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SUPREME COURT STATE OF COLORADO 2 East 14th Avenue, Denver, CO 80202	
Original Proceeding District Court, City and County of Denver, Colorado, Case No. 2023CV32577	▲ **COURT USE ONLY** ▲
In Re: **Petitioners-Appellees:** **NORMA ANDERSON, MICHELLE PRIOLA, CLAUDINE CMARADA, KRISTA KAFER, KATHI WRIGHT,** and **CHRISTOPHER CASTILIAN**, v. **Respondents-Appellants:** **JENA GRISWOLD,** in her official capacity as Colorado Secretary of State, and **DONALD J. TRUMP** v. **Intervenors-Appellant:** **COLORADO REPUBLICAN STATE CENTRAL COMMITTEE,** an unincorporated association, and **DONALD J. TRUMP.**	
Attorneys for Respondent, Intervenor and Appellant, Donald J. Trump: Scott E. Gessler (28944), sgessler@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	Supreme Court Case Number: 23SA279
REQUEST FOR EMERGENCY STAY	

President Trump seeks an immediate stay from this Court, before trial commences on October 30, 2023. A request for a stay in the district court is impracticable; the district court has set the current hearing date over President Trump's ongoing objections, and there is inadequate time to first apply for a stay in the court below.

As discussed below, there is adequate time for this Court to hear an appeal on the controlling legal issues, for the lower court to conduct a hearing (if necessary), and for Colorado to conduct a smooth election.

This Court should grant the stay for four reasons.

First, the district court has acted beyond its jurisdiction, as discussed in the *Petition*. Today, October 25, 2023, the district court denied President Trump's *Third Motion to Dismiss*, which was based on federal jurisdiction. In doing so, the court has departed from every prior decision on Section Three disability, ruling that:

- Section Three is self-executing;
- Federal law does not pre-empt state enforcement. In ruling on this issue, the court *sua sponte*, raised a new argument – that when Congress passed 2022 amendments to 3 U.S.C. § 15, responsibility for enforcement of Section Three transferred to the states. This theory has not been accepted – or discussed – by any court, nationwide, ever;

- Enforcement of Section Three is not a political question; and
- The plain language of Section Three includes the president and vice president.

Finally, the court declined to address the merits -- or even provide guidance – regarding the meaning of "engage" or "insurrection" as used in Section Three. As a result, President Trump has no foreknowledge of the legal standards that will govern this matter.

These are additional reasons demonstrating that the lower court substantially exceeded its jurisdiction.

Other courts have considered application of Section Three ruling on one or more of the federal arguments above. President Trump submits that the lower court's decision is contrary to the overwhelming weight of authority. That includes the historical record surrounding Section Three, litigation involving presidential qualifications with respect to President Obama, Senator McCain, and Senator Cruz, as well as numerous decisions regarding Section Three in the current cycle.

Second, this Court's involvement is necessary to provide adequate guidance for the litigants and district court. To be sure, these are complex issues, with a unique procedural posture, involving the first factual hearing on this issue in the nation. Practically, the lower court has not provided any guidance as to the elements of proof that constitute "engage" or "insurrection" as used in Section Three, and accordingly

President Trump must defend this matter without any understanding of the legal standards that apply. This is particularly troubling and is akin to shooting first and aiming later. President Trump submits that guidance from this Court will ensure a fairer, smoother, and more credible hearing.

Next, the lower court has repeatedly requested testimony regarding legal issues, such as "[t]he meaning and historical application of Section 3 of the Twentieth Amendment," "[t]he history and application of Section 3 of the Fourteenth Amendment," and "[t]he meaning of engaged and insurrection as used in Section of the Fourteenth Amendment."[1] And lastly, the lower court has asked for additional, last minute discussion or witnesses on "the 2022 revisions to 3 U.S.C. § 15," without providing further guidance to the parties.

President Trump submits that these are all legal issues, not evidentiary issues or facts to be determined at trial. Importantly, this Court can and should resolve these issues for the district court, *before* a hearing. The proper way to conduct a hearing of this gravity is to first establish the guiding legal standards, and *then* develop facts that address those standards. By accepting evidence first, and then determining whether

[1] *Topics for the October 30, 2023 Hearing*, p. 2

that evidence even meets a subsequently-announced legal standard does not provide fair warning to the parties, nor is it an efficient way to resolve this dispute.

Both the litigants and the lower court will benefit from thoughtful, considered guidance from this Court. And indeed, this Court is best positioned to provide this guidance. The district court has certainly considered many (but not all) of these issues in an exceedingly compressed timeframe, while attempting to prepare for and manage a factual hearing. For example, since September 6, 2023, undersigned counsel counts 253 filings in this case.

