STATE OF MICHIGAN
COURT OF CLAIMS

ROBERT LaBRANT, ANDREW BRADWAY, NORAH MURPHY, and WILLIAM NOWLING,

Plaintiffs,

NO. 23-000137-MZ

v.

ELECTION MATTER

JOCELYN BENSON, in her official, capacity as Secretary of State,

HON. JAMES ROBERT REDFORD

Defendant.
____/

AMICI CURIAE BRIEF OF THE MICHIGAN REPUBLICAN PARTY, THE OKLAHOMA REPUBLICAN PARTY, THE COLORADO REPUBLICAN PARTY, THE WEST VIRGINIA REPUBLICAN PARTY, THE KANSAS REPUBLICAN PARTY, THE NORTH DAKOTA REPUBLICAN PARTY, AND THE DELAWARE REPUBLICAN PARTY IN SUPPORT OF DISMISSAL AS A MATTER OF LAW

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JAY ALAN SEKULOW*
JORDAN SEKULOW*
STUART J. ROTH*
ANDREW J. EKONOMOU*
BENJAMIN P. SISNEY*
NATHAN MOELKER*
American Center for Law & Justice
201 Maryland Avenue, N.E.
Washington, D.C. 20002
Tel. 202-546-8890
bsisney@aclj.org
*Not admitted in Michigan
Counsel for Amici Curiae

MARK BREWER
ROWAN CONYBEARE
17000 W 10 MILE RD STE 200
SOUTHFIELD, MI 48075-2902
(248) 483-5000
Counsel for Plaintiffs

FREE SPEECH FOR PEOPLE
Ronald Fein
Amira Mattar
Courtney Hostetler
John Bonifaz
Ben Clements
1320 Centre St. #405
Newton, MA 02459
(617) 244-0234
Counsel for Plaintiffs

DAVID A. KALLMAN
5600 W MOUNT HOPE HWY
LANSING, MI 48917-7510
(517) 322-3207
Counsel for DONALD J. TRUMP

MARK P. MEUSER
Dhillon Law Group Inc.
177 Post St., Suite 700
San Francisco, CA 94108
415.433.1700 (o)
Counsel for DONALD J. TRUMP

Daniel Hartman
Daniel J. Hartman (p52632)
MRP General Counsel
P.O. Box 307
Petoskey, MI 49770
Tel. 231-348-5100
Counsel for Amici Curiae

HEATHER S. MEINGAST
525 W OTTAWA ST FL 4 PO # 30217
LANSING, MI 48933-1067
(517) 335-7659
Counsel for Defendant Sec. of State Jocelyn Benson

ANDREW NICKELHOFF
333 W. FORT ST. STE. 1400
DETROIT, MI 48226
(313) 496-9429
Counsel for CONSTITUTIONAL ACCOUNTABILITY CENTER

NATHAN J. FINK
38500 WOODWARD AVE STE 350
BLOOMFIELD HILLS, MI 48304-5053
(248) 971-2500
Counsel for CITIZENS FOR RESPONSIBILITY AND ETHICS IN WASHINGTON

CHARLES ROBERT SPIES
350 S MAIN STE 300
ANN ARBOR, MI 48104
(734) 623-1672
Counsel for PETER MEIJER

SARAH SUZANNE PRESCOTT
105 E. Main Street
Northville, MI 48167
(248) 679.8711
Counsel for GERARD N. MAGLIOCCA

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REQUEST OF *AMICI CURIAE*, AS A UNIQUELY SITUATED STATE POLITICAL PARTY, FOR ORAL ARGUMENT TIME

