No. 24-342

# In the Supreme Court of the United States

DR. SHIVA AYYADURAI
PETITIONER
*v.*
NEW JERSEY DEMOCRATIC STATE COMMITTEE, ET AL.,
RESPONDENTS

*ON PETITION FOR WRIT OF CERTIORARI*
*TO THE SUPREME COURT OF NEW JERSEY*

## PETITION FOR WRIT OF CERTIORARI

DR. SHIVA AYYADURAI
*Petitioner, Pro Se*
701 Concord Avenue
Cambridge, MA 02138
vashiva@cytosolve.com
857-393-7910

## QUESTIONS PRESENTED

For the first time in the history of the United States, a State silenced a presidential candidate *running* for the Office whose message spoke to the inequity of the "natural born" qualification, a requirement for *holding* the Office, that flouts Equal Protection to make *second-class citizens* of 25 million Americans. The New Jersey Secretary of State prematurely adjudicated and enforced that very qualification to remove Dr. Shiva Ayyadurai, "Dr. Shiva," from the ballot though he met every statutory requirement.

The Supreme Court of New Jersey, by denying his motion for emergent review, condoned the State's gross violation of his First and Fourteenth Amendment rights, and held States possess authority, regardless of the lack of congressional authorization, to determine that a presidential candidate is disqualified from *running* for the Office under the "natural born" clause.

Ironically, the effort to remove Dr. Shiva from the ballot was initiated by the New Jersey Democratic State Committee whose candidate Kamala Harris benefits immensely from the same Equal Protection now denied to Dr. Shiva. A "chaotic state-by-state patchwork" now exists with some States keeping him on the ballot, and others disqualifying him.

The Questions Presented are:

1. Is not States' premature adjudication of qualifications for President, unconstitutional?

2. Is Congress, not States, responsible for enforcing *all* qualifications against federal officeholders and candidates?

3. Does "natural born" violate Equal Protection making 25 million Americans *second-class citizens*?

## PARTIES TO THE PROCEEDINGS

Petitioner Dr. Shiva Ayyadurai - "Dr. Shiva" - was Respondent in the state courts. The following were Petitioners in the state courts and are respondents here: New Jersey Democratic State Committee ("NJDSC"); New Jersey Secretary of State ("NJSOS") Lt. Governor Tahesha Way, in her official capacity, and New Jersey Division of Elections ("NJDOE") Acting Director Donna Barber, in her official capacity.

A corporate disclosure statement is not required because Dr. Shiva Ayyadurai is not a corporation. *See* Sup. Ct. R. 29.6.

## STATEMENT OF RELATED CASES

Plaintiff Pro Se Dr. Shiva Ayyadurai is aware of no directly related proceedings arising from the same trial-court case as this case other than those proceedings appealed here.

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# In the Supreme Court of the United States

No._____

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**PETITION FOR WRIT OF CERTIORARI**

"Running for the Office of President is the ultimate symbol of Equal Opportunity."[1]

Dr. Shiva Ayyadurai - "Dr. Shiva" – a U.S. Citizen, born in Bombay, India, known by nearly 500 million people globally, and by tens of millions in the United States, is the leading *non-Party* independent candidate for the Office of President of the United States.

His *running* for the Office of President launched with the message *"One America, One Citizenship."* That message galvanized millions of Americans to begin a broad discourse on the last bastion of anti-American legalized discrimination: the invidious

[1] Yinger, J. "Op-Ed: No Americans should be second-class citizens." Syracuse University, August 3, 2004. https://joyinger.expressions.syr.edu/citizenship/op-ed-no-americans-should-be-second-class-citizens/

"natural born" clause that flouts Equal Protection to deny 25 million U.S. citizens from *holding* the Office.

His message also reflected a " 'fundamental principle of our representative democracy,' embodied in the Constitution, that 'the people should choose whom they please to govern them.' " *U.S. Term Limits, Inc. v. Thornton*, 514 U.S. 779, 783 (1995) (quoting *Powell v. McCormack*, 395 U.S. 486, 547 (1969)).

Americans, inspired by his message, mobilized in nearly every State and petitioned hundreds of thousands of voters so as to get Dr. Shiva on States' ballots. However, the New Jersey Secretary of State enforced the very qualification (the "natural born" clause) that his campaign and message exposed as invidious, to block his *running* for the Office thereby squelch his speech and message.

On August 16, 2024, the New Jersey Supreme Court dismissed Dr. Shiva's motion for emergent review (App. 1a) thus upholding the lower court's Initial Decision (App. 13a–21a) and the New Jersey Secretary of State's Final Decision (App. 6a-12a) that States can violate the First and Fourteenth Amendment rights of candidates, and, regardless of the lack of congressional authorization, can determine a presidential candidate is disqualified from *running* for President per the "natural born" clause.

If the New Jersey ruling is allowed to stand, it will mark the first time in the history of the United States that the judiciary based on the "natural born" provision, which is a requirement for *holding* the Office of President, but not for *running* for the Office, prevented voters from casting ballots for a U.S. Citizen, who achieved every State-mandated requirement to be on the ballot.

In our system of "government of the people, by the people, [and] for the people,"[2] New Jersey's ruling is not and cannot be correct. This Court should grant certiorari to consider these questions of paramount importance, summarily reverse the New Jersey Supreme Court's ruling, and return the right to vote for their candidate of choice to the voters.

The question of eligibility to serve as President of the United States is properly reserved for Congress, not the state courts, to consider and decide. By considering the question of Dr. Shiva's eligibility and barring him from the ballot, the New Jersey Supreme Court arrogated Congress' authority.

In addition, even if the New Jersey Supreme Court could consider challenges to Dr. Shiva's eligibility, which it cannot, there are various reasons they misapplied the law, and why their decision needs to be reversed.

First, this Court has already reasoned that electioneering communication is a form of political speech, and such speech being the most protected form of speech under the First Amendment, U.S. Const. amend. I, which warrants the highest level of scrutiny against the laws that regulate it. *Citizens United v. FEC,* 558 U.S. 310 (2010). Dr. Shiva's *running* for President is based on his electioneering speech that eviscerates the invidious "natural born" clause, a qualification for *holding* the office of President, that violates Equal Protection. The fact that the State enforced that very qualification, for *holding* the Office,

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[2] *See* Abraham Lincoln, *Gettysburg address delivered at Gettysburg Pa. Nov. 19th, 1863,* Nat'l Archives, https://www.loc.gov/ resource/rbpe.24404500/?st=text.

against him to stop him *running* for President so as to squelch his speech, is as gross a violation of the First Amendment, U.S. Const. amend. I, as it gets.

