No.

In The

Supreme Court of the United States

Couy Griffin,

Petitioner,

v.

State of New Mexico, ex rel. Marco White,
Mark Mitchell, Leslie Lakind,

Respondents.

On Petition for Writ of Certiorari
to the New Mexico Supreme Court

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

This Petition presents the following issues:

I. Whether Section 5 of the Fourteenth Amendment to the United States Constitution exclusively reserves the power to enforce the Fourteenth Amendment, by appropriate legislation, to Congress

II. Whether courts have authority to adjudicate challenges pursuant to Section 3 of the Fourteenth Amendment to the United States Constitution in the absence of appropriate legislative direction from Congress

III. Whether a state court may issue a federal writ quo warranto

IV. Whether the events taking place at the U.S. Capitol on January 6, 2021, constitute an "insurrection" within the context of the Fourteenth Amendment to the United States Constitution

V. Whether disqualifying Mr. Griffin from holding public office on account of his speech violates the First Amendment to the United States Constitution

VI. Whether disqualifying Mr. Griffin from holding public office on account of his associations violates the First Amendment to the United States Constitution

LIST OF PARTIES

All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgement is the subject of this Petition is as follows:

1. Bacon, C. Shannon, Chief Justice of the Supreme Court of the State of New Mexico
2. Bookbinder, Noah, Attorney for Plaintiffs-Respondents
3. Dodd, Christopher A., Attorney for Plaintiffs-Respondents
4. Everett, Melody F., Attorney for Defendant-Petitioner in the New Mexico Supreme Court.
5. Fayerberg, Amber, Attorney for Plaintiffs-Respondents
6. Goldberg, Joseph, Attorney for Plaintiffs-Respondents
7. Griffin, Couy, Defendant-Petitioner
8. Lakind, Leslie, Plaintiff-Respondent
9. Mathew, Francis J., State of New Mexico, County of Santa Fe, First Judicial District Court Judge
10. McPhail, Stuart, Attorney for Plaintiffs-Respondents
11. Mitchell, Mark, Plaintiff-Respondent
12. Sherman, Donald, Attorney for Plaintiffs-Respondents
13. Small, Daniel A., Attorney for Plaintiffs-Respondents
14. Sus, Nikhel, Attorney for Plaintiffs-Respondents
15. White, Marco, Plaintiff-Respondent

CORPORATE DISCLOSURE STATEMENT

No party to this proceeding is a corporation having parent corporations or publicly held companies owning 10% or more of the corporation's stock.

RELATED CASES

There following are related cases within the meaning of Rule 14.1(b)(iii):

1. N.M. ex rel. White, D-101-CV-2022-00473, 2022 N.M. Dist. LEXIS 1
2. *Griffin v. White*, S-1-SC-39571 (N.M. 2022)

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PETITION FOR A WRIT OF CERTIORARI

Petitioner, COUY GRIFIFN (hereinafter referred to as "Mr. Griffin"), by and through undersigned counsel, respectfully petitions this Honorable Court for a Writ of Certiorari to review the State of New Mexico, County of Santa Fe, First Judicial District Court's decision in this case.

OPINIONS BELOW

The State of New Mexico, County of Santa Fe, First Judicial District Court's September 6, 2022 opinion 1) finding that Mr. Griffin is constitutionally ineligible and barred for life from holding any office under the United States or under any State, including the office of Otero County Commissioner pursuant to Section Three of the Fourteenth Amendment to the Constitution of the United States, 2) finding that Mr. Griffin became constitutionally disqualified from holding public office as of January 6, 2021, 3) ordering that Mr. Griffin be immediately removed from his former position as an Otero County Commissioner, 4) permanently enjoining Mr. Griffin from performing any official acts in his capacity as an Otero County Commissioner or on behalf of the Board of County Commissioners of Otero County, and 5) permanently enjoining Mr. Griffin from seeking or holding any federal or state public office, is reported at 2022 N.M. Dist. LEXIS 1 * and appears at Appendix C (App. 9a-73a). The New Mexico Supreme Court's November 15, 2022, opinion dismissing Mr. Griffin's appeal is unreported and appears at Appendix B (App. 6a-8a)

The New Mexico Supreme Court's February 16, 2023, opinion denying Mr. Griffin's Motion for Reconsideration is unreported and appears at Appendix A (App. 1a-5a).

