

No. A23-1354

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STATE OF MINNESOTA  
IN SUPREME COURT

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JOAN GROWE, *et al.*,  
PETITIONERS,

V.

STEVE SIMON, MINNESOTA SECRETARY OF STATE,  
RESPONDENT.

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REQUEST FOR LEAVE TO FILE AN AMICUS CURIAE OF GERARD N.  
MAGLIOCCA

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TO: THE MINNESOTA SUPREME COURT AND ALL COUNSEL OF RECORD:

Pursuant to Minnesota Rule of Civil Appellate Procedure 129.01(c), Applicant Law Professor Gerard Magliocca respectfully requests leave to file, in the public interest, a brief *amicus curiae*, supporting Petitioners.

**I. Professor Magioca is well-qualified to assist this Court regarding the central issues presented.**

As this Court recognizes, the issues raised here are of critical importance to our democracy. In this case, Petitioners ask this Court to hold that Donald J. Trump must be excluded from the March 5, 2024 presidential nomination primary election ballot and the November 5, 2024 general election ballot in the State of Minnesota pursuant to Section 3 of the Fourteenth Amendment to the United State Constitution. This Court, in its

September 20, 2023 Order, requested briefing on several issues raised by Section 3 of the Fourteenth Amendment.

Professor Magliocca is a constitutional law scholar whose work has long focused on the Fourteenth Amendment. He can assist the Court in understanding the meaning that Section 3 had at the time of the proposal, ratification, and early implementation of the Fourteenth Amendment.

## **II. Participation of Prospective Amicus Curiae Professor Magliocca Is Desirable.**

If permitted to provide an amicus brief in support of Petitioners, Professor Magliocca will address three of the four issues cited in this Court's September 20, 2023 Order: the legal construction of Section 3 of the Fourteenth Amendment, including but not limited to (a) whether Section 3 of the Fourteenth Amendment is self-executing; (b) whether Section 3 of the Fourteenth Amendment operates to preclude a person from being President of the United States; and (c) whether Section 3 of the Fourteenth Amendment applies to a person who has previously taken an oath as President of the United States.

Professor Magliocca is well qualified to assist the Court with addressing these issues. He is the Samuel R. Rosen Professor at the Indiana University Robert H. McKinney School of Law. He teaches constitutional law and has written extensively on the history of the Fourteenth Amendment.

In 2020, Professor Magliocca wrote an article on Section 3 of the Fourteenth Amendment that was made publicly available before January 6, 2021 and was published shortly afterwards. This article has been cited as reliable authority by courts and litigants

in election cases. *See, e.g., Cawthorn v. Amalfi*, 35 F.4th 245, 259 (4th Cir. 2022) (“To the contrary, the available evidence suggests that the Congress that enacted the 1872 Amnesty Act was, understandably, laser-focused on the then-pressing problems posed by the hordes of former Confederates seeking forgiveness. *See* Gerard N. Magliocca, *Amnesty and Section Three of the Fourteenth Amendment*, 36 *Const. Comment.* 87, 111–21 (2021)”).

In 2013, he published a biography of Congressman John A. Bingham, who was one of the drafters of the Fourteenth Amendment as a member of the Joint Committee on Reconstruction.<sup>1</sup> Professor Magliocca has also published four law review articles on the proposal, ratification, or early implementation of Sections One and Two, and Three of the Fourteenth Amendment.<sup>2</sup>

Finally, Professor Magliocca has been an important voice in the recent debates around the Fourteenth Amendment, as can be seen in his frequent contributions to

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<sup>1</sup> Gerard N. Magliocca, *American Founding Son: John Bingham and the Invention of the Fourteenth Amendment* (NYU Press, 2013).

<sup>2</sup> In addition to the article cited by the *Cawthorn* court and referenced above, the three additional articles are Gerard N. Magliocca, “Our Unconstitutional Apportionment Process,” 86 *George Washington Law Review* 774 (2018) (discussing the history of Section Two of the Fourteenth Amendment at length); Gerard N. Magliocca, “Indians and Invaders: The Citizenship Clause and Illegal Aliens,” 10 *University of Pennsylvania Journal of Constitutional Law* 499 (2008) (providing a historical account of the first sentence in Section One of the Fourteenth Amendment); Gerard N. Magliocca, “The Cherokee Removal and the Fourteenth Amendment,” 53 *Duke Law Journal* 873 (2003) (analyzing other historical aspects of Section One).

newspapers, websites, and podcasts on the meaning and interpretation of the Fourteenth Amendment.<sup>3</sup>

Professor Magliocca's well-regarded scholarship on the Fourteenth Amendment demonstrates that he can add important context and arguments to the issues facing this Court.

### CONCLUSION

For the foregoing reasons, Professor Magliocca requests that this Court grant his motion for leave to file a brief as amici curiae.

Dated: September 27, 2023

Respectfully submitted,

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<sup>3</sup> These contributions are listed in an electronic C.V. at <https://mckinneylaw.iu.edu/faculty-staff/profile-WCMS.cfm?Id=40>

**CERTIFICATION OF LENGTH OF DOCUMENT**

I hereby certify that this document conforms to the requirements of the applicable rules, is produced with proportional font, and the length of this document is 706 words.

This document was prepared using Microsoft Word 2016.

Dated: September 27, 2023

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