Second, New Jersey's decision was arbitrary and capricious in disqualifying Dr. Shiva, particularly given the history of conflicting decisions in lower courts, and even within New Jersey itself concerning disqualifying or keeping candidates on the ballot based on U.S. Const. art. II, § 1, cl. 5. For example, New Jersey itself allowed Linda Jenness, Larry Holmes, Peta Lindsay, all below age 35; and even a Nicaraguan citizen Roger Calero, who was neither a "natural born" nor naturalized U.S. citizen, to *run* for President. [3] These individuals were all clearly "ineligible" to *hold* the Office. What made the Secretary of the State of New Jersey treat Dr. Shiva so differently? Is this because the Democratic Party machine of New Jersey sees Dr. Shiva as a real threat who will take significant votes from their candidate Kamala Harris?

Third, in the 21st century, it is time to come to terms with the anachronous nature of the "natural born" clause that makes 25 million Americans *second-class citizens* by denying the Equal Opportunity to hold the highest Office in the land. It is anti-American to the core.[4]

Fourth, proceedings by the New Jersey State were premature and violated the Electors Clause.

Finally, the reversal is necessary to ensure that the "patchwork" which this Court sought to avoid for a major Party candidate in *Trump v. Anderson,* 601

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[3] Richard Winger, *Ballot Access News,* https://ballot-access.org/

[4] Paul A. Clark, *Limiting the Presidency to Natural Born Citizens Violates Due Process*, 39 J. Marshall L. Rev. 1343 (2006)

U.S. 100 (2024), is not just reserved for the two major Parties.

## OPINIONS BELOW

The New Jersey State Supreme Court's dismissing the emergent relief is reproduced at App. 1a. The New Jersey State Appellate Division's dismissing the emergent relief is reproduced at App. 2a-5a The New Jersey Secretary of State's final decision is reproduced at App. 6a–12a. The New Jersey Office of Administrative Law's Initial Decision is reproduced at App. 13a–21a.

## JURISDICTION

The New Jersey State Supreme Court entered judgment on August 16, 2024. App. 1a. Dr. Shiva timely filed this petition on September 20, 2024. This Court has jurisdiction under 28 U.S.C. § 1257.

## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The relevant constitutional and statutory provisions are at App. 22a–27a.

## STATEMENT

Over the last few months, lawsuits or administrative challenges have been filed in some States seeking to keep Dr. Shiva from appearing on those States' presidential general election ballots. In other States, secretaries of states and/or election board officials have, without any due process, simply removed Dr. Shiva's name from the presidential general election ballot. Finally, other States who have

allowed Dr. Shiva on their presidential general election ballots either with his name listed or as a write-in.

In the following States, voters can cast a vote for Dr. Shiva by selecting his name since it will be **listed** on the ballot:

- Washington
- Iowa
- Massachusetts
- Idaho
- Mississippi
- Kentucky
- Minnesota

In the following States, voters can cast a vote for Dr. Shiva via **write-in** by writing his name "Dr. Shiva" on ballot:

- Alabama
- Florida
- Colorado
- Delaware
- Georgia
- Illinois
- Kansas
- Maine
- Maryland
- Texas
- New Hampshire
- North Carolina
- Ohio
- Oregon
- Maine
- Michigan
- Montana

- Pennsylvania
- Rhode Island
- Vermont
- Washington DC
- West Virginia
- Wyoming

In the following States, although Dr. Shiva fulfilled or exceeded every State-mandated requirement to have his name listed on the ballot, his name was removed by the State's Secretary of State based on their enforcing the qualification of "natural born" for *holding* the Office of President against him from *running* for the Office:

- New Jersey
- Wisconsin
- Utah
- Tennessee
- Nebraska

The common theory behind the lawsuits, challenges, and removals is that Dr. Shiva is disqualified from ***running*** for the Office of President since he cannot be ***holding*** the office under U.S. Const. art. II, § 1, cl. 5 e.g. the "natural born" provision.

The challenge in the State of New Jersey has become ripe for review by this Court since the New Jersey Supreme Court, dismissed a request for emergent relief, thus upholding the lower courts and New Jersey Secretary of State's Final Decision to remove Dr. Shiva from running for the Office.

The respondents in this case include three parties: the New Jersey Democratic State Committee ("NJDSC"), New Jersey Secretary of State Lt.

Governor Tahesha Way ("NJSOS"), and New Jersey Division of Elections Acting Director Donna Barber ("NJDOE").

Concerning the appointment of Electors of the President and Vice President of the United States, the U.S. Constitution creates and defines the Electoral College as the only process by which each State's Electors vote by ballot to elect the President and Vice President of the United States.

No state may add qualifications beyond those stated in the U.S. Constitution for ballot eligibility of New Jersey Electors for the President and Vice President of the United States, and may not directly or indirectly infringe upon federal constitutional protections; see e.g., *United States Term Limits, Inc. v. Thornton*, 514 U.S. 779, 827, 115 S.Ct. 1842, 1866 (1995).

On July 11, 2024, fourteen independent presidential elector candidates ("Elector Candidates") jointly submitted 1,294 signatures of New Jersey voters to qualify those fourteen Elector Candidates as New Jersey independent Electors at the November 5, 2024 general election; the fourteen Elector Candidates submitted nomination papers specifically for the U.S. Constitutionally defined office of "Elector of President and Vice President of the United States." U.S. Const. art. II, § 1.

The New Jersey Election Code requires submission of 800 signatures in the aggregate from New Jersey voters. *N.J.S.A. 19:13-5.*

On August 1, 2024, The New Jersey State Democratic Committee, was identified as objector who filed an objector's petition against pledged independent presidential candidate Dr. Shiva

Ayyadurai. Please see objector's petition in App. 25a-26a ("Objectors' Petition"). The Objector's Petition requested that the NJDOE issue a decision addressing Dr. Shiva Ayyadurai.

## I. THE OFFICE OF ADMINISTRATIVE LAW AND THE NEW JERSEY SECRETARY OF STATE PROCEEDINGS

Dr. Shiva represented himself as Respondent Pro Se at the New Jersey Office of Administrative Law ("NJOAL") hearing on August 5, 2024. The transcript of this hearing is at App. 30a-46a.

On August 6, 2024, the OAL hearing officer issued his Initial Decision in which the hearing officer advised the NJSOS to remove Dr. Shiva from the general election presidential ballot (See App. 13a – 21a).

The NJOAL's analysis was severely flawed, and a close analysis reveals how a low-level hearing officer's misapplication of the law - literally creating the law "on-the-fly" – gets percolated upward, and rubber-stamped by agency heads and even by judges, all the way to state supreme courts.