JURISDICTION

The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The First Amendment to the United States Constitution provides that:

> Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

U.S. Const. amend. I.

Section Three of the Fourteenth Amendment to the United States Constitution provides that:

> No person shall be a Senator or Representative in Congress, or elector of President and Vice-President, or hold any office, civil or military, under the United States, or under any State, who,

> having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.
>
> U.S. Const. amend. XIV, § 3.
>
> Section Five of the Fourteenth Amendment to the United States Constitution provides that:
>
> The Congress shall have the power to enforce, by appropriate legislation, the provisions of this article.
>
> U.S. Const. amend. XIV, § 5.

STATEMENT OF THE CASE

On March 21, 2022, Marco White, Mark Mitchell, and Leslie Lakind (hereinafter collectively referred to as the "Plaintiffs") commenced an action against Mr. Griffin under New Mexico's *quo warranto* statute, i.e., NMSA 1978, Section 44-3-4, asserting that Mr. Griffin was disqualified from holding public office pursuant to Section Three of the Fourteenth Amendment to the United States Constitution due to his alleged involvement in the events taking place in Washington, D.C. on January 6, 2021, and seeking a

declaratory judgment holding that said events constituted an "insurrection" within the meaning of the Fourth Amendment and that Mr. Griffin is disqualified from holding federal or state office for having engaged in that so-called "insurrection." App. C at 15a. Additionally, the Plaintiffs sought injunctive relief removing Mr. Griffin from his former position as an Otero County Commissioner, barring him from performing any official acts as a county commissioner, and barring him from holding any future state or federal office as well. *Id.* Thereafter, on September 6, 2022, the State of New Mexico, County of Santa Fe, First Judicial District Court rendered a final judgement in this case 1) finding that Mr. Griffin is constitutionally ineligible and barred for life from holding any office under the United States or under any State, including the office of Otero County Commissioner; pursuant to Section Three of the Fourteenth Amendment to the Constitution of the United States; 2) finding that Mr. Griffin became constitutionally disqualified from holding public office as of January 6, 2021; 3) ordering that Mr. Griffin be immediately removed from his former position as an Otero County Commissioner; 4) permanently enjoining Mr. Griffin from performing any official acts in his capacity as an Otero County Commissioner or on behalf of the Board of County Commissioners of Otero County; 5) permanently enjoining Mr. Griffin from seeking or holding any federal or state public office. *Id.* at 72a-73a.

Mr. Griffin subsequently appealed the district court's order to the New Mexico Supreme Court, however, on November 15, 2022, Mr. Griffin's appeal was dismissed on a procedural technicality due to Mr.

Griffin's former attorney's failure to file a statement of issues. App. B at 7a. However, on November 16, 2022, Mr. Griffin's former attorney filed a Motion for Reconsideration of the New Mexico Supreme Court's November 15, 2022, Order dismissing Mr. Griffin's Appeal arguing that the Court's dismissal Order was entered in error because Mr. Griffin's Appeal was allegedly exempt from the docketing statement and statement of issues rule pursuant to N.M.R. App. P. 12-208 and 12-604. App. A at 2a-3a. Notwithstanding, on February 16, 2023, the Supreme Court of New Mexico denied Mr. Griffin's Motion for Reconsideration on the ground that N.M.R. App. P. 12-604 doesn't authorize a public official who has been removed from office by the district court to appeal from a judgement in quo warranto but rather governs original actions filed in the Supreme Court to remove a public official upon presentment of constitutional or statutory charges. App. A at 3a.

REASONS FOR GRANTING THE PETITION

I. The Trial Court Decided an Important Federal Question That Hasn't Been, but Should be, Settled by this Court, in a way Which Conflicts with the Decision of a State Court of Last Resort.