Amici Curiae are cognizant of this Court's November 6, 2023, order directing that no additional *amicus curiae* will be granted oral argument time. However, the Michigan Republican Party respectfully submits that it is (1) uniquely situated to be heard in these matters, (2) possesses clear and articulable interests jeopardized by the claims before this Court, and (3)) that it would have successfully shown entitlement to intervention. *See Michigan State v. Miller*, 103 F.3d 1240, 1247 (1997) (allowing the Chamber of Commerce to intervene because it showed that it was "(1) a vital participant in the political process that resulted in legislative adoption of the 1994 amendments in the first place, (2) a repeat player in Campaign Finance Act litigation, (3) a significant party which is adverse to the challenging union in the political process surrounding Michigan state government's regulation of practical campaign financing, and (4) an entity also regulated by at least three of the four statutory provisions challenged by plaintiffs."). *See also Am. Ass'n of People with Disabilities v. Herrera*, 257 F.R.D. 236, 258 (D.N.M. 2008) (Court permitted the Republican Party to intervene because, "[a]s an organization involved in helping to elect candidates to office, it has a direct and specific interest in the litigation that is not the same general interest in fair elections that is common to all voters. . . . Its protectable interest in this matter, . . . is not in vague, general interests such as preserving confidence in the electoral system. Its protectable interest is a result of running a slate of state-wide candidates."). As such, *Amici* respectfully seek the Court's indulgence for argument time, specifically, with respect to the *LaBrant v. Benson* matter.

INTEREST OF THE *AMICI CURIAE*

Amicus curiae, the Michigan Republican State Committee (the "Michigan Republican Party," the "MRP," the "Party"), is an unincorporated nonprofit association and Political Party

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Committee in the state of Michigan, operating pursuant to Michigan law.[1] Its primary purpose, as reflected by its bylaws, is to elect duly nominated Republican candidates to office, promote the principles and objectives of the Republican Party, and perform its functions under Michigan election law. Specifically, its purpose is: "To direct, manage and supervise the affairs and business of the Republican Party in Michigan. This shall include, but shall not necessarily be limited to: 1. work for the election of nominees of the Republican Party in Michigan; and 2. work in close cooperation with other Republican state, district and county organizations."[2]

Its interests, clearly implicated in this action, are to elect Republican candidates and to protect the access of its members, statewide, to as many candidates as possible. Nominating and designating candidates is its core role – regardless of any particular candidate. The MRP seeks to be heard in this action to protect its procedures and the voter access of its members statewide and any Michigander who might choose to vote for a Republican candidate.

Not ignoring the ministerial role the Secretary of State plays in the election process, it is the Michigan Republican Party – not even named as a party in these lawsuits – who bears the ultimate discretionary responsibility under Michigan law to determine who shall be the Republican nominees for presidential office according to its own policies and procedures, by determining who shall represent the Michigan Republican Party at the National Republican Convention. Michigan law makes clear that it is the Republican Party, not the Secretary of State in her ministerial function, that has the ultimate say in presidential primary elections, because it chooses the

[1] Pursuant to MCR 7.312(H)(5), no counsel for any party authored this brief in whole or in part, and no person or entity aside from *amicus curiae*, its members, or its counsel made a monetary contribution to the preparation or submission of this brief.

[2] Michigan Republican State Committee, Bylaws, Art. II (2020), https://uploads-ssl.webflow.com/64e5fc4d534d66779544b105/64e5fc4d534d66779544b155_MRSC-Bylaws.pdf.

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candidates for electors and then transmits those candidates to the Secretary of State. MCLS § 168.42. "The candidates for electors of president and vice-president who shall be considered elected are those whose names have been certified to the secretary of state by that political party receiving the greatest number of votes." *Id.* Likewise, Michigan law reflects the party's authority by giving to the state chairperson of the party the authority, before a presidential primary is held, to "file with the secretary of state a list of individuals whom they consider to be potential presidential candidates for that political party." MCLS § 168.614a(2). These statutes reflect the authority of the Michigan Republican Party to make its own political decisions.