In approaching this analysis, the work of one of the leading scholars on ballot access and the rights of States to adjudicate qualifications of the Presidency, provides a "North Star" (emphasis added):

> "States lack any power to evaluate qualifications in congressional elections, **and any power to evaluate qualifications in presidential elections arises solely from the force of its own statutes.** **Because of the review of qualifications that occurs in the people, electors, political parties, and**

**Congress, the need for the state to review is slight.**"[5]

States must be circumspect in prohibiting candidates for President from *running* for the Office, even though the candidate may be "ineligible" for *holding* the Office. As aforementioned, States should only do so if they have explicit statutes, passed by the State legislature, that allow them to do so. Why? Because, the Office of President is elected by all the people, and there are sufficient mechanisms - "**people, electors, political parties, and Congress**" – who can intervene to prevent an "ineligible" candidate from holding the Office.

Based on this North Star, the NJOAL's analysis has no basis in any State statute that allows the State of New Jersey to remove a presidential candidate from the ballot and to stop the candidate's running for the Office based on that candidate being "ineligible" to hold the Office. Since no such statute exists, the NJOAL hearing officer was grabbing for straws and built a "house of cards" to support his decision to remove Dr. Shiva off the ballot.

Here's how his flawed analysis went.

First, after acknowledging that Dr. Shiva and his Electors accomplished every State-mandated requirement to be on the ballot, the NJOAL hearing officer asserted that Dr. Shiva is "ineligible" to *hold*

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[5] Muller, Derek T. (2015) "Scrutinizing Federal Electoral Qualifications," Indiana Law Journal: Vol. 90: Iss. 2, Article 3.

the Office of President since he is not "natural born," after which he posed the following question:

> The next issue to be determined is whether **an ineligible candidate for President can still appear on the ballot as an independent if their nominating petition is in conformity** with the provisions of *N.J.S.A. Title 19.*

Second, and most importantly, the NJOAL hearing officer admitted that he has no basis in any New Jersey Statute to make his decision (emphasis added); however, he will still proceed to do so:

> While there are **no specific regulations or case law that address the issue**, the way that **other cases** have treated this issue leads to the conclusion **that an ineligible candidate for president should not be on the ballot**.

Third, the NJOAL hearing officer's analysis should have just ended here! Given there are no "specific regulations" i.e. State Statutes, the officer should have stopped and simply said, "there is nothing stopping Dr. Shiva from *running* for the Office and being on the ballot, given Dr. Shiva fulfilled and exceeded very State-mandated requirement to be on the ballot." He should have further stated, it is up to the **"people, electors, political parties, and Congress"** to decide, given Dr. Shiva is not "natural born," whether he should be *holding* the Office. Period.

However, this hearing officer went to extremes to piece together a flawed framework, none of it based on New Jersey Statutes, to conclude:

> Respondent did not have to prove his eligibility prior to the challenge. **However, now that there is a challenge, it follows that he needs to prove his eligibility,** and since he cannot, he should not be placed on the ballot. Also, **it is logical that someone who is ineligible to be president cannot be on the presidential ballot, even as an independent.**

This nonsensical logic and disingenuity, goes against the face of New Jersey's own practice since 1972, as aforementioned, where New Jersey allowed many candidates to run for Office, who were clearly "ineligible" to hold the Office. For example, New Jersey allowed Linda Jenness, Larry Holmes, Peta Lindsay, all below age 35; and even a Nicaraguan citizen Roger Calero, who was neither a "natural born" nor naturalized U.S. citizen, to *run* for President.

These individuals were *all* "ineligible" to *hold* the Office!

This fact was brought up by Dr. Shiva at the NJOAL hearing. The response from the NJOAL hearing officer at the hearing on this matter was deafening silence. Moreover, the NJOAL hearing officer did not address this contradiction even in his NJOAL Initial Decision as to why those other candidates were given ballot access and Dr. Shiva was not.

In addition, the NJOAL erroneously sought, in the Initial Decision, to narrow the implications of the precedential *Trump v. Anderson* ruling to Section 3 of the Fourteenth Amendment, U.S. Const. amend. XIV, completely ignoring the aim of this Court: to prevent a "chaotic state-by-state patchwork." And, this is

precisely what has occurred since the New Jersey ruling. Some States have taken Dr. Shiva of the ballot by unconstitutionally extending their authority, and others have kept him on the ballot.

This Initial Decision from the NJOAL was passed on to the NJSOS. On August 7, 2024, the NJSOS issued their Final Decision and removed Dr. Shiva from the ballot to end his running for President. App. 6a-12a. Here are the problems with the NJSOS' Final Decision:

1) The NJSOS simply cut-and-pasted the flawed NJOAL decision, likely assuming the low-level hearing officer's analysis was based on Statutes not on ad hoc legal theory;
2) The NJSOS' Final Decision repeatedly chants *Hassan, Hassan, Hassan*, while ignoring this simple fact: Hassan never got on the ballot in **any State**, never had a real campaign, never had presidential electors who worked day and night to collect thousands upon thousands of petition signatures to get ballot access, etc. In short, Hassan was not a bona fide or diligent candidate like Dr. Shiva;
3) The NJSOS' Final Decision is deafeningly silent on Linda Jenness, Peta Lindsay, Roger Calero and Larry Holmes – all "ineligible" candidates to *hold* the Office who NJSOS' allowed to run for the Office. In fact, the NJSOS allowed non-"natural born," non-naturalized citizen, Roger Calero on the ballot twice; and,
4) The NJSOS' Final Decision has no basis in law per that North Star as there is no State Statute that allows New Jersey election officials to prematurely disqualify a candidate from *running* for the Office by applying

constitutional qualifications for *holding* the Office.

In fact, the NJOAL and the NJSOS decisions incite that very "chaotic state-by-state patchwork," which has now emerged in Dr. Shiva's situation, that this Court so sought to avoid.

## II. THE STATE APPELLATE DIVISION AND STATE SUPREME COURT PROCEEDINGS

Following the flawed ruling of the NJSOS in their Final Decision, Dr. Shiva filed an Emergent Appeal Application to the Superior Court. The New Jersey Judiciary Appellate Division on August 13, 2024 (App. 2a-5a), however, dismissed Dr. Shiva's request, further erroneously and unconstitutionally rubber-stamping the NJOAL's flawed analysis that the State had the right to end Dr. Shiva's running for the Office, since he may be "ineligible" from holding the Office. Specifically, the Appellate Division stated:

> Respondent admitted he is not a "natural born citizen" of the United States. Therefore, he is ineligible to appear on the ballot as a candidate for the office of United States President in 2024 per the United States Constitution. U.S. Const. art. II, § 1.

This judgement conflates "running" for the Office with "holding" the Office. The "natural born" provision is for "holding" the Office of President. This decision further asserts that the State has some authority to create extra-Constitutional qualifications i.e. that Dr. Shiva must be a "natural born" citizen to *run* for the Office. The State has no such right. Even

if it did per that North Star, there would have to be a specific and explicit Statute passed by the New Jersey legislature.