This Court's Rule 10, entitled "Considerations Governing Review on Certiorari," says that certiorari will be granted "only for compelling reasons," *City & Cnty. of San Francisco v. Sheehan*, 575 U.S. 600, 619 (2015), and sets forth situations that can weigh in

favor of certiorari, although they are "neither controlling nor fully measuring the Court's discretion," *Brown v. United States*, 139 S. Ct. 14, 16 n.5 (2018). According to that Rule, among the compelling reasons which tend to weigh in favor of certiorari include cases where "a state court of last resort has decided an important federal question in a way that conflicts with the decision of another state court of last resort," as well as those where "a state court … has decided an important question of federal law that has not been, but should be, settled by this Court." *See* Rule 10(b), (c).

In the case at bar, although the trial court is not a court of last resort, it unquestionably decided an important question of federal law by holding that Mr. Griffin is constitutionally ineligible and barred for life from holding any office under the United States or under any State pursuant to Section 3 of the Fourteenth Amendment to the Constitution of the United States. As such, and for the following reasons, this Court should grant this Petition to review the decision of the trial court in this matter.

A. Section 5 of the Fourteenth Amendment to the United States Constitution Expressly Delegates the Power to Devise the Method by Which to Enforce the "Disqualification Clause."

It's axiomatic that "where a power is expressly given by the Constitution, and the means by which, or the manner in which it is to be exercised, is prescribed, such means or manner is exclusive of all others." *Cooper v. Albuquerque City Commission*, 85

N.M. 786, 793 (1974) (internal quotation marks and citation omitted). As such, since Section 5 of the Fourteenth Amendment to the United States Constitution, otherwise known as the "Enforcement Clause," explicitly provides that "Congress shall have the power to enforce, by appropriate legislation, the provisions of this article," it's clear that Congress has exclusive authority to enforce the Fourteenth Amendment, including the so-called "Disqualification Clause" set forth in Section 3 of the Fourteenth Amendment. *See*, e.g., U.S. Const. amend. XIV, § 5; *In Re Griffin*, 11 F. Cas. 7 (C.C.D. Va. 1869); *Hansen v. Finchem*, CV-22-0099-AP/EL, 2022 Ariz. LEXIS 168 (Ariz. May 9, 2022).

There are few cases which have interpreted the Disqualification Clause, however, the seminal case considering the Disqualification Clause, one written shortly after its enactment, is *In Re Griffin*, *supra*. In *Griffin*, squarely at issue before the court was whether a trial judge was disqualified from holding public office due to his membership in the legislature of Virginia during the civil war. 11 F. Cas. at 22. The court concluded that:

> The object of the amendment is to exclude from certain offices a certain class of persons. Now it is obviously impossible to do this by a simple declaration, whether in the constitution or in an act of congress, that all persons included within a particular description shall not hold office. For, in the very nature of things, it must be ascertained what particular individuals are

> embraced by the definition, before any sentence of exclusion can be made to operate. To accomplish this ascertainment and ensure effective results, proceedings, evidence decisions, and enforcement of decisions, more or less formal, are indispensable; *and these can only be provided for by congress*.

Id. at 26 (emphasis added). The *Griffin* Court went on to emphasize that it was imperative upon the United States Congress to pass legislation to enforce the Disqualification Clause, stating:

> Now, the necessity of this is recognized by the [Fourteenth] amendment itself, in its fifth and final section, which declares that "congress shall have power to enforce, by appropriate legislation, the provision[s] of this article."
>
> There are, indeed, other sections than the [Disqualification Clause], to the enforcement of which legislation is necessary; but there is no one which more clearly requires legislation in order to give effect to it. The fifth section [of the Fourteenth Amendment] qualifies the [Disqualification Clause] to the same extent as it would if the whole amendment consisted of these two sections.

Id.

