

In the Supreme Court of the United States

No. 23-696

COLORADO REPUBLICAN STATE CENTRAL COMMITTEE,
Petitioner,

v.

NORMA ANDERSON ET AL.,
JENA GRISWOLD,

in her official capacity as Colorado Secretary of State,
and

DONALD J. TRUMP,
Respondents.

On Petition for a Writ of Certiorari to the Colorado Supreme Court

**MOTION OF THE ANDERSON RESPONDENTS TO EXPEDITE BRIEFING
ON THE PETITIONS FOR A WRIT OF CERTIORARI AND FOR
EXPEDITED MERITS BRIEFING IF THE COURT GRANTS THE
PETITIONS**

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The Anderson Respondents—the four Republican and two unaffiliated Colorado voters who prevailed in the Colorado Supreme Court—respectfully move under Supreme Court Rule 21 for expedited consideration of the petition for writ of certiorari docketed today, and of any petition that Donald Trump files. The Anderson Respondents also move for expedited merits briefing if the Court grants either or both petitions. Though Petitioner has also filed a motion to expedite, the Anderson Respondents separately move to expedite because they additionally seek to set an expedited deadline for Trump to file any petition for certiorari, and because Petitioner’s proposed schedule would be too slow.

This case involves issues of exceptional national importance. The Colorado Supreme Court correctly held that Trump was disqualified from Colorado’s presidential election primary ballot under Section 3 of the Fourteenth Amendment because he engaged in insurrection against the Constitution. Colorado, along with fifteen other states and territories, holds its presidential primary on Super Tuesday, March 5, 2024.¹ This motion seeks to expedite the Court’s consideration of this petition and any petition filed by Trump, and any subsequent review on the merits, so that the important question of Trump’s eligibility can be resolved by this Court before most primary voters cast their ballots.

Because Colorado votes almost exclusively by mail, completing the election by March 5 requires significant work in advance. Colorado must certify the ballot on January 5; the Uniformed and Overseas Citizens Absentee Voting Act, 52 U.S.C.

¹ See Federal Election Commission, 2024 Presidential Primary Dates and Candidate Filing Deadlines for Ballot Access, <https://www.fec.gov/resources/cms-content/documents/2024updates.pdf>.

§ 20302(a)(8), requires Colorado to mail ballots to overseas voters by January 20; and Colorado clerks must mail ballots to other voters starting on February 12.² These fast-approaching deadlines require quick resolution of all petitions for certiorari and, if granted, of the merits so that primary voters will know whether Trump is disqualified when they cast their ballots.

The Anderson Respondents will not oppose the Colorado Republican Party's petition on the substance of the First and Second Questions Presented, but may propose reframing them. The Anderson Respondents will oppose the petition on the Third Question Presented.

The Anderson Respondents propose a schedule that will allow consideration of the petitions for certiorari from the opinion below at the January 5 conference and any argument on the merits on January 19.

To meet these deadlines, the Anderson Respondents will file a Brief in Response to the Colorado Republican Party's Petition for Certiorari by January 2, and if Trump files a petition for certiorari this week, will file a consolidated response. If Trump does not file a petition by noon ET December 29, the Anderson Respondents request that the Court order Trump to file any such petition on January 2 and the Anderson Respondents will file their brief in response to Trump's petition by noon ET on January 4. By this motion, the Anderson Respondents ask the Court to circulate all briefing, including any replies, for discussion at the January 5 conference, shortening the fifteen-day time under Rule 15.5. If either petition is granted,

² See Colorado Secretary of State, 2024 Election Calendar, <https://www.sos.state.co.us/pubs/elections/calendars/2024ElectionCalendar.pdf>.

Respondents ask the Court to set an expedited briefing schedule with argument at a special session on January 19, or another date convenient for the Court, so that the Court may issue a ruling before in-state Colorado voters begin receiving their ballots on February 12 and well before Super Tuesday.