No such Statute exists.

Moreover, even if a Statute existed, which does not, multiple and differing State Statutes would result in a "patchwork" that his Court seeks to avoid. In response to the flawed analysis and dismissal by the Appellate Division, Dr. Shiva filed an Emergent Appeal Application to the New Jersey Supreme Court.

On August 16, 2024 the New Jersey Supreme Court denied the Dr. Shiva's request to hear his Appeal.

## REASONS FOR GRANTING THE PETITION

The New Jersey Supreme Court has no authority to deny Dr. Shiva access to the ballot. By doing so, the New Jersey Supreme Court has usurped Congressional authority and misinterpreted and misapplied the text of U.S. Const. art. II, § 1, cl. 5, which is for *holding* the Office of President, not for *running* for the Office of President.

## I. THE ISSUES PRESENTED IN THIS PETITION ARE OF EXCEPTIONAL IMPORTANCE AND URGENTLY REQUIRE THIS COURT'S PROMPT RESOLUTION

The questions presented in this Petition are of the utmost importance. Dr. Shiva is an eminent public figure and is known by nearly 500 million worldwide, and by tens of millions in the United States.

In April of 2023, Dr. Shiva announced his run of President of the United States, which inspired millions online and mobilized hundreds of thousands of volunteers offline, in nearly every state, to garner nomination petition signatures to get his name on the general election presidential ballot. Being fully aware of the potential questions concerning his not being born in the United States, Dr. Shiva proactively filed a complaint for Declaratory and Injunctive Relief, *Ayyadurai v. Garland,* Civil Action 23-2079 (LLA) to have the courts to order Attorney General Merrick Garland to declare to secretaries of state that Dr. Shiva's running for President is a non-justiciable issue, and the "natural born" provision violates Equal Protection, and therefore the States should not be removing him from the ballot provided Dr. Shiva meets State-mandated requirements for ballot access. That lawsuit has now moved to the U.S. Court of, D.C. Circuit. *Ayyadurai v. Merrick Garland* (24-5133), Court of Appeals for the D.C. Circuit.

The intention of providing the aforementioned history of Dr. Shiva is to establish that Dr. Shiva is neither a theoretical nor non-diligent candidate like *Hassan* nor a frivolous candidate. Dr. Shiva is bona fide and diligent candidate whose aim is provide Americans a real alternative to the major and minor Party candidates by motivating citizens to build a bottom's up movement. His campaign for President emphasized the message *"One America, One Citizenship"* to address the invidious nature of the "natural born" clause that reduces 25 million Americans to second-class citizens.

Therefore, without reversal of the New Jersey Supreme Court's decision, millions of voters in New Jersey would be disenfranchised, and likely it shall be

used as a template, (which it already has), to disenfranchise tens of millions of voters nationwide. Indeed, States have already used the New Jersey proceedings as justification for unlawfully striking Dr. Shiva from their ballots in Wisconsin, Utah, Tennessee, and Nebraska. Those decisions are being appealed.

## II. DISPUTED QUESTIONS OF PRESIDENTIAL QUALIFICATIONS ARE RESERVED FOR CONGRESS TO RESOLVE

Not all claims are "properly suited for resolution by the . . . courts." *Rucho v. Common Cause*, 139 S. Ct. 2484, 2491 (2019). "Sometimes . . . 'the law is that the judicial department has no business entertaining the claim of unlawfulness—because the question is entrusted to one of the political branches or involves no judicially enforceable rights.' " *Id.* at 2494 (quoting *Vieth v. Jubelirer*, 541 U.S. 267, 277 (2004) (plurality op.)); *see also Baker v. Carr*, 369 U.S. 186, 217 (1962). This presents just such a case.

Congress—not a state court—is the proper body to resolve questions concerning a presidential candidate's eligibility. First, the Constitution provides a role for Congress in resolving disputed presidential elections. To wit, the Constitution expressly provides that:

> [I]f the President elect shall have failed to qualify, then the Vice President elect shall act as President until a President shall have qualified
>
> . . . and the Congress may by law provide for the case wherein neither a President elect nor a vice President elect shall have

> qualified, declaring who shall then act as President, or the manner in which one who is to act shall be selected, and such person shall act accordingly until a President or Vice President shall have qualified. U.S. Const. amend. XX § 3.

Similarly, both Article II and the Twelfth Amendment prescribe a role for Congress in Presidential elections. U.S. Const. art. II, cl. 3; U.S. Const. amend. XII. And the Fourteenth Amendment, U.S. Const. amend. XIV, itself embodies a clear textual commitment of authority to Congress, with section 3 giving it the power to lift any "disability" under that Section and section 5 expressly providing that "Congress shall have the power to enforce, by appropriate legislation, the provisions of this article." U.S. Const. amend. XIV, §§ 3, 5. There is no similar commitment of questions concerning presidential eligibility to state courts, particularly in the absence of a duly enacted enforcement statute.

Considering the Constitutional role for Congress in addressing presidential qualifications, indeed, every federal court that addressed this issue with regard to the eligibility of President Barack Obama, Senator John McCain, and Senator Ted Cruz concerning the "natural born" provision held that the issue was for Congress and not the federal courts.[6] Even in *Trump*

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[6] *See, e.g.*, *Castro v. N.H. Sec'y of State*, Case No. 23-cv-416-JL, 2023 WL 7110390, at *9 (D.N.H. Oct. 27, 2023) (footnote omitted) *aff'd on other grounds* --- F.4th ----, 2023 WL 8078010 (1st Cir. Nov. 21, 2023) ("[T]he vast weight of authority has held that the Constitution commits to Congress and the electors the responsibility of determining matters of presidential candidates' qualifications."); *Robinson v. Bowen*, 567 F. Supp. 2d 1144, 1147

*v. Anderson*, every court except Colorado that has addressed the political question doctrine when presented with the question of determining President Trump's eligibility, held that question is nonjusticiable and reserved to Congress.