Amici the Oklahoma Republican Party, the Colorado Republican Party, the West Virginia Republican Party, Kansas Republican Party, North Dakota Republican Party, and the Delaware Republican Party also join this brief and seek to be heard in these cases because a ruling in favor of Plaintiffs would injure these other state parties as, if a candidate is barred from the ballot in Michigan, that candidate's viability is unquestionably lessened and the votes of these state parties' members lessened. This injury highlights the jurisprudence requiring that states may not determine or interfere with qualifications for national office. *See U.S. Term Limits, Inc. v. Thornton*, 514 U.S. 779, 810 (1995) ("In light of the Framers' evident concern that States would try to undermine the National Government, they could not have intended States to have the power to set qualifications."); *Heitmanis v. Austin*, 899 F.2d 521, 529 (6th Cir. 1990) (Court applied U.S. Supreme Court jurisprudence holding that "a State, or a court, may not constitutionally substitute its own judgment for that of the Party. A political party's choice among the various ways of determining the makeup of a State's delegation to the party's national convention is protected by the Constitution."). All these state parties share a commitment to their First Amendment rights, and the clear jurisprudence protecting those rights, addressed more fully below in Section II.

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Amici urge this Court to dismiss Plaintiffs' complaint and to enter an order requiring that the Michigan Secretary of State not subvert the Michigan Republican Party's constitutionally and statutorily protected autonomy and rights or otherwise interfere with its processes in naming candidates to its ballots.

INTRODUCTION

Section Three of the Fourteenth Amendment to the United States Constitution is not self-executing – a flaw fatal to the Plaintiffs' Complaint and requested relief. This Court should dismiss the Plaintiffs' claims and instead, order that the Secretary of State may not interfere with the Michigan Republican Party's constitutionally and statutorily protected processes, procedures, autonomy, and rights – including but not limited to the Party's First Amendment associational rights.

ARGUMENT

I. UNDER THE UNITED STATES CONSTITUTION, SECTION THREE OF THE FOURTEENTH AMENDMENT DOES NOT PROVIDE A SELF-EXECUTING CAUSE OF ACTION.

There is a fundamental problem with this case, more fundamental than disputes over whether President Donald Trump's conduct amounted to insurrection, and even more basic than the various disputes over the scope and meaning of the Fourteenth Amendment. That problem, which Plaintiffs do not address in their Complaint, is that Section Three of the Fourteenth Amendment is not self-executing. In other words, it does not of its own strength provide a cause of action for anyone to sue anyone, anywhere, in order to disqualify them from office. It also does not provide to any state Secretary of State the authority to determine such constitutional questions herself. The only means for enforcement is the means Congress establishes.

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The Constitution has reserved enforcement authority of the Fourteenth Amendment to Congress. The Fourteenth Amendment itself expressly states in Section Five that "[t]he Congress shall have power to enforce, by appropriate legislation, the provisions of this article." Thus, Congress has exclusive authority to enforce, by legislation, all the provisions of the Fourteenth Amendment, including the disqualification rule of Section Three.

The United States Supreme Court has regularly said that the enforcement power of the Fourteenth Amendment lies only in Congress, and Section Five of the Fourteenth Amendment confers enforcement power on Congress to determine "whether and what legislation is needed to" enforce the Fourteenth Amendment. *Katzenbach v. Morgan*, 384 U.S. 641, 651 (1966); *Pac. Mut. Life Ins. Co. v. Haslip*, 499 U.S. 1, 33 (1991) (Scalia, J., concurring) ("It cannot rightly be said that the Fourteenth Amendment furnishes a universal and self-executing remedy. Its function is negative, not affirmative, and it carries no mandate for particular measures of reform."). If this doctrine applies to the vital individual rights protections of Section One, there is no reason it should not also apply to the political questions of Section Three.