President Trump recognizes that the issues decided by the Court today are not part of his *Petition*. If a stay is granted, however, he will immediately appeal the issues. Both parties have extensively briefed the issues in the court below (in pleadings substantially exceeding the presumptive word limits in this Court) and therefore will be able to promptly and efficiently brief and argue these matters.

No matter how this Court resolves the pending legal issues, it will be immensely helpful to the lower court, the litigants, and the public. If it determines that the lower court has no jurisdiction, then it will save time and money for everyone involved, while preventing substantial harm to President Trump as well as a sensationalized – and unwarranted -- hearing. If it upholds the lower court, it will

provide valuable guidance for the factual hearing and provide careful reasoning that clarifies these important issues and enhances judicial credibility.

Third, as discussed in the *Petition*, this is a matter of utmost importance, in every aspect. The practical consequences are immense, involving the ability of voters to choose the President of the United States. The legal issues go to the very structure of our federal government. And several issues (such as the meaning of "engage" and "insurrection") are critical matters of first impression.

Fourth, this Court should avoid, whenever possible, the harm caused by the hearing. The *Petition* outlines the harm, but most importantly, one circuit court judge has addressed the direct harm caused by holding a Section Three hearing, prior to thorough review of the governing legal standards. In *Greene v. Secretary of State for Georgia*,[2] the court declined to hear an appeal on mootness grounds. But in writing in a separate concurrence, Circuit Judge Branch directly criticized the lower court's refusal to enjoin the state proceedings:

> when the district court issued its decision denying Rep. Greene a preliminary injunction on April 18, the hearing before the ALJ was still four days away. Before the hearing took place, Rep. Greene surely faced a risk of irreparable harm in having to defend herself in proceedings that carried the risk that the State Defendants would act outside the Constitution and strike her from the ballot, purportedly under § 3 of the Fourteenth Amendment. Given the timing of the federal litigation, the

[2] *Greene v. Secretary of State for Georgia*, 52 F.4th 907 (2022).

> district court was well positioned to obviate the risk of harm faced by Rep. Greene by issuing a preliminary injunction.[3]

Finally, there is adequate time to resolve this matter in a considered and thoughtful manner, well within the current election timeline. The presidential election is scheduled for March 5, 2024, and the Secretary must certify ballots by January 5, 2023. This Court may order the Secretary to certify President Trump to the ballot, pending the outcome of this litigation. If President Trump is barred, then the Court can order the Secretary not count votes cast for him.

This is a practical solution that been used successfully in Colorado. Most recent is *Frazier v. Williams*. There, the trial court stayed ballot certification until May 4, 2016, 55 days before the primary date of June 28, 2016. Following a trial, the district court issued another stay until May 9, 2016, to allow an appeal.[4] At that point, the Secretary agreed to place Ryan Frazier on the ballot, with the caveat that if his appeal were unsuccessful, votes cast for him would not be counted. Following appeal, this Court issued an opinion on May 24, 2016, and following an additional proceeding the trial

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[3] *Greene v. Secretary of State for Georgia*, 52 F.4th 907, 915 (2022) (Brandt, J. concurring).

[4] Ex. A, *Frazier v. Williams*, Case No. 2016CV31575, *Order re: Stay*, (Denver Dist. Ct., 2016).

court certified Ryan Frazier as a candidate on May 25, 2016, exactly 34 days before the election.[5]

In 2004, Waldo Benevidez, candidate for Colorado House District 2, unsuccessfully challenged a statement of insufficiency in an administrative hearing before Deputy Secretary of State Bill Hobbs. But the Secretary agreed to nonetheless place his name on the ballot pending an appeal, again with the caveat that if Benevidez lost the appeal, votes cast for him would not be counted. The Denver District Court overturned the administrative decision on July 21, 2004, exactly 20 days before August 10, 2004.[6]

In short, there is adequate time to resolve the legal issues in this case and if necessary proceed with a five day hearing, well before the March 5, 2024 election. The importance of this case, the complexity of the controlling legal issues, the harm caused by a rushed and hasty trial, and the likelihood that the lower court has exceeded her jurisdiction all serve as compelling reasons to issue a stay in this matter, resolve the controlling legal issues, and proceed in an orderly – and fair – manner.

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[5] Ex. B. *Blaha v. Williams*, Case No. 2016CV31574, consolidated with 2016CV31575, Order, (Denver Dist. Ct. 2016).

[6] *Benevidez v. Cerbo*, Case No. 2004CV005473 (Denver Dist. Ct., 2004). Undersigned counsel attests to the accuracy of this procedure, and further states that he has personal knowledge of this procedure because he was counsel for Mr. Benevidez in the hearing.

Respectfully submitted 25th day of October 2023,

GESSLER BLUE, LLC

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CERTIFICATE OF SERVICE

I certify that on this 25th day of October 2023, the foregoing was electronically served via e-mail or CCES on all counsel and parties of record.

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