The principle recognized by the Court in *Griffin* is aptly illustrated by the Arizona Supreme Court's

recent decision in *Hansen v. Finchem*, *supra*, a case strikingly similar to the case at bar. There, the plaintiffs sought to disqualify Arizona Representative Mark Finchem, U.S. Representative Paul Gosar, and U.S. Representative Andy Biggs (hereinafter collectively referred to as the "Candidates") from the August 2022 Primary Election Ballot. *Id.* at *1. In doing so, the plaintiffs argued that, pursuant to the Disqualification Clause, the Candidates were ineligible to run for office due to their alleged involvement in the events that occurred in Washington, D.C., on January 6, 2021. *Id.* However, the Candidates filed motions to dismiss which the trial court ultimately granted upon finding, *inter alia*, that "Congress has not created a civil practice right of action to enforce the Disqualification Clause." *Id.* at *2. Upon review, the Arizona Supreme Court agreed with the trial court that the plaintiffs failed to state a claim upon which relief could be granted, and in so doing, the Court noted that "Section 5 of the Fourteenth Amendment appears to expressly delegate to Congress the authority to devise the method to enforce the Disqualification Clause." *Id.* at *3.

Conversely, in the case at bar, the trial court noted that "[s]tate courts have adjudicated Section Three challenges through *quo warranto* or similar state-law proceedings." App. C at 47a (citing *Louisiana ex rel. Sandlin v. Watkins*, 21 La. Ann. 631 (La. 1869); *Worthy v. Barrett*, 63 N.C. 199 (1869); *In re Tate*, 63 N.C. 308 (1869)). Notably, however, in *Watkins*, *supra*, the defendant argued, *inter alia*, that the Fourteenth Amendment "does not affect him because … it is not self-enforcing, and before it can

have effect it requires legislation by Congress." 21 La. Ann. at 633. Nevertheless, the Court refused to consider this position and instead held that Louisiana's so-called "Intrusion Act" (No. 156, acts of 1868), which provides in pertinent part that "no person prohibited from holding office under the United States by section three of the proposed amendment, known as article fourteenth, shall be deemed eligible to any office … unless relieved from disability as provided by said amendment," mandates courts to carry the law into effect. *Id.* at 633-34. Additionally, it should be noted that neither *Worthy*, *supra*, nor *Tate*, *supra*, addressed the issue of whether the Disqualification Clause can be enforced in the absence of appropriate legislation by Congress.

Notwithstanding, as the *Griffin* and *Hansen* Courts both recognized, Section 5 of the Fourteenth Amendment to the United States Constitution expressly delegates to Congress the power to devise the method by which to enforce the Disqualification Clause. *See*, e.g., *In Re Griffin*, 11 F. Cas. at 26 ("Taking the [Disqualification Clause] then, in its completeness with this final clause, it seems to put beyond reasonable question the conclusion 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 legislation of congress in its ordinary course*") (emphasis added); *Hansen*, CV-22-0099-AP/EL, 2022 Ariz. LEXIS 168 at *3. Thus, because the trial court's conclusion that state courts have authority to adjudicate Section 3 challenges in the absence of appropriate legislative direction from Congress not

only constitutes a decision of an important federal question that has not been, but should be, settled by this Court, but also constitutes a decision of an important question of federal law which conflicts with the decisions of a state court of last resort, i.e., the Arizona Supreme Court, this Court should therefore grant this Petition to review the decision of the trial court in this matter.

II. The Trial Court Decided Important Federal Questions That Haven't Been, but Should be, Settled by this Court.

A. A Federal Writ Quo Warranto can Only be Sought by the United States.

Although Federal statute provides for the removal of federal officials by way of quo warranto brought in the District Court for the District of Columbia, *see Drake v. Obama*, 664 F.3d 774, 784-85 (9th Cir. 2011), "under that statute, and traditionally, quo warranto is brought only by the sovereign or a representative of the sovereign," *Hill v. Mastriano*, 2022 U.S. App. LEXIS 30663, *4 (3d DCA 2022) (citing *Drake*, 664 F.3d at 785; *Country Club Estates L.L.C. v. Town of Loma Linda*, 213 F.3d 1001, 1003 (8th Cir. 2000); *Commonwealth ex rel. Jud. Conduct Bd. v. Griffin*, 591 Pa. 351, 918 A.2d 87, 93 (Pa. 2007) (stating that "standing to pursue quo warranto is generally within a public entity such as, the Attorney General, or the local district attorney")).