But even more specifically, in the seminal decision of *Griffin's Case*, 11 F. Cas. 7, 22 (C.C.D. Va. 1869), Chief Justice Salmon Chase, sitting as Circuit Judge for Virginia held that only Congress can provide the means of enforcing Section Three as a cause of action. That case has never been overruled and has been affirmed repeatedly by other courts and authorities. Many cases since have echoed the case's conclusions. Because the Fourteenth Amendment is not self-executing, the exclusive method for enforcing its provisions is through the provisions Congress may choose to establish for doing so. Just as a private plaintiff seeking to enforce individual rights under Section One of the Fourteenth Amendment needs to utilize the mechanism Congress has established, 42 U.S.C. 1983, *see Foster v. Michigan*, 573 F. App'x. 377, 391 (6th Cir. 2014) ("[W]e

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have long held that § 1983 provides the exclusive remedy for constitutional violations."), the enforcement of Section Three is likewise entrusted to congressional authority.

a. *Griffin's Case*, which remains good law and has been repeatedly relied upon since it was decided, establishes conclusively that Section Three of the Fourteenth Amendment is not self-executing.

In *Griffin's Case*, 11 F. Cas. 7, 22 (C.C.D. Va. 1869), Judge Sheffey, a former officer of Confederate Virginia, sentenced Caesar Griffin to two years' imprisonment for assault with intent to kill. Griffin filed a federal action, arguing that the Fourteenth Amendment automatically acted to remove Judge Sheffey from office, "operating directly, without any intermediate proceeding whatever, upon all persons within the category of prohibition, and as depriving them at once, and absolutely, of all official authority and power." *Id.* at 23. In other words, he argued that the Disqualification Clause was self-executing, and that individuals who served the confederacy were automatically barred from office, even without any congressional authorization of a cause of action or process.

Chief Justice Chase prefaced his analysis of Section Three with the observation that "it can hardly be doubted that the main purpose was to inflict upon the leading and most influential characters who had been engaged in the Rebellion, exclusion from office as a punishment for the offense." *Id.* at 26. Chase opined that "it is obviously impossible to do this by a simple declaration . . . . [I]t must be ascertained what particular individuals are embraced by the definition, before any sentence of exclusion can be made to operate." *Id.* Chase concluded that the Due Process Clause foreclosed the argument that Section Three automatically disqualifies someone from offense without a trial:

> Now it is undoubted that those provisions of the constitution which deny to the legislature power to deprive any person of life, liberty, or property, without due process of law, or to pass a bill of attainder or an ex post facto, are inconsistent in

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> their spirit and general purpose with a provision which, at once without trial, deprives a whole class of persons of offices held by them, for cause, however grave.

Id. at 26. Moreover, Chief Justice Chase held that the provisions of Section Three can only be enforced by Congress. "To accomplish this ascertainment and ensure effective results, proceedings, evidence, decisions, and enforcements of decisions, more or less formal, are indispensable; and these can only be provided for by congress." *Id.* He concluded that:

> the intention of the people of the United States, in adopting the fourteenth amendment, was to create a disability, to be removed in proper cases by a two-thirds vote, and to be made operative in other cases by the legislations of congress in its ordinary course. This construction gives certain effect to the undoubted intent of the Amendment to insure the exclusion from office of the designated class of persons, if not relieved from their disabilities, and avoids the manifold evils which must attend the construction insisted upon by the counsel for the petitioner.

Id.; *see also In re Brosnahan*, 18 F. 62, 81 n.73 (C.C.W.D. Mo. 1883) (McCrary, J., concurring) (same).

State courts and officials have repeatedly followed *Griffin*. *See*, *e.g.*, *Hansen v. Finchem*, 2022 Ariz. Super. LEXIS 5 (Maricopa Cnty. Sup. Ct. 2022) ("given the current state of the law and in accordance with the United States Constitution, Plaintiffs have no private right of action to assert claims under the Disqualification Clause"), *aff'd on other grounds*, 2022 Ariz. LEXIS 168 (Ariz. S. Ct. May 9, 2022); *Rothermel v. Meyerle*, 136 Pa. 250, 254 (1890) (citing *Griffin's Case*, 11 F. Cas. at 26) ("[I]t has also been held that the fourteenth Amendment, as indeed is shown by the provision made in its fifth section, did not execute itself."); *State v. Buckley*, 54 Ala. 599, 616 (Ala. 1875) (Stone, J.) (same); Mark R. Herring, Va. Attorney General to Lee J. Carter, Delegate, Commonwealth of Virginia Opinion No. 21-003, 2021 Va. AG Lexis 1, 2, n.11 (2021) ("[T]he weight of authority appears to be that Section Three of the Fourteenth Amendment is not 'self-executing'—put another way, it is possible that Congress may need to pass implementing legislation to make this provision operative.") (citing *Griffin's Case*).