It would be beyond absurd—particularly in light of the Fourteenth Amendment's enlargement of federal authority—that this issue would be nonjusticiable by federal courts yet properly heard and decided by courts in 51 jurisdictions. The election of the President of the United States is a national matter, with national implications, that arises solely under the federal Constitution and does not implicate the

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(N.D. Cal. 2008) ("Arguments concerning qualifications or lack thereof can be laid before the voting public before the election and, once the election is over, can be raised as objections as the electoral votes are counted in Congress. The members of the Senate and the House of Representatives are well qualified to adjudicate any objections to ballots for allegedly unqualified candidates."); *Grinols v. Electoral College,* No. 2:12-cv-02997-MCE-DAD, 2013 WL 2294885, at *5–7 (E.D. Cal. May 23, 2013) ("[T]he Constitution assigns to Congress, and not to federal courts, the responsibility of determining whether a person is qualified to serve as President of the United States."); *Grinols v. Electoral Coll.*, No. 12-CV-02997-MCE-DAD, 2013 WL 211135, at *4 (E.D. Cal. Jan. 16, 2013) ("These various articles and amendments of the Constitution make it clear that the Constitution assigns to Congress, and not the Courts, the responsibility of determining whether a person is qualified to serve as President."); *Taitz v. Democrat Party of Mississippi*, No. 3:12-CV-280-HTW-LRA, 2015 WL 11017373, at *12–16 (S.D. Miss. Mar. 31, 2015) ("[T]hese matters are entrusted to the care of the United States Congress, not this court."); *Kerchner v. Obama*, 669 F. Supp. 2d 477, 483 n.5 (D.N.J. 2009) ("The Constitution commits the selection of the President to the Electoral College in Article II, Section 1, as amended by the Twelfth Amendment and the Twentieth Amendment, Section 3," and "[n]one of these provisions evince an intention for judicial reviewability of these political choices.").

inherent or retained authority of the states. *See generally Cook v. Gralike,* 531 U.S. 510, 552 (2001) ("It is no original prerogative of state power to appoint a representative, a senator, or a president for the union.").

Further, in the absence of enforcement legislation adopted under Section 5 of the Fourteenth Amendment, courts lack judicially manageable standards for resolving disputes over presidential disqualifications.

Legal scholars have argued that given the Constitution is silent on the enforcement of the "natural born" provision, it is common sense that Congress, rather than States, should enforce such qualifications to hold the Office of President. Furthermore, scholars have argued just because State election officials e.g. Secretaries of State, etc. take an oath to defend the Constitution, this does not give them broad powers to enforce such qualifications notwithstanding specific and explicit statutes passed into law by State legislatures (emphasis added):

> But good reasons exist for construing such jurisdiction narrowly—after all, voters, political parties, the Electoral College, and Congress **all may scrutinize whether a candidate is a natural born citizen, and unless the legislature has expressly spoken otherwise, these agencies should defer to others before deciding whether to keep a candidate off the ballot.**[7]

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[7] Derek T. Muller, *"Natural Born" Disputes in the 2016 Presidential Election*, 85 Fordham L. Rev. 1097 (2016).

Such analysis, however, was in the pre- *Trump v. Anderson* era. Now, *Trump v. Anderson* informs us that even if every State had perfected its State-specific Statutes on how to adjudicate qualifications of Presidential candidates during ballot access, that could and would likely lead to a "chaotic state-by-state patchwork." The precedential decision of this Court in *Trump v. Anderson* clarified only Congress, not States, can enforce qualifications for President, in order to prevent that "patchwork."

However, the Respondents in this situation would seek to artificially narrow the conclusions of *Trump v.* Anderson to simply Section 3. The historical events of Dr. Shiva's bona fide run for President provide this Court the opportunity to clarify that only Congress, not States, can enforce ***all*** qualifications to hold the Office of President including U.S. Const. art. II, § 1, cl. 5 so as to prevent those "chaotic state-by-state patchworks." This question alone is worthy of consideration by this Court.

Even if U.S. Const. art. II, § 1, cl. 5 does not *require* enforcement legislation to have effect, the lack of such legislation deprives the courts of judicially manageable standards. Procedurally, U.S. Const. art. II, § 1, cl. 5, is silent on whether a jury, judge, or lone state election official makes factual determination and is likewise silent on the appropriate standard of review. Similarly, states have different approaches to voter standing. As a result, a voter in one state may be able to challenge a presidential candidate's qualifications, while similarly situated voters in another state cannot. The result is that 51 different jurisdictions may (and have) adopted divergent rulings based on different standards on the same set of operative facts.

Resolving these conflicts requires making policy choices among competing policy and political values. These are fundamentally legislative exercises that are properly suited for Congressional—rather than judicial—resolution.

Moreover, the result of divergent standards and determinations is particularly problematic in presidential elections. As this Court has recognized, "in the context of a Presidential election, state-imposed restrictions implicate a uniquely important national interest" because "the President and the Vice President of the United States are the only elected officials who represent all the voters in the Nation" and "the impact of the votes cast in each State is affected by the votes cast for the various candidates in other States." *Anderson v. Celebrezze*, 460 U.S. 780, 796 (1983) (footnotes and citations omitted).

By purporting to determine a presidential candidate's qualification, the New Jersey Supreme Court has overstepped its authority and usurped power properly allocated to Congress.

## III. EVERY CITIZEN POSSESSES FIRST AMENDMENT RIGHT TO RUN FOR OFFICE REGARDLESS OF "QUALIFICATIONS"

Running for office is a core method bringing matters of public concern to the attention of the public. Given the impact of running for elective office, every citizen possesses a First Amendment Right, U.S. Const. amend. I, to campaign for office regardless of any collateral issue about "qualifications." The Supreme Court has consistently held that "the First Amendment has its fullest and most urgent application to speech uttered during a campaign for

political office." *Eu v. San Fran. Cnty. Dem. Cent. Comm.,* 489 U.S. 214, 223 (1989).

The Federal Election Commission has already issued an advisory Opinion, FEC ADVISORY OPINION 2011-15 (September 2, 2011), stating that there is no provision of federal law that prohibits a naturalized citizen from running for president, regardless of whether or not that person could ultimately serve as president if elected. Advisory Opinion 2011-15 further determined that a "naturalized" citizen was fully entitled under Federal Law to solicit contributions to his campaign. This Advisory Opinion 2011-15 is presumptively entitled to deference by this court, as the FEC was issuing an official opinion in its area of expertise.

Given the Fundamental right to run for office and spread one's message, the neither the States nor the Federal Government may restrict one's right to appear on the ballot for President.

## IV. DISCRIMINATION ON BASIS OF STATUS AS "NATURAL BORN" AS OPPOSED TO NATURALIZED CITIZEN VIOLATES 14th and 5th AMENDMENT GUARANTEE OF EQUAL PROTECTION

The Equal Protection Clause of the Fourteenth Amendment states in relevant part that:

> No state shall ... deny to any person within its jurisdiction the equal protection of the laws.
> U.S. Const. amend. XIV.

The Equal Protection Clause of the 14th Amendment prohibits states from discriminating against citizens based on national origin or on status as a naturalized

versus a natural born citizen. See *McDonald v. City of Chicago, Ill.* 130 S.Ct. 3020, 3060 (2010), ("[invidious discrimination is] irreconcilable with the principles of equality, government by consent, and inalienable rights proclaimed by the Declaration of Independence and embedded in our constitutional structure."). See also *Adarand v. Pena* 515 U.S. 200, 213 (1995), reiterating that, "[d]istinctions between citizens solely because of their ancestry are by their very nature odious to a free people whose institutions are founded upon the doctrine of equality."