In *Wilkes v. North Carolina*, No. 1:19-CV-699, 2019 U.S. Dist. LEXIS 219940, 2019 WL 7039631

(M.D.N.C. Nov. 19, 2019), a United States Magistrate Judge recommended dismissal of a petition for a writ of quo warranto. *Id.* at *10. In doing so, the Magistrate Judge recognized that "quo warranto is the prerogative writ by which the Government can call upon any person to show by what warrant he holds public office or exercises a public franchise and, as such, a private individual has no standing to institute such proceeding." *Id.* at *10-11 (internal quotations omitted); *accord Hill v. Perry*, 4:22-CV-560, 2022 U.S. Dist. LEXIS 125972 *22 (M.D. Pa. 2022) ("A federal writ quo warranto may be sought only by the United States, and not by a private individual"). After the Magistrate Judge's recommendation was adopted by the United States District Court for the Middle District of North Carolina, 2019 U.S. Dist. LEXIS 218961, 2019 WL 7037401 (M.D.N.C. Dec. 20, 2019), the Fourth District Court of Appeals affirmed the District Court's decision 821 F. App'x 256 (4th Cir. 2020).

To the extent that the trial court's Order purports to permanently enjoin Mr. Griffin from seeking or holding any federal public office, the court was without authority to do so. App. C at 72a-73a. To be clear, a federal writ quo warranto may be sought only by the United States, and not by a private individual." *Id.*; *see also*, e.g., *Cizek v. Davis*, No. 4:10-0185, 2010 U.S. Dist. LEXIS 136829, 2010 WL 5437286, at *3 (M.D. Pa. Nov. 29, 2010), report and recommendation adopted by 2010 U.S. Dist. LEXIS 136827, 2010 WL 5441969 (M.D. Pa. Dec. 28, 2010); *Wright v. Magill*, No. 18-1815, 2019 U.S. Dist. LEXIS 17447, 2019 WL 440554 at *1 (D. Minn. Feb. 4, 2019) ("Quo warranto is an extraordinary proceeding that is

only authorized to be brought by the United States"). Thus, since the case at bar was initiated by private individuals in state court and not by the United States in the District Court for the District of Columbia, it was clearly erroneous for the trial court to issue a federal writ quo warranto by permanently enjoining Mr. Griffin from seeking or holding any federal public office.

B. The trial court incorrectly determined that the events taking place at the U.S. Capitol on January 6, 2021, constitute an "insurrection" within the meaning of Section Three of the Fourteenth Amendment.

Section Three of the Fourteenth Amendment to the United States Constitution provides that:

> No person shall be a Senator or Representative in Congress, or elector of President and Vice-President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

U.S. Const. amend. XIV,§ 3.

To constitute an insurrection or rebellion, "there must have been a movement accompanied by action specifically intended to overthrow the constituted government and to take possession of the inherent powers thereof," *Home Ins. Co. of N.Y. v. Davila*, 212 F.2d 731, 736 (1st Cir. 1954); *accord Pan Am. World Air., Inc. v. AETNA Casualty & Sur. Co.*, 505 F.2d 980, 1017-1019 (2d Cir. 1974) (defining insurrection as (1) a violent uprising by a group or movement (2) acting for the specific purpose of overthrowing the government and seizing its powers). Furthermore, "[i]nsurrection is distinguished from rout, riot, and offenses connected with mob violence by the fact that in insurrection there is an organized and armed uprising against authority or operations of government, while crimes growing out of mob violence, however serious they may be and however numerous the participants, are simply unlawful acts in disturbance of the peace which do not threaten the stability of the government or the existence of political society," *A & B Auto Stores of Jones Street, Inc. v. Newark*, 106 N.J. Super. 491, 506-507 (1969).