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In fact, even the United States Government officially takes the view that the Fourteenth Amendment is not self-executing, based on *Griffin's Case*. The annotated constitutional commentary available on Congress's website cites *Griffin's Case* for this proposition: "Legislation by Congress providing for removal was necessary to give effect to the prohibition of Section Three, and until removed in pursuance of such legislation persons in office before promulgation of the Fourteenth Amendment continued to exercise their functions lawfully." *Amdt14.S3.1 Overview of Disqualification Clause*, Congress.Gov, https://constitution.congress.gov/browse/essay/amdt14-S3-1/ALDE_00000848/ (last visited Nov. 6, 2023).

Chief Justice Chase's analysis in *Griffin's Case* is supported by historical evidence. Representative Thaddeus Stevens, one of the leading proponents of the Reconstruction Amendments, introduced the Joint Committee's draft of Section Three to the House. During the Congressional framing debates, Stevens responded to concerns that Section Three would be unenforceable, stating explicitly that both Section Three and other provisions in the Fourteenth Amendment would require enabling legislation from Congress in order to be enforceable. Stevens emphasized that "[i]t will not execute itself, but as soon as it becomes a law, Congress at the next session will legislate to carry it out both in reference to the presidential and all other elections as we have a right to do." Kurt T. Lash, *The Meaning and Ambiguity of Section Three of the Fourteenth Amendmen*t (2023), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4591838, at 37. (quoting 2 Reconstruction Amendments, Essential Documents 219 (Kurt Lash ed. 2021). Stevens expressed fear that there was "no hope of safety unless in the prescription of proper enabling acts." *Id.*

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b. Moreover, the United States Supreme Court has repeatedly indicated that no provision of the Fourteenth Amendment provides a self-executing cause of action.

This requirement of enabling legislation for Section Three of the Fourteenth Amendment reflects a broader principle. It is black letter law that for a cause of action to exist under federal law, Congress must specifically authorize it. *Alexander v. Sandoval*, 532 U.S. 275, 286 (2001) ("Like substantive federal law itself, private rights of action to enforce federal law must be created by Congress."). Section Five of the Fourteenth Amendment explicitly confers enforcement power on Congress to determine "whether and what legislation is needed to" enforce the Fourteenth Amendment. *Katzenbach v. Morgan*, 384 U.S. 641, 651 (1966). The Court has consistently indicated that it is Congress alone who is vested with the authority to enforce the Fourteenth Amendment by positive legislation. "It is the power of Congress which has been enlarged. Congress is authorized to enforce the prohibitions by appropriate legislation. Some legislation is contemplated to make the amendments fully effective." *Ex parte Va.*, 100 U.S. 339, 345 (1879).

As the United States Court of Appeals for the Fourth Circuit explained:

> It is true that in the Civil Rights Cases, the Court referred to the Fourteenth Amendment as self-executing, when discussing the Fifteenth, but it is also true that earlier in the opinion, discussing § 1 of the Fourteenth Amendment, the court stated: "in order that the national will, thus declared, may not be a mere *brutum fulmen*, the last section of the amendment invests Congress with power to enforce it by appropriate legislation." The Civil Rights Cases did not overrule *Ex Parte Virginia*, and any apparent inconsistency between the two just quoted statements in the Civil Rights Cases may be resolved, we think, by reference to the protection the Fourteenth Amendment provided of its own force as a shield under the doctrine of judicial review.

