

No. 23-719

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IN THE  
**Supreme Court of the United States**

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DONALD J. TRUMP,  
*Petitioner,*

v.

NORMA ANDERSON, ET AL.,  
*Respondents.*

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**On Writ of Certiorari  
to the Supreme Court of Colorado**

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**BRIEF FOR THE ASSOCIATION OF THE BAR OF  
THE CITY OF NEW YORK AS *AMICUS CURIAE*  
IN SUPPORT OF NEITHER PARTY**

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**INTEREST OF *AMICUS CURIAE*<sup>1</sup>**

The Association of the Bar of the City of New York (the “City Bar”) was founded in 1870 and currently has 23,000 members throughout the State of New York and in every jurisdiction in the United States. Its mission is to help a diverse legal profession practice with excellence, to promote the reform of the law, and to uphold the rule of law and access to justice in support of a fair society and the public interest in our community, our nation, and throughout the world. The City Bar’s Task Force on the Rule of Law is among more than 150 committees that work to carry out this mission. Together with the City Bar’s Election Law Committee, the Task Force on the Rule of Law has focused on federal and state laws and Constitutional requirements assuring free, fair, and informed elections in New York and throughout our nation, as well as respect for the role of state officials and the judiciary in overseeing those elections. The City Bar submits this brief as *amicus curiae* because it believes the Constitutional issues before the Court should be decided in a manner and on a schedule that permits voters throughout the nation to cast informed ballots with a uniform understanding of who the eligible candidates are for the Presidency.

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<sup>1</sup> Pursuant to this Court’s Rule 37.6, *amicus* states that this brief was not authored in whole or in part by counsel for any party, and that no person or entity other than *amicus* and its counsel made a monetary contribution intended to fund the preparation or submission of this brief.

## INTRODUCTION AND SUMMARY OF ARGUMENT

The City Bar respectfully submits this *amicus curiae* brief on behalf of neither party. The Colorado Supreme Court found former President Donald J. Trump ineligible to seek the office of President under Section 3 of the Fourteenth Amendment to the United States Constitution. *See* Pet. App. 1a; U.S. Const. amend. XIV, § 3. The purpose of this brief is to urge the Court (1) to reach and decide the merits of whether the former President is disqualified from being a candidate for or serving as President, so that there is one uniform standard to be applied by all states in evaluating ballot access challenges; and (2) to issue its decision promptly in order for both primary and general election voters to know the names of all eligible candidates for President at the time they cast their ballots. The City Bar believes it essential that the forthcoming Presidential election be conducted with a common understanding, in all jurisdictions, of who is eligible for that office in order to avoid a patchwork quilt of eligibility decisions depending on differing state or lower federal court interpretations of Section 3. Furthermore, the City Bar believes it important that the question of former President Trump's eligibility under Section 3 be decided as soon as possible so that primary and general election voters alike can make an informed decision as for whom to cast their ballot.

**ARGUMENT****I. THIS COURT SHOULD DECIDE ALL RELEVANT ISSUES UNDER SECTION 3 RELATIVE TO THE COLORADO SUPREME COURT'S DECISION.**

The City Bar takes no position in this brief on the merits of Respondents' Constitutional claims under Section 3 of the Fourteenth Amendment. We are confident that both the parties and other *amici* will address those issues fully.

What we do urge is that the Court render a decision that ensures a uniform nationwide standard for meaning and application of Section 3. An authoritative interpretation of Section 3 will help avoid chaos both in this election cycle and in years to come.<sup>2</sup>

In its detailed September 2022 report on Section 3, the City Bar's Task Force on the Rule of Law pointed out the dangers of fragmented decision-making at the state level in the absence of a clear national standard.<sup>3</sup> The Task

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<sup>2</sup> See *Storer v. Brown*, 415 U.S. 724, 730 (1974) (“[T]here must be a substantial regulation of elections if they are to be fair and honest and if some sort of order, rather than chaos, is to accompany the democratic processes.”); *Martin v. Hunter’s Lessee*, 14 U.S. (1 Wheat.) 304, 347-48 (1816) (underscoring “the importance, and even necessity of *uniformity* of decisions throughout the whole United States, upon all subjects within the purview of the constitution”).

<sup>3</sup> Task Force on the Rule of Law, Ass’n of the Bar of N.Y.C., *Section 3 of the Fourteenth Amendment to the United States Constitution—The Disqualification Clause: Historical Context, Current Challenges, and Recommendations Regarding Federal Legislation to Ensure Uniform and Effective Application* (Sept. 2022),

Force emphasized the chaotic situation likely to result from multiple, potentially inconsistent decisions by state administrative agencies, state courts, and even federal courts in the absence of a single overriding interpretation and application of Section 3.<sup>4</sup> This Court now has the opportunity, and the responsibility, to provide the uniform interpretation and application of Section 3 necessary to ensure that all American voters can make an informed decision at the ballot box.

## **II. IT IS ESSENTIAL THAT THE COURT’S DECISION BE TIMELY FOR BOTH PRIMARY AND GENERAL ELECTIONS.**

As the City Bar has previously noted, our government derives its legitimacy from “the consent of the governed.”<sup>5</sup> A timely interpretation of Section 3 is essential as voters begin to go to the polls in party primaries and caucuses: By the time the Court hears argument, several states will have held primary elections or caucuses. The Court has already recognized the significance of an expedited decision by issuing its schedule for briefing and argument. The City Bar urges the Court to issue a definitive ruling as soon as possible thereafter.

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<https://s3.amazonaws.com/documents.nycbar.org/files/20221096-DisqualificationClauseRecommendations.pdf>.

<sup>4</sup> Although that report proposed Congressional legislation to achieve a uniform standard, it took no position on whether such Congressional action was required for enforcement of Section 3.

<sup>5</sup> Task Force on the Rule of Law & Election Law Comm., Ass’n of the Bar of N.Y.C., *The Consent of the Governed: Enforcing Citizens’ Right to Vote* 1 (Sept. 2021), <https://s3.amazonaws.com/documents.nycbar.org/files/2020934-VoterSuppressReport.pdf> (quoting The Declaration of Independence para. 2 (U.S. 1776)).

**CONCLUSION**

For these reasons, the City Bar urges this Court to reach and decide the merits of Respondents' claims under Section 3 of the Fourteenth Amendment and to do so expeditiously, so that primary and caucus voters throughout the nation know whether Petitioner is an eligible candidate for President.

Respectfully submitted,

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