In *Home Ins. Co. v. Davila*, 212 F.2d 731 (1st Cir. 1954), an insured had three buildings burned during an uprising staged by a band of extremists known as the Nationalist Party of Puerto Rico. Unfortunately, the insureds policies did not include coverage for losses caused by various perils including, *inter alia*, "insurrection." *Id.* at 732. However, the insured's policies were intended to cover fire losses resulting from a "riot." *Id.* In determining whether the fires were caused as a result of an "insurrection,"

or merely a "riot," the Court stated that "[i]t could be that the Nationalist leaders had (1) a maximum objective -- with the realization that it had only an off-chance of accomplishment, depending as it did upon the movement's developing and rolling along as they hoped, with the populace rising to their support, under the contagion of local successes -- and at the same time, (2) a lesser or minimum objective." *Id.* at 738. Toward that end, the Court reasoned that "[t]he minimum objective might have been to create a series of local disturbances, or civil commotions, in various towns of Puerto Rico, to embarrass and discredit the insular government, to dramatize the fact that there were patriots in Puerto Rico prepared to die for the ideal of freedom, for propaganda purposes to fire a shot heard around the world," and further that "[i]f that objective, upon a more realistic appraisal of the possibilities, had been the only objective of the Nationalist leaders, then we would agree that the outbreaks of October 30, 1950, did not constitute an insurrection." *Id.* (internal quotation marks omitted).

In the instant case, the trial court found that the events taking place at the U.S. Capitol on January 6, 2021, "constituted an 'insurrection' within the meaning of Section Three of the Fourteenth Amendment." App. C at 52a. However, the trial court made no finding that the goal of said events was to overthrow the government or to seize the powers thereof. Rather, the trial court found that "an insurrection need not rise to the level of trying to overthrow the government." *Id.* at 51a, Toward that end, the trial court relied upon the *Case of Fries*, 9 F. Cas. 924 (C.C.D. Pa. 1800), a case decided nearly a century prior to the ratification of the Fourteenth

Amendment, which held that "any insurrection or rising of any body of the people, within the United States, to attain or effect by force or violence any object of a great public nature, or of public and general (or national) concern, is a levying of war against the United States, within the contemplation and construction of the constitution." *Id.* (citing *Fries*, 9 F. Cas. at 930). Notably, however, in that case the Court also recognized that "[t]he true criterion to determine whether acts committed are treason, or a less offence (as a riot), is the quo animo, or the intention, with which the people did assemble," *Fries*, 9 F. Cas. at 930, and further that "[t]he commission of any number of felonies, riots, or other misdemeanours, cannot alter their nature, so as to make them amount to treason," *id.* at 930-31.

Assuming *arguendo* that state courts are even authorized to adjudicate challenges to an individual's qualifications to hold public office pursuant to the Disqualification Clause, none of the trial court's findings are sufficient to conclude that Mr. Griffin somehow engaged in "insurrection" against the United States. At best, the trial court's findings were sufficient to conclude that Mr. Griffin engaged in a riot intended to create a disturbance or a civil commotion.

C. The Trial Court's Disqualification of Mr. Griffin on Account of his Speech is Violative of the First Amendment to the U.S. Constitution.

"Above all else, the First Amendment means that government" generally "has no power to restrict

expression because of its message, its ideas, its subject matter, or its content." *Barr v. Am. Ass'n of Political Consultants*, 140 S. Ct. 2335, 234 (2020); *see also Texas v. Johnson*, 491 U.S. 397, 414 (1989) ("If there is a bedrock principle underlying the First Amendment, it is that the government may not prohibit the expression of an idea simply because society finds the idea itself offensive or disagreeable"). This is especially true when it comes to an elected official's right to speak on matters of public concern as the "potential chilling effect on … free speech rights is more pronounced when elected officials are discharged" on account of their speech. *See Sheet Metal Workers' Int'l Ass'n v. Lynn*, 488 U.S. 347, 355 (1989) ("Not only is the fired official likely to be chilled in the exercise of his own free speech rights, but so are the members who voted for him").