*Cale v. Covingto*n, 586 F.2d 311, 316-17 (4th Cir. 1978) (rejecting the argument that there is an implied cause of action under the Fourteenth Amendment because the Amendment is self-executing). In other words, the Fourth Circuit explained a critical distinction in constitutional law. Many provisions are self-executing in the sense that they can be relied on as a defense, even if not

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specifically authorized. The First Amendment may be raised as a defense in some criminal cases even when not explicitly authorized by an individual statute, for example. But what the Court has made clear time and time again is that no constitutional provision is a self-executing sword, creating within itself a cause of action. As fundamental as the First and Second Amendments are, for example, they still nonetheless may only be enforced as a cause of action pursuant to congressional statute. And this is also true of Section Three of the Fourteenth Amendment.

Just as Congress enacted 42 U.S.C. § 1983 pursuant to its enforcement power under Section Five, Congress can adopt legislation enforcing Section Three. It has chosen not to create a private right of action. In 1994, Congress adopted 18 U.S.C. § 2383, a criminal provision banning rebellion and insurrection and providing a penalty of disqualification. If there is any current enforcement statute for Section Three, that is the statute. President Donald Trump has never been charged with, much less convicted of, violating § 2383.

By analogy, there is unanimous federal precedent holding that 42 U.S.C. § 1983 provides the exclusive vehicle for bringing constitutional claims against state officials under the Fourteenth Amendment. *See, e.g.*, *Sweat v. City of Fort Smith*, 265 F.3d 692, 696 (8th Cir. 2001) (noting Eighth Circuit precedent holding that § 1983 is an exclusive remedy for constitutional violations); *Cedar-Riverside Associates, Inc. v. City of Minneapolis*, 606 F.2d 254 (8th Cir. 1979) (stating that Congress intended 42 U.S.C. § 1983 as an exclusive remedy for constitutional violations committed by municipalities and that "no reason exists to imply a direct cause of action (for such violations) under the fourteenth amendment."); *see also Foster v. Michigan*, 573 F. App'x. 377, 391 (6th Cir. 2014) ("[W]e have long held that § 1983 provides the exclusive remedy for constitutional violations."); *Burns-Toole v. Byrne*, 11 F.3d 1270, 1273 n.3 (5th Cir. 1994) (providing that § 1983 is the appropriate vehicle for asserting violations of constitutional rights);

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Azul-Pacifico, Inc. v. City of Los Angeles, 973 F.2d 704, 705 (9th Cir. 1992) ("We have previously held that a litigant complaining of a violation of a constitutional right must utilize 42 U.S.C. § 1983."). State courts may only "apply the Constitution" when constitutional claims are brought before them as Congress prescribed. State courts have no free roaming power to hear federal constitutional claims against state and local officials apart from the limits of whatever cause of action Congress may establish. In other words, the simple existence of a constitutional provision does not create a cause of action. This is true of individual rights provisions, and likewise true of the quasi-criminal disqualification provision contained in Section Three. It is only if Congress establishes a cause of action for disqualification that these plaintiffs would have any lawful ability to engage this lawsuit.

This reflects the general principle that the Supreme Court has consistently declined to recognize a private cause of action that Congress did not expressly authorize for the enforcement of any federal law. *See, e.g.*, *Armstrong v. Exceptional Child Ctr., Inc.*, 575 U.S. 320, 324-25 (2015) ("It is equally apparent that the Supremacy Clause is not the 'source of any federal rights,' . . . and certainly does not create a cause of action. It instructs courts what to do when state and federal law clash, but is silent regarding who may enforce federal laws in court, and in what circumstances they may do so.") (internal citations omitted); *Gonzaga Univ. v. Doe*, 536 U.S. 273 (2002); *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 when Congress has not created a private right of action, implying such a right entrenches 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.