Accordingly, insofar as any state might attempt to deny ballot access to certain individuals based on national origin or status as naturalized citizens this constitutes invidious, illegal discrimination – *second-class* citizenship.

The Fifth Amendment, U.S. Const. amend. V requires the federal government to provided equal protection for all in the same way as the 14th Amendment requirement of equal protection applies to the states. *Bowling v. Sharp*, 347 U.S. 497 (1954). Accordingly, pursuant to the requirements of the Fifth Amendment, the United States may not discriminate based on national origin or status as a naturalized citizen. *Schneider v. Rusk*, 377 U.S. 163 (1964). "[D]iscrimination aimed at naturalized citizens ... creates indeed a second-class citizenship" that is incompatible with the Fifth Amendment. *Id.*

Moreover, a naturalized citizen "becomes a member of the society, possessing all the rights of a native citizen, and standing, in view of the constitution, on the footing of a native." *Afroyim v. Rusk*, 387 U.S. 253, 262 (1967). Insofar as U.S. Const. art. II, § 1, cl. 5 might be interpreted to forbid "naturalized citizens"

from being President, such a doctrine is entirely incompatible with the guarantee of equality found in the Fifth and Fourteenth Amendments.

The Fourteenth Amendment, U.S. Const. amend. XIV, is "the most significant structural provision adopted since the original Framing" and has had profound and extensive effect upon the rest of the Constitution. *McCreary County, Ky. v. Am. Civ. Liberties Union of Ky.*, 545 U.S. 844, 872 (2005). For example, the Fourteenth Amendment permits Congress to authorize suits against state that were previously prohibited by the Eleventh Amendment.

In *Fitzpatrick v. Bitzer* 427 U.S. 445 (1976) the Supreme Court held that "the Eleventh Amendment, and the principle of state sovereignty which it embodies. . . are necessarily limited by the enforcement provisions of §5 of the Fourteenth Amendment." This was true despite the fact that the 14th Amendment did not explicitly mention either the 11th Amendment or suits against states.

Just as the Fourteenth Amendment "necessarily limited" earlier provisions of the Constitution, the Fifth Amendment limits earlier provisions of the Constitution that are incompatible with the Fifth Amendment. Insofar as U.S. Const. art. II, § 1, cl. 5 appears to permit discrimination based on status as naturalized citizen this is entirely incompatible with the Fifth Amendment guarantee of equal protection.

The natural born provision of the Constitution, insofar as it appears to permit the invidious national origin discrimination, is irreconcilable with and is, abrogated and implicitly repealed by the Equal Protection Clause, the Citizenship Clause and the Privileges and Immunities Clause of the Fourteenth

Amendment as well as the Equal Protection guarantee of the Fifth Amendment. Accordingly, any discrimination against presidential candidates by either the states or the federal government are unconstitutional and null and void.

## V. NEW JERSEY VIOLATED THE ELECTORS CLAUSE BY FLOUTING THE STATUTES GOVERNING PRESIDENTIAL ELECTIONS AND FABRICATING "LAWS" TO RATIONALIZE PREMATURE ADJUDICATION OF PRESIDENTIAL QUALIFICATIONS

The Electors Clause requires states to appoint presidential electors "in such Manner as the Legislature thereof may direct." U.S. Const. art. I, § 1, ¶ 2; *see also Moore v. Harper*, 600 U.S. 1, 36 (2023) ("[S]tate courts may not transgress the ordinary bounds of judicial review such that they arrogate to themselves the power vested in state legislatures to regulate federal elections."); *Bush v. Gore*, 531 U.S. 98, 111–22 (2000) (Rehnquist, C.J., concurring).

The New Jersey Supreme Court, by denying Dr. Shiva's Emergent Appeal and upholding NJSOS' Final Decision violated the Electors Clause. The Electors Clause demands that power over presidential electors is in the state legislatures. This means that the neither the NJOAL nor the NJDOE nor the NJSOS can simply "make up" statutes, that get percolated up to the judiciary, to prematurely adjudicate and enforce presidential qualifications, for *holding* the Office, not for *running* for the Office.

But this is precisely what occurred in New Jersey. As the NJOAL judge stated in his Initial Decision (see App 17a – 18a):

> The next issue to be determined is whether an ineligible candidate for President can still appear on the ballot as an independent if their nominating petition is in conformity with the provisions of *N.J.S.A. Title 19.*
>
> While there are **no specific regulations or case law that address the issue, the way that other cases have treated this issue leads to the conclusion that an ineligible candidate for president should not be on the ballot**.

The NJOAL prematurely adjudicated Dr. Shiva's qualifications for President without any specific State Statutes. Period. This in and of itself is enough for this Court to reverse the New Jersey ruling. In addition, the State proceeded to also violate the rights of the presidential electors themselves by never providing them any due process in the "manner" in which they adjudicated their removal from the ballot. One cannot forget an Elector College exists, and the real candidates in New Jersey are the presidential elector candidates ("Elector Candidates") whose Pledged Candidate is "Dr. Shiva," whose *name* is used to label their slate.

The New Jersey Democratic State Party ("the Objector") named the wrong party in their Objector's Petition; specifically, they named the Pledged Candidate for President – Dr. Shiva - who is neither a New Jersey resident nor seeking the Office of Elector to be elected by New Jersey voters on November 5, 2024, nor within the authority of the NJDOE or NJSOS to be removed from the ballot, or within the authority of the NJDOE or NJSOS to be

denied ballot certification, since these offices are not certified to the ballot by the NJDOE or NJSOS. The New Jersey Election Code, defines the offices voted upon by New Jersey voters in general elections in even numbered years, and states in part as follows *N.J.S.A. 19:14-8* (emphasis added):

> **N.J.S.A. 19:14-8.** Such titles of office shall be arranged in the following order:
>
> **Electors of President and Vice President of the United States.**
>
> * * *

N.J.S.A. 19:14-8 of the New Jersey Election Code does not include the office of "President of the United States" or "Vice President of the United States" as offices for which New Jersey voters vote at a general election, and logically, such an office could not be added to the New Jersey Election Code or to the New Jersey ballot because the U.S. Constitution preempts New Jersey law regarding the election of President and Vice President of the United States. U.S. Const. art. II, § 1.

