

STATE OF MINNESOTA
IN THE SUPREME COURT
A23-1354

JOAN GROWE, et al.,

Petitioners,

v.

STEVE SIMON, MINNESOTA SECRETARY OF STATE, et al.,

Respondents.

AMERICAN CENTER FOR LAW AND JUSTICE'S
REQUEST FOR LEAVE TO PARTICIPATE AS *AMICUS CURIAE*

Pursuant Minn. R. Civ. App. P. 129.01(c), the American Center for Law and Justice (ACLJ) files this Request for Leave to Participate as *Amicus Curiae*.

I. The Prospective Amicus's Interest

The ACLJ is a public interest law firm dedicated to the defense of constitutional liberties secured by law. ACLJ attorneys have frequently appeared before the Supreme Court of the United States and the lower federal and state courts as counsel either for a party, or for amicus. The ACLJ has extensive experience in constitutional litigation.

The proper resolution of this case is a matter of utmost concern to the ACLJ and more than 1,661 of its Minnesota members because of their commitment to the proper interpretation of the constitution and to stability in election law. As the Supreme Court of the United States has emphasized, “the exclusion of candidates also burdens voters’ freedom of association, because an election campaign is an effective platform for the expression of views on the issues of the day and a candidate serves as a rallying point for like-minded citizens.” *Anderson v. Celebrezze*, 460 U.S. 780, 787-88 (1983).

II. The Prospective Amicus’s Position

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.” The ACLJ’s amicus brief will support Respondent and explain why Section 3 of the Fourteenth Amendment, upon which Petitioners’ claim is based, does not authorize the Petition because Section 3 is not self-executing. As is true with the entirety of the Fourteenth Amendment, only Congress has the power of enforcement. The courts that have considered the issue presented in this case have held unanimously that only Congress has the power to enforce Section 3. While Congress can grant a private right of action to individuals to enforce the Fourteenth Amendment, Congress has repeatedly declined to do so when adopting legislation enforcing Section 3.

For at least the past two decades, the Supreme Court has consistently declined to recognize a private cause of action that Congress did not expressly authorize to enforce federal laws. *See, e.g., Gonzaga Univ. v. Doe*, 536 U.S. 273 (2002); *Armstrong v. Exceptional Child Ctr., Inc.*, 575 U.S. 320 (2015); *Comcast Corp. v. Nat'l Assn. of African American-Owned Media*, 140 S. Ct. 1009, 1015 (2020). The Court firmly grounded these holdings on the principle that implying private rights of action that Congress has not created trenches upon the separation of legislative and judicial power. *Hernandez v. Mesa*, 140 S. Ct. 735, 741 (2020). That principle applies with even greater force to a constitutional amendment that expressly reserves enforcement power to Congress.

Because private individuals and organizations have no authority to enforce Section 3, it cannot provide the basis for the Petitioner's claims.

III. Conclusion

Wherefore the ACLJ respectfully requests that this Court grant leave to the ACLJ to participate as *amicus* in support of Respondents.

Respectfully Submitted,

AMERICAN CENTER FOR LAW JUSTICE

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Dated: September 27, 2023

CERTIFICATE OF COMPLIANCE

I hereby certify that this Request conforms to the requirements of Minn. R. Civ. App. P. 129.01(c) regarding length and format for the Request for Leave to Participate as Amicus Curiae. The length of this Request is 482 words, including headings, footnote, and quotations, but exclusive of caption, signature block, and certificate. This Request was prepared using Microsoft Word software.

/s/ Douglas G. Wardlow
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