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Likewise, the Supreme Court has regularly made clear that state officials lack authority to set the requirements for federal office. "In light of the Framers' evident concern that States would try to undermine the National Government, they could not have intended States to have the power to set qualifications." *U.S. Term Limits, Inc. v. Thornton*, 514 U.S. 779, 810 (1995); *see Heitmanis v. Austin*, 899 F.2d 521, 529 (6th Cir. 1990) (Court applied U.S. Supreme Court jurisprudence holding that "a State, or a court, may not constitutionally substitute its own judgment for that of the Party. A political party's choice among the various ways of determining the makeup of a State's delegation to the party's national convention is protected by the Constitution."); *Ferency v. Austin*, 666 F.2d 1023 (6th Cir. 1981) (holding that the Michigan Election Law was unconstitutional insofar as it controlled "the method of selection of the Michigan delegates to the Democratic National Convention" in violation of Democratic National Party rules); *Tashjian v. Republican Party of Connecticut*, 479 U.S. 208 (1986); *Democratic Party of United States v. Wisconsin*, 450 U.S. 107 (1981). Section Five of the Fourteenth Amendment gives Congress "the power to enforce, by appropriate legislation, the provisions of this article," including Section Three. U.S. Const., amend. XIV, § 5. That Congress has not exercised that power to authorize private plaintiffs to sue or state officials and courts to adjudicate Section Three means that this determination still belongs exclusively to Congress.

Significantly, when Congress has adopted legislation enforcing Section Three, it has on each occasion chosen *not* to create a private right of action. Its first legislation enforcing Section Three was the Ku Klux Klan Act, Ch. 114, 16 Stat. 140 (1870), which provided for Fourteenth Amendment enforcement through official quo warranto actions filed by the Department of Justice. Congress later enacted 18 U.S.C. § 2383, a criminal provision prohibiting rebellion and insurrection and providing for the penalty of disqualification. And in 2021, Congress considered

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but did not adopt legislation authorizing the U.S. Attorney General to enforce Section Three. *Amici* find no record indicating Congress ever even considered authorizing a private remedy.

Congress has the authority to define the means whereby the Fourteenth Amendment is applied and enforced. And if it has done so at all, it is through the criminal code, by enacting 18 U.S.C. § 2383. That is the mechanism for someone to be disqualified from office. Congress has declined to create any other mechanism. Accordingly, regardless of the Plaintiffs' allegations about President Trump's conduct, they simply do not possess a right to sue to attempt to bar President Trump from the ballot. The Fourteenth Amendment is enforced by Congress, not individual plaintiffs.

II. THE FIRST AMENDMENT TO THE UNITED STATES CONSTITUTION PROTECTS THE PARTY'S AND CANDIDATES' RIGHTS TO FREELY ASSOCIATE FOR PURPOSES OF ENGAGING IN POLITICAL ADVOCACY AND EXPRESSION.

As the U.S. Court of Appeals for the Sixth Circuit made quite clear, "a State, or a court, may not constitutionally substitute its own judgment for that of the Party. A political party's choice among the various ways of determining the makeup of a State's delegation to the party's national convention is protected by the Constitution." *Heitmanis v. Austin*, 899 F.2d 521, 529 (6th Cir. 1990); *see U.S. Term Limits, Inc. v. Thornton*, 514 U.S. 779, 810 (1995) ("In light of the Framers' evident concern that States would try to undermine the National Government, they could not have intended States to have the power to set qualifications."); *Ferency v. Austin*, 666 F.2d 1023 (6th Cir. 1981).

Political parties are free to make their own choices for a reason – the First Amendment protects them – and courts are rightly very reticent to deny political parties the opportunity to set requirements in primary elections. The Supreme Court regularly recognizes the right of a political party to make associational decisions. *Cal. Democratic Party v. Jones*, 530 U.S. 567, 575 (2000)

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("In no area is the political association's right to exclude more important than in the process of selecting its nominee. That process often determines the party's positions on the most significant public policy issues of the day, and even when those positions are predetermined it is the nominee who becomes the party's ambassador to the general electorate in winning it over to the party's views."); *see also Duke' v. Cleland*, 954 F.2d 1526, 1531 (11th. Cir. 1992); *Tashjian v. Republican Party of Connecticut*, 479 U.S. 208 (1986) (holding unconstitutional statute's requirement that voters in a primary be members of that party); *Colo. Republican Fed. Campaign Comm. v. FEC*, 518 U.S. 604, 629 (1996) ("Political parties have a unique role in serving this principle; they exist to advance their members' shared political beliefs.").