Notwithstanding, in support of its conclusion that Mr. Griffin engaged in "insurrection," the trial court placed great emphasis upon Mr. Griffin's speech before, during, and after the events taking place at the U.S. Capitol on January 6, 2021. App. C at 59a ("Griffin was a featured speaker on a multi-city bus tour organized by a leading Stop the Steal rally organizer, during which Mr. Griffin urged crowds to join the 'war' and 'battle' in 'the streets' of Washington, D.C. on January 6 to stop certification of the election and the peaceful transfer of power"); *id.* at 61a ("He filmed a speech for social media promoting the attack as it was ongoing, threatening 'this is what you're going to get, and you're going to get more of it'"); *id.* ("He fist-bumped insurrectionists and chanted "this is our house!" and "we could all be armed" as he approached the West Terrace"); *id.* at

61a-62a ("And he minimized concerns about the ongoing violence raised by those around him, stating 'sometimes these sorts of things need to happen in order to send a signal that we're going to quit putting up with their bull crap, you know?'"); *id.* at 63a ("Mr. Griffin vowed a more brutal attack to prevent Biden from taking office on January 20, when he threatened there would be 'blood running out' of the Capitol building") *id.* ("Mr. Griffin later conveyed specific plans to attend Biden's inauguration with firearms"); *id.* ("By calling on 'men' to join him in 'battle,' telling crowds they were in the midst of a 'war,' dehumanizing the opposition as 'wicked' and 'vile,' warning that 'losing [was] not an option,' and associating as an elected official with 'violent specialist' groups, Griffin lowered inhibitions of others to engage in violence"); *id.* ("by using language that goes outside of democratic norms, like urging supporters take to 'the streets' rather than the 'ballot box,' Mr. Griffin suggested that the use of violence to prevent the transfer of presidential power was legitimate"). As such, the trial court effectively disqualified Mr. Griffin from holding public office on account of his speech in violation of the First Amendment. *See*, e.g., *Perry v. Sindermann*, 408 U.S. 593, 597 (1972) (recognizing that the government "may not deny a benefit to a person on a basis that infringes his constitutionally protected interests -- especially, his interest in freedom of speech); *Bd. of County Comm'rs v. Umbehr*, 518 U.S. 668, 675 (1996) ("The First Amendment's guarantee of freedom of speech protects government employees from termination because of their speech on matters of public concern"). Thus, irrespective of whether the

trial court appreciated or agreed with Mr. Griffin's speech, removing Mr. Griffin from his position as an Otero County Commissioner and further prohibiting him from ever holding public office again on account of such speech is a far greater offense to the Constitution than anything it accused Mr. Griffin of doing.

D. The Trial Court's Disqualification of Mr. Griffin on Account of his Speech is Violative of the First Amendment to the U.S. Constitution.

Not only does the First Amendment prohibit the government from "abridging the freedom of speech, or of the press," but it also protects "the right of the people peaceably to assemble, and to petition the Government for a redress of grievances." *Ams. for Prosperity Found. v. Bonta*, 141 S. Ct. 2373, 2382 (2021). This Court has "long understood as implicit in the right to engage in activities protected by the First Amendment a corresponding right to associate with others." *Id.* (quoting *Roberts v. United States Jaycees*, 468 U. S. 609, 622 (1984) (recognizing that protected association furthers "a wide variety of political, social, economic, educational, religious, and cultural ends," and "is especially important in preserving political and cultural diversity and in shielding dissident expression from suppression by the majority")). Government infringement of this freedom "can take a number of forms." *Id.* This Court has held, for example, that the freedom of association may be violated where individuals are punished for their political affiliation, *see Elrod v. Burns*, 427 U. S. 347,

355 (1976) (plurality opinion), or where members of an organization are denied benefits based on the organization's message, *see Healy v. James*, 408 U. S. 169, 181-182 (1972).

Notwithstanding, in support of its conclusion that Mr. Griffin engaged in "insurrection," the trial court also placed emphasis upon those with whom Mr. Griffin allegedly associated with. App. C at 62a("Mr. Griffin also repeatedly aligned himself with the insurrectionists"); *id.* ("In videos recorded before, during, and after the January 6 Attack, Griffin used the first-person plural to describe how 'we' could not permit Joe Biden to steal the 2020 presidential election, 'we' took over the Capitol grounds because it was 'our' house, and 'we' shouted 'Heave! Ho!' in support of attackers breaking into the Capitol building"). As such, the trial court effectively disqualified Mr. Griffin from holding public office on account of his associations in violation of the First Amendment.

CONCLUSION

For the foregoing reasons, Mr. Griffin respectfully requests that this Honorable Court grant this Petition.

Respectfully submitted,

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