Statement

On September 6, 2023, four Republican and two unaffiliated Colorado voters sued the Colorado Secretary of State and Trump using a state law procedure that allows Colorado voters to challenge qualifications of primary candidates seeking to be on the ballot. After extensive pretrial briefing and disclosures, the district court held a five-day evidentiary hearing beginning on October 30. It issued a decision on November 17. The trial court found that the attack on the U.S. Capitol on January 6, 2021, was an insurrection against the Constitution and that Trump engaged in that insurrection but that Section 3 of the Fourteenth Amendment did not apply to him.

The Colorado Supreme Court accepted Trump's and the Anderson Respondents' applications for review on November 21, heard argument on December 6, and issued its opinion on December 19, holding that Section 3 of the Fourteenth Amendment disqualified Trump from appearing on Colorado's primary ballot. The court stayed its order through January 4, the day before the Colorado deadline to certify the ballot, and held: "If review is sought in the Supreme Court before the stay expires, it shall remain in place, and the Secretary will continue to be required to include President Trump's name on the 2024 presidential primary ballot until the receipt of any order or mandate from the Supreme Court." 2023 CO 63, ¶ 257.

Argument

Expedited consideration of the petitions for writ of certiorari, and briefing on the merits if certiorari is granted, is warranted.

1. This case involves an issue of exceptional national importance: whether a former president, and current candidate for president, who has engaged in insurrection against the Constitution is disqualified from holding that office again. The petitions for certiorari should be resolved as quickly as possible—preferably by January 5—so that, if the petitions are denied, Colorado ballots will not include a disqualified candidate.

If the petitions are granted, briefing and argument on the merits should similarly occur as quickly as practicable. There will not be enough time to resolve the merits before the Secretary certifies the primary ballot on January 5. The Court should nevertheless decide the merits on an accelerated basis to reduce voter confusion and ensure that primary voters cast their vote knowing whether Trump is disqualified from the Presidency. In Colorado, county clerks from each of its 64 counties must mail ballots to overseas voters on January 20 and to in-state voters starting on February 12 (and must complete mailing by February 16).³ And all in-state ballots must be returned by Super Tuesday, March 5, to be counted. *Id*

Even though the Colorado Supreme Court's self-imposed stay ensured that Trump will appear on the ballot until an order or mandate from this Court, this Court's decision here will affect whether and how ballots cast for Trump will be

³ See Colorado Secretary of State, 2024 Election Calendar, <https://www.sos.state.co.us/pubs/elections/calendars/2024ElectionCalendar.pdf>.

counted in Colorado. *See generally* C.R.S. §§ 1-4-1001, 1-4-1003, 1-4-1004. Voters should know the answer to these questions before they cast their ballots.

Thus, having a decision on the merits by February 11 would ensure that every in-state Colorado voter knows of this Court's decision before receiving their ballot and casting their primary vote.

2. Only three states and one territory have Republican primary elections or caucuses before February 11. Iowa holds its Republican caucus on January 15, New Hampshire holds its primary on January 23, the Virgin Islands and Nevada hold their Republican caucuses on February 8.⁴ And these early contests allocate only 92 of the total 2,429 delegates at issue in the primaries.⁵

⁴ See Federal Election Commission, 2024 Presidential Primary Dates and Candidate Filing Deadlines for Ballot Access, <https://www.fec.gov/resources/cms-content/documents/2024updates.pdf>.

⁵ See 2024 Republican Presidential Primary Calendar, New York Times, <https://www.nytimes.com/interactive/2024/us/elections/republican-primary-calendar.html>.

