

FILED

September 26, 2023

**OFFICE OF
APPELLATE COURTS**

No. A23-1354

**STATE OF MINNESOTA
IN SUPREME COURT**

JOAN GROWE, *et al.*,
PETITIONERS,

V.

STEVE SIMON, MINNESOTA SECRETARY OF STATE,
RESPONDENT.

**CONSTITUTIONAL ACCOUNTABILITY CENTER'S
REQUEST FOR LEAVE TO PARTICIPATE AS *AMICUS CURIAE*
IN SUPPORT OF PETITIONERS**

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

Pursuant to Minnesota Rule of Civil Appellate Procedure 129, Applicant Constitutional Accountability Center requests leave to participate in this action as *amicus curiae* in support of Petitioners. In this case, 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 that he therefore 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 operates to preclude a person from being President of the United States” and “whether Section 3 of the Fourteenth Amendment applies to a person who has previously taken an oath as President of the United States.” This request

for leave to participate as *amicus curiae* describes Constitutional Accountability Center'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.

Constitutional Accountability Center ("CAC") is a think tank and public interest law firm dedicated to fulfilling the progressive promise of the Constitution's text and history. CAC works in our courts, through our government, and with legal scholars to improve understanding of the Constitution and to preserve the rights and freedoms it guarantees. CAC has a strong interest in ensuring that constitutional provisions are understood in accordance with their text, history, and their Framers' plan in passing them. Accordingly, CAC has an interest in this case.

II. The Prospective *Amicus*'s Position.

In support of Petitioners, CAC will argue that Section 3 of the Fourteenth Amendment "operates to preclude a person from being President of the United States" and "applies to a person who has previously taken an oath as President of the United States." *See* Order at 3 (Minn. Sept. 20, 2023).

When the Fourteenth Amendment was adopted, the presidency fell within the normal and ordinary meaning of an "office . . . under the United States," and the president would have been understood to have taken an oath as an "officer of the United States." U.S. Const. amend. XIV, § 3. This understanding is supported by language elsewhere in the Constitution, as well as by the language used by the members of the 39th Congress who drafted and approved Section 3's text. Further, exempting presidents and the presidency

from the strictures of Section 3 would seriously undermine the Fourteenth Amendment’s ability to serve its purpose: to prevent another rebellion by excluding from “positions of public trust . . . those whose crimes have proved them to be enemies to the Union, and unworthy of public confidence.” *Report of the Joint Committee on Reconstruction*, 39th Cong., 1st Sess. (1866), at xviii; *see id.* at xvi (describing a desire to prevent “leading rebels” from resuming “power under that Constitution which they still claim the right to repudiate”). Finally, judicial treatment of this provision in the years following its passage further supports its application both to presidents and the presidency.

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

CAC’s longstanding experience interpreting the Constitution’s text and evaluating the Constitution’s meaning in light of its history may assist this Court in at least two ways. First, CAC can explain how the language of the Fourteenth Amendment would have been interpreted at the time of its ratification. When interpreting constitutional text, courts are “guided by the principle that ‘the Constitution was written to be understood by the voters; its words and phrases were used in their normal and ordinary as distinguished from technical meaning.’” *District of Columbia v. Heller*, 554 U.S. 570, 576 (2008) (quoting *United States v. Sprague*, 282 U.S. 716, 731 (1931)); Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 78 (2012) (“Words must be given the meaning they had when the text was adopted.”). The proposed brief will illustrate the way that contemporary lawmakers and judges used the phrases “office” and “officer.” As that analysis will demonstrate, those words were understood to encompass the presidency and the president at the time of the Fourteenth Amendment’s drafting and ratification.

Second, CAC will provide historical context and discussion of the Framers’ debates that help explain why Section 3 was adopted. *See, e.g., Torres v. Texas Dep’t of Pub. Safety*, 142 S. Ct. 2455, 2463–64 (2022) (looking to “[t]he Constitution’s text, its history, and this Court’s precedents” to resolve a constitutional question); *Abramski v. United States*, 573 U.S. 169, 179 (2014) (“[W]e must (as usual) interpret the relevant words not in a vacuum, but with reference to the statutory context, ‘structure, history, and purpose.’” (quoting *Maracich v. Spears*, 570 U.S. 48, 52 (2013))). This historical context underscores that exempting the president and the presidency from the operation of Section 3 would not only be at odds with the text of Section 3, but also would undermine that provision’s ability to serve its important role in our constitutional structure.

CONCLUSION

For the foregoing reasons, Constitutional Accountability Center requests leave to participate as *amicus curiae* in support of Petitioners in these proceedings.

Dated: September 26, 2023

**CONSTITUTIONAL ACCOUNTABILITY
CENTER**

GREENE ESPEL PLLP

/s/ Elizabeth B. Wydra

Elizabeth B. Wydra
Brianna J. Gorod
Praveen Fernandes
Smita Ghosh
Jess Zalph*
1200 18th Street NW, Suite 501
Washington, D.C. 20036
(202) 296-6889
elizabeth@theusconstitution.org
brianna@theusconstitution.org
praveen@theusconstitution.org
smita@theusconstitution.org
jess@theusconstitution.org

/s/ Katherine M. Swenson

Katherine M. Swenson, Reg. No. 0389280
Emily M. McAdam, Reg. No. 0400898
222 S. Ninth Street, Suite 2200
Minneapolis, MN 55402
kswenson@greeneespel.com
emcadam@greeneespel.com
(612) 373-0830

* Not admitted in D.C.; supervised by
principals of the firm

*Attorneys for Proposed Amicus Curiae
Constitutional Accountability Center*

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 883 words, exclusive of the caption and signature block.

/s/ Katherine M. Swenson

Katherine M. Swenson