By operation of the U.S. Const. art. II, § 1, cl. 2, and the New Jersey Election Code, New Jersey voters elect their Electors for President and Vice President of the United States; thereafter, those Electors that are elected at the general election proceed to vote by ballot in the Electoral College. Thus, it is the Electors that elect the President and Vice President of the United States through a separate ballot.[8]

The election of **Electors** for the President and Vice President (rather than any potential pledged

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[8]See https://www.archives.gov/electoral-college.

candidates) is confirmed by the New Jersey Election Code, which states:

> **N.J.S.A. 19:13-9 Presidential and Vice Presidential Electors - Time of Election.**
>
> [A]ll petitions and acceptances thereof nominating electors of candidates for President and Vice President of the United States, which candidates have not been nominated at a convention of a political party as defined by this Title, shall be filed with the Secretary of State before 4:00 p.m. of the 99th day preceding the general election in this Title provided.

The New Jersey Election Code, applies to election authorities and defines the process for the printing of ballots and the counting of votes for Electors (emphasis added) as follows (emphasis added):

> **N.J.S.A. 19:14-8.1 Ballots for Presidential Electors:**
>
> [ * * * ]
>
> When Presidential Electors are to be elected, **their names shall not be printed upon the ballot,** either paper or voting machine, but **in lieu thereof, the names of the candidates of their respective parties or political bodies for President and Vice-President of the United States shall be printed together in pairs under the title "Presidential Electors for."** All ballots marked for the candidates for President and Vice-President of a party or political body, **shall be counted as votes for each candidate for Presidential Elector** of such party or political body.

Therefore, by operation of the New Jersey Election Code, Elector Candidates' "**names shall not be printed upon the ballot,** either paper or voting machine, but **in lieu thereof, the names of the candidates of their respective parties or political bodies for President and Vice-President of the United States shall be printed together in pairs under the title "Presidential Electors for"** and that a vote for any such pledged candidates for President and Vice President "**shall be counted as votes for each candidate for Presidential Elector"** confirming that New Jersey voters are voting for and electing the State's Electors, and that such a vote for a Presidential and Vice Presidential (pledged) candidate shall not be deemed and taken as a direct vote for such candidates for President and Vice-President. *N.J.S.A. 19:14-8*

Thus, New Jersey voters do not nominate or elect their candidates for President or Vice President, as confirmed by recent events[9]; pledged Presidential and Vice-Presidential candidates are not ballot-eligible in

[9] Recent events are illustrative. Donald Trump's **delegates** were elected at the Republican primary (without a VP being identified), and Joe Biden's **delegates** were elected at the Democratic Party primary (also without a VP being identified). Candidates for President however were not nominated at either party's primary election. After strategic considerations by the DNC, Joe Biden announced on July 21, 2024 that he would not seek re-election, and Kamala Harris then announced her intent to seek the Democratic nomination as their Presidential candidate without declaring her VP candidate. Donald Trump was then rumored to be considering replacing his Vice President who was announced at the Republican convention.

New Jersey nor are they voted upon by voters in any state, including New Jersey. Political party convention delegates are the ballot eligible candidates elected at a party's primary election; thereafter, established political party Electors (selected at each convention and certified pursuant to New Jersey Election) **alongside** independent (and new political party) Electors are the only ballot eligible candidates that are voted upon by New Jersey voters at the November 5, 2024 general election in relation to the offices of President and Vice President of the United States.

## VI. THE QUALIFICATION FOR PRESIDENT IS A NON-JUSTICIABLE POLITICAL ISSUE THAT IS DETERMINED BY VOTERS AND HENCE CANNOT BE INTERFERED WITH BY STATE OR FEDERAL ELECTION OFFICIALS

Although Article 2 discussed "qualifications" for president the Constitution does not provide any mechanism for enforcing this provision. Article 2 also fails to define what is meant by a "natural born citizen." Because there is no enforcement mechanism the qualification for President appears to be a non-justiciable political issue that is in effect left up to the voters themselves to determine.

A controversy is non-justiciable when it involves a political question and the determination of an issue is vested with the political process. *Nixon v. U.S.*, 506 U.S. 224, 228 (1993) (citing *Baker v. Carr*, 369 U.S. 186, 217 (1962)). Article 1 of the Constitution provides that "No person shall be a Representative who shall not have attained to the age of twenty-five years, and been seven years a citizen of the United

States" but further provides that "Each House shall be the judge of the elections, returns and qualifications of its own members." See also *Burton v. U.S.*, 202 U.S. 344, 366 (1906) ("[T]he Senate is made by [the Constitution] the sole judge of the qualifications of its members.

Just as Article provides for qualification for elected representatives but leave it up to the political process to adjudicate those qualifications, Article 2 also appears to leave the issue to the political process. No state or federal executive official should be permitted to refuse to allow a candidate to run for office based on an assertion that the candidate does not meet the qualifications because that is an issue that is entrusted to the political process.

## VII. ARTICLE II, SECTION 1, CLAUSE 5 – THE "NATURAL BORN" CLAUSE – CANNOT BE USED TO DENY DR. SHIVA ACCESS TO THE BALLOT

U.S. Const. art. II, § 1, cl. 5 prohibits individuals only from *holding* office:

> No Person except a natural born Citizen, or a Citizen of the United States, at the time of the Adoption of this Constitution, shall be eligible to the Office of President; neither shall any Person be eligible to that Office who shall not have attained to the Age of thirty five Years, and been fourteen Years a Resident within the United States. U.S. Const. art. II, § 1, cl. 5.

It does not prevent anyone from *running* for office, or from *being elected* to office, because Congress can

choose to remove a U.S. Const. art. II, § 1, cl. 5 disqualification at any time—and Congress can remove that disability after a candidate is elected but before his term begins. *See id.* ("But Congress may by a vote of two-thirds of each House, remove such disability.").

This basis alone merits reversal of the New Jersey Supreme Court, and by prohibiting states from using ballot access restrictions to enforce U.S. Const. art. II, § 1, cl. 5, reversal would ensure that Congress retains its authority even though U.S. Const. art. II, § 1, cl. 5 is silent on enforcement.

The New Jersey Supreme Court by denying emergent relief held that it has no less authority to exclude Dr. Shiva from the ballot than the Supreme Court of Colorado would a 28-year-old or a foreign national. App. 1a; *see also Hassan v. Colorado*, 495 F. App'x 947 (10th Cir. 2012) (Gorsuch, J.) (upholding Colorado's decision to exclude a naturalized U.S. citizen from the presidential ballot). That is wrong. Congress has *no* authority to add additional qualifications to the Constitution's age, residency, or natural-born citizenship requirements.