As the Supreme Court has indicated, States may not enact "unreasonably exclusionary restrictions." *Timmons v. Twin Cities Area New Party*, 520 U.S. 351, 369 (1997). Laws regarding even general ballot access must still be "reasonable, politically neutral regulations." *Burdick v. Takushi*, 504 U.S. 428, 438 (1992). "[T]he State's asserted regulatory interests need be 'sufficiently weighty to justify the limitation' imposed on the Party's rights." *Timmons*, 520 U.S. at 364 (citing *Norman v. Reed*, 502 U.S. 279, 288-89 (1992). Moreover, the basis for the purported disqualification is crucial to determining whether First Amendment rights are violated. *See also Rubin v. City of Santa Monica*, 308 F.3d 1008, 1014 (9th Cir. 2002) (restrictions are not severe when they are "generally applicable, even-handed, [and] politically neutral"). The heavily political, extra-statutory, non-neutral, and not-generally-applicable requirement that Plaintiffs seek to impose is simply not available to them in this matter under the Fourteenth Amendment, in part because it would severely infringe on the Party's right to associate.

As the Supreme Court of Michigan has emphasized, "[b]oth the rights of individuals to associate for the advancement of political beliefs and of qualified voters to cast their votes

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effectively are basic to effective political expression and merit strong constitutional protection. Restrictions on access to the ballot burden those fundamental rights directly, and the effect is heightened where the restrictions work to eliminate political and ideological alternatives at the primary election when the candidates for the major parties are selected and before campaigning has identified and sharpened the issues facing the voters." *Socialist Workers Party v. Secretary of State*, 412 Mich. 571, 579 (1982).

It is the Michigan Republican Party, not the Secretary, that sets the rules and determines the requirements for Republican nominees. Election law reflects the Party's constitutional right to freely associate and to exercise its political decisions. One of the ways the law does so is by not granting to individuals the right to interfere with a political party's political decisions.

CONCLUSION

For these reasons, along with those raised by *Amicus* President Donald Trump, the Plaintiffs lack an individual cause of action to enforce the disqualification provision contained within Section Three of the Fourteenth Amendment, and the relief they seek would violate the Michigan Republican Party's First Amendment associational rights. This Court should dismiss the Plaintiffs' claims.

Respectfully submitted,

/s/ *Daniel Hartman*
Daniel Hartman
Daniel J. Hartman (MI Bar No. p52632)
MRP General Counsel
P.O. Box 307
Petoskey, MI 49770
Tel. 231-348-5100
Email: Danjh1234@yahoo.com

Counsel for Amici Curiae

JAY ALAN SEKULOW*
JORDAN SEKULOW*
STUART J. ROTH*
ANDREW J. EKONOMOU*
BENJAMIN P. SISNEY*
NATHAN MOELKER*
AMERICAN CENTER FOR LAW & JUSTICE
201 Maryland Avenue, NE
Washington, DC 20002
Tel. 202-546-8890
Email: bsisney@aclj.org
*Not admitted in Michigan

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PROOF OF SERVICE

I, Daniel J. Hartman, hereby affirm that on November 7, 2023, I delivered a copy of the *Amicus Curiae* Brief upon counsel of record stated above, via the Court's MiFile system. I hereby declare that this statement is true to the best of my information, knowledge, and belief.

/s/ *Daniel J. Hartman*

Daniel J. Hartman (MI Bar No. p52632)
MRP General Counsel
P.O. Box 307
Petoskey, MI 49770
Tel. 231-348-5100
Counsel for *Amici Curiae*

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