Rev. (forthcoming 2024), at 18, [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=4532751](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4532751).

legislature, this Court does not require federal legislation to enforce Section 3’s disqualification against a disqualified candidate. *See* Order at 3 (Minn. Sept. 20, 2023).

### **III. Why Participation of the Prospective *Amicus* is Desirable.**

It is important to determine the eligibility of former President Trump for the Minnesota Republican presidential primary as soon as possible to meet statutory ballot printing timelines—ballots that must be accurate in order to avoid disenfranchising overseas (including active military) voters who could otherwise vote for an ineligible candidate. There is also a broader need for other states to assess candidate Trump’s constitutional eligibility.

CREW can contribute to this Court’s timely and comprehensive analysis of the legal issues in at least two ways. First, CREW’s case *New Mexico ex rel. White v. Griffin* not only marked the first time since 1869 that a court ordered a public official removed from office under Section 3, but also the first time any court has ruled that the events of January 6, 2021 were an insurrection under Section 3. In finding that Griffin had indeed “engaged in” insurrection and was disqualified from holding office, the *Griffin* court relied on the constitutional interpretations of CREW’s expert witness concerning the definition of “insurrection” consistent with how knowledgeable nineteenth-century individuals would have viewed January 6 and the surrounding events. *Griffin*, 2022 WL 4295619, at \*17-23.

Second, CREW has extensively studied Section 3’s text and history of enforcement, as well as relevant Supreme Court precedent interpreting the Fourteenth Amendment. For example, CREW’s research uncovered past cases where state courts

have enforced constitutional qualifications in candidate challenges. There are various examples of state courts enforcing constitutional requirements on candidates in accordance with their role in our federal system to faithfully enforce federal law, including the U.S. Constitution. CREW’s knowledge of these cases will aid this Court’s adjudication of Trump’s eligibility.

### CONCLUSION

For the foregoing reasons, Citizens for Responsibility and Ethics in Washington requests leave to participate as *amicus curiae* in support of Petitioners in these proceedings.

Dated: September 27, 2023

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## **CERTIFICATE OF DOCUMENT LENGTH**

This request complies with the word limitations of Minn. R. Civ. App. P. 129.01. The brief was prepared with proportional font, using Microsoft Word in Office 365, which reports that the request contains 975 words, exclusive of the caption and signature block.

/s/ Sara K. Van Norman  
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