By contrast, shortly after February 11, many states hold their Republican primaries or caucuses:

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| February 24 | South Carolina |
| February 27 | Michigan |
| March 2 | Idaho and Missouri |
| March 3 | Washington, D.C. |
| March 4 | North Dakota |
| March 5 | Alabama, Alaska, American Samoa, Arkansas, California, Colorado, Maine, Massachusetts, Minnesota, North Carolina, Oklahoma, Tennessee, Texas, Utah, Vermont, and Virginia |
| March 12 | Georgia, Hawaii, Mississippi, and Washington ⁶ |

By March 12, over half—1,312—of the total available delegates will be selected.⁷

3. Reaching a merits decision before February 11 is consistent with how this Court has addressed similar urgent cases in the past.

In *Whole Woman’s Health v. Jackson*, No. 21-463, and *United States v. Texas*, No. 21A85, the Court granted the petitions for certiorari and ordered concurrent briefing from parties within five days, with reply briefs due two days after that and oral argument two days later. All told, the Court heard argument two weeks after the

⁶ See Federal Election Commission, 2024 Presidential Primary Dates and Candidate Filing Deadlines for Ballot Access, <https://www.fec.gov/resources/cms-content/documents/2024pdates.pdf>. Where discrepancies between the FEC and the New York Times calendars arose, the New York Times dates were used as it appears to be updated more frequently.

⁷ See 2024 Republican Presidential Primary Calendar, New York Times, <https://www.nytimes.com/interactive/2024/us/elections/republican-primary-calendar.html>.

first filing at the Court. The Court resolved these cases a few weeks later. *Jackson*, 595 U.S. 30 (2021) (decided on the merits); *Texas*, 595 U.S. 74, 75 (2021) (writ dismissed as improvidently granted).

In *Bush v. Gore*, No. A00-504, Bush filed a stay application on December 8, 2000, which the Court treated as a writ of certiorari and granted the next day. The Court ordered concurrent briefing to be filed on December 10, and oral argument the next day. The Court issued its decision on December 12, just four days after the filing of the stay application. *See* 531 U.S. 98 (2000).

Finally, in *United States v. Nixon*, No. 73-1766, the Court granted certiorari one week after the Special Prosecutor filed its petition and motion to expedite, set an expedited briefing schedule with concurrent briefs and responses, and heard argument one week after briefing was completed. 418 U.S. 683, 690 (1974); 417 U.S. 927 (1974). The Court issued its decision sixteen days after argument. 418 U.S. at 683.

The Anderson Respondents request a schedule reflecting similar urgency here.

For the petitions for certiorari, the Anderson Respondents will file a brief in response to the Colorado Republican Party's Petition for Certiorari by January 2, and if Trump files a petition for certiorari by noon ET December 29, will file a consolidated response on January 2. If Trump does not file a petition by noon ET December 29, the Anderson Respondents request that the Court order Trump to file any such petition on January 2 and the Anderson Respondents will file their Brief in Response by noon ET January 4. By this motion, the Anderson Respondents ask the Court to circulate

all briefing, including any replies, for discussion at the January 5 conference, shortening the fifteen-day time under Rule 15.5.

If any petition is granted, Respondents ask the Court to set a sequential briefing schedule allowing the Court to hold a special argument session on January 19, or another date convenient for the Court. Doing so would give the Court time to issue a ruling before Colorado voters begin receiving their ballots on February 12 and well before Super Tuesday, March 5. Sequential briefing is appropriate here because the Anderson Respondents prevailed below on every issue and do not seek a stay from this Court. Thus, the traditional order allows the Anderson Respondents to respond to those issues Trump and the Colorado Republican Party choose to raise and gives them the opportunity for a reply.

Petitioners propose the following schedule:

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| January 8 | Trump's and Colorado Republican Party's opening briefs, amici supporting them, and Joint Appendix due |
| January 12 | Respondents' briefs and amici supporting them due |
| January 16 | Any reply briefs due |
| January 19 | Oral argument |

Conclusion

The Anderson Respondents ask that the Court expedite consideration of the petition for writ of certiorari, require any related petition to be filed promptly, and, if the Court grants any petition, that the Court expedite briefing, oral argument, and issuance of a decision on the merits.

Respectfully submitted.

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