Forcing Dr. Shiva to prove that he is not disqualified *before appearing* on the ballot effectively adds a new, extra-constitutional requirement to running for office. But *U.S. Term Limits* renders the states powerless to add to or alter the Constitution's qualifications or eligibility criteria for federal officials, and states are equally powerless to exclude federal candidates from the ballot based on state-created qualifications or eligibility criteria not mandated by the Constitution. *See id.* at 799 (" 'It is not competent for any State to add to or in any manner change the

qualifications for a Federal office, as prescribed by the Constitution or laws of the United States' " (quoting G. McCrary, American Law of Elections § 322 (4th ed. 1897)); *id.* at 803–04 ("States thus 'have just as much right, and no more, to prescribe new qualifications for a representative, as they have for a president. . . . It is no original prerogative of state power to appoint a representative, a senator, or president for the union.' " (quoting 1 Story § 627)); *id.* at 828–36 (rejecting state's attempt to deny ballot access to incumbent congressional candidates who had exceeded an allotted number of terms). Even the *Term Limits* dissenters acknowledged that states are forbidden from prescribing qualifications for the presidency beyond those specified in the Constitution. *See id.* at 855 n.6 (Thomas, J., dissenting) ("[T]he people of a single State may not prescribe qualifications for the President of the United States"); *id.* at 861 (Thomas, J., dissenting) ("[A] State has no reserved power to establish qualifications for the office of President"); *id.* at 861 (Thomas, J., dissenting) ("[T]he individual States have no 'reserved' power to set qualifications for the office of President"). And for good reason: The president, unlike members of Congress, represents and is elected by the entire nation,[10] and allowing each of the 51 jurisdictions to prescribe and enforce their own qualifications for a nationwide office would be a recipe for bedlam and voter confusion.

The New Jersey Supreme Court's ruling violates *Term Limits* by adding a new qualification for the

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[10] *See Seila Law LLC v. Consumer Financial Protection Bureau*, 140 S. Ct. 2183, 2203 (2020) ("Only the President (along with the Vice President) is elected by the entire Nation.").

presidency. It requires that a president be "qualified" under U.S. Const. art. II, § 1, cl. 5 not only on the dates that he holds office, but also on the dates of the primary and general elections—and on whatever date a court renders judgment on his eligibility for the ballot. This is no different from a state enforcing a preelection residency requirement for congressional or senatorial candidates, when the Constitution requires only that representatives and senators inhabit the state "when elected." *See* U.S. Const. art. I, § 2, ¶ 2 ("No Person shall be a Representative . . . who shall not, *when elected*, be an Inhabitant of that State in which he shall be chosen" (emphasis added)); *See* U.S. Const. art. I, § 3, ¶ 2 (same rule for senators); *see also Texas Democratic Party v. Benkiser*, 459 F.3d 582, 589–90 (5th Cir. 2006) (holding pre-election residency requirements unconstitutional under *Term Limits*); *Campbell v. Davidson*, 233 F.3d 1229, 1236 (10th Cir. 2000) (same); *Schaefer v. Townsend*, 215 F.3d 1031, 1036 (9th Cir. 2000) (same). In each of these situations, a state violates *Term Limits* by altering the timing of a constitutionally required qualification for office.

## VIII. HASSAN RULINGS CANNOT BE USED TO JUSTIFY PREMATURE ADJUDICATION OF PRESIDENTIAL QUALIFICATIONS IN LIGHT OF TRUMP V. ANDERSON AND CONFLICTS FROM OTHER STATE SUPREME COURT RULINGS

The Court granted petition for certiorari in *Trump v. Anderson,* and reversed the Colorado Supreme Court's decision since the Framers wanted a direct

**link between the National Government and the people** of the United States, not a "patchwork."

Twelve years earlier, in 2012, also in the State of Colorado, in *Hassan v. Colorado 495 F. App'x 947 (10th Cir. 2012)*, the United States Tenth Circuit Court of Appeals of Colorado made a decision to disqualify candidate Hassan for President and to deny *Hassan* ballot access in the 2012 Presidential election asserting:

> *"...a state's legitimate interest in protecting the integrity and practical functioning of the political process permits it to exclude from the ballot candidates who are* ***constitutionally prohibited*** *from assuming office."*

Specifically, the State referred to a provision in the Constitution, U.S. Const. art. II, § 1, cl. 5 for asserting such constitutional prohibition.

Neil M. Gorsuch, one of the nine Supreme Court Justices in *Trump v. Anderson* that had concluded on March 4, 2024 that States cannot disqualify and deny ballot access to a candidate running for President even on constitutional grounds, was then in 2012 the Circuit Court Judge, who authored the decision in *Hassan v. Colorado 495 F. App'x 947 (10th Cir. 2012)* that concluded **a State could disqualify** and deny *Hassan* access to the Colorado's state ballot on constitutional grounds.

Before the *Trump v. Anderson* decision of this Court, many on the "left" and legal scholars concluded that the *Hassan* ruling would be the precedential basis for removing Trump's name from the ballot. However, the exact opposite took place.

Common sense leads to a simple explanation: since Hassan never got on the ballot in **any State**, never had a real campaign, neither had presidential electors nor volunteers who worked day and night to collect hundreds of thousands of petition necessary signatures to get ballot access, etc., he was not a bona fide or *diligent* candidate like Dr. Shiva and Trump. Had Hassan actually gotten on the ballot, had a broad bottom's up movement, etc., it is likely Justice Gorsuch would have decided differently in Colorado in 2012. States cannot deny access to a bona fide and diligent candidate to States' ballots, unless that candidate does not meet specific and reasonable State Elector and Nomination Petition signature requirements. Only Congress can disqualify a candidate for President.

Moreover, state supreme courts rulings that conflicted with *Hassan* rulings foreshadowed th Court's ruling in *Trump v. Anderson.* For example, in the case of Roger Calero, a Nicaraguan citizen, who was neither "natural born" nor a naturalized U.S. citizen, and patently "ineligible" to hold the Office of President, the New York Supreme Court in *Earl–Strunk v. N.Y. State Bd. of Elections*, 950 N.Y.S.2d 722 allowed him on the ballot and the court stated (emphasis added):

> Thus, this Court **lacks subject matter jurisdiction to determine the eligibility and qualifications of President OBAMA to be President, as well as the same for Senator MCCAIN or ROGER CALERO.** If a state court were to involve itself in the eligibility of a candidate to hold the office of President, a determination **reserved for the Electoral College and Congress,** it may

> involve itself in national political matters for which it is institutionally ill-suited and interfere with the constitutional authority of the Electoral College and Congress. Accordingly, **the political question doctrine instructs this Court and other courts to refrain from superseding the judgments of the nation's voters** and those federal government entities the Constitution designates as the proper forums to determine the eligibility of presidential candidates.

**History has moved forward. The decision in *Trump v. Anderson* supersedes earlier rulings and resolves conflicts concerning Hassan. Only Congress can enforce qualifications against a candidate for President.**

## CONCLUSION

The petition for writ of certiorari should be granted and the decision of the New Jersey Supreme Court summarily reversed.

Respectfully submitted,

DR. SHIVA AYYADURAI, PHD
701 Concord Avenue
Cambridge, MA 02138
Telephone: (857)393-7910
Email: vashiva@cytosolve.com
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