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 OF *AMICUS CURIAE*
MARTIN ARMSTRONG, PRO SE, IN SUPPORT OF
PETITIONER

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TABLE OF AUTHORITIES – Continued

Contents

TABLE OF AUTHORITIES

CASES

Circuit Cases

STATUTES, RULES, AND CONSTITUTIONAL AUTHORITY

INTEREST OF AMICUS CURIAE

Martin Armstrong is a citizen of the United States. I do not represent anyone other than myself and my interest is in seeing this important case correctly decided and to avoid national discord and to secure my personal right to vote in the 2024 election. My father was a lawyer, I grew up listening to legal argument but chose international economics after my father took me to Europe for the summer of 1964. As part of my profession, I have studied intently Constitutional Law as well as international law finding myself in the role of an international corporate and governmental adviser for about 50 years, which necessitated the understanding of law on a global basis such as Europe following Canon Law and America Common Law. I have also studied the evolution of law from ancient times when kings were once the judges as their duty within society – i.e., King Solomon.

I have not been asked by anyone to file this petition nor have I accepted any money from anyone to do so. I am a pro se interested citizen that brings a practical perspective from an interested citizen to secure my right to vote in a free democratic inspired Republic. I believe my interests were not presented insofar as my right to vote for the next president and after listening to the oral arguments, I believe this Court has previously held that interfering in a primary election violates the Equal Protection of the Law Clause and that the structural design intended by the Framers was clearly expressed in the Commerce Clause. For these reasons, I am compelled to at least submit this *amicus curiae* brief to exert my constitutional right to vote.

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INTRODUCTION AND SUMMARY OF ARGUMENT

I, Martin Armstrong, pro se, have standing to address this court for the removal of Donald Trump from the ballot of Colorado or Maine that will result in a cascade impact on the legitimacy of federal elections nationwide fundamentally depriving me of my right to vote and those of about 50% of the nation. Allowing one state to alter the ability of a nationwide election concerning a national candidate in contrast to a local state representative in a federal election is absurd.

The Founding Fathers never intended to allow a rogue state to interfere in either national commerce or national federal elections implied in the Commerce Clause, Article 1, Section 8, Clause 3 of the U.S. Constitution and Colorado has thus

violated my Civil Rights by interfering in a national election prohibited by 18 U.S. Code § 594.

In addition, this Court's prior precedent in Smith v Allwright, 321 us 649 (1944) held that states cannot deny the right to vote to blacks in a primary election without violating the Equal Protection Clause of the Fourteenth Amendment.

The Petitioner here is filing this Amicus brief because in the oral arguments nobody raised Smith v Allwright or the Commerce Clause, and the Founding Fathers never anticipated a rogue state taking action like Colorado and Maine banning any candidate from the national ballot that impacts all states any more than banning the imports of one state for their own self–interest.

The last time a federal candidate was the removed from the ballot was Abraham Lincoln during the election of 1860 by the Southern States which was finally resolved in civil war. Allowing the actions of one state to impact the voting rights of all other states not merely constructively amends the Constitution, it nullifies the very foundation of the national Union.

The Founding Fathers did address this issue of one state interfering in the national economy with the Commerce Clause prohibiting such acts trying to impose a ban on the exports of another state to its own self–interest. Surely, the Founding Fathers realized that States must be confined to their own boundaries under the Commerce Clause giving Congress the exclusive power "to regulate commerce with foreign nations, among states, and with the Indian tribes."

It cannot rationally be assumed that they would allow a single state to inflict political chaos for a national post that is not domiciled within their own jurisdiction. This Court has held that "the Constitution was written to be understood by the voters" and although I am not a lawyer, the restraint imposed by the Commerce Clause would make no sense if states could remove a senator or congressman from another state because they disagree with their philosophy.

The Commerce Clause expressly forbids a state from interfering in national commerce. That jurisdiction is reserved strictly to Congress. I cannot imagine how any state can claim such a power to interfere in the federal election for the national office in the Federal Government that is not a local state office or confined to represent only that state. While the Constitution does not expressly prohibit a state from removing a senator or

congressman from another state, the sovereignty of a state cannot supersede all other states or federal law by virtual of the Supremacy Clause Article VI, Clause 2: No state can simply kidnap a citizen in another state and they must proceed to extradite that individual. This further implies that the Founding Fathers never contemplated a state interfering in a federal election or commerce.

Any such power of any state must be confined to a congressman or senator exclusively from their state not any other and likewise they have no jurisdiction to deny one candidate from a primary election for national office appearing in every state. Therefore, no state has the subject matter jurisdiction to interfere in a federal election concerning a national candidate such as the national office of President and Vice President. They would have no such right to prohibit even the

president appointing a member of his cabinet or nominating a federal judge to the Supreme Court.

If the Supreme Court upholds Colorado's decision, then it will be only justifying the polarization of the nation and that would risk once again a civil war when several states removed Abraham Lincoln from the ballot during the 1860 election.

Ten Southern states failed to issue ballots on behalf of the Republican candidate because he was opposed to slavery. Lincoln was not exactly barred from the ballot, but his party could not issue ballots in 10 states: South Carolina, North Carolina, Mississippi, Florida, Alabama, Texas, Georgia, Louisiana, Arkansas, and Virginia. In fact, he did not receive any votes from the states that would later form the Confederacy besides Virginia where Republicans secured 1% of the votes.

Lincoln secured 180 electoral votes while John C. Breckinridge, Southern Democratic, secured 72. What if Lincoln had lost instead of carrying 18 states against 11 for Breckinridge?

I fear we will see violence regardless of how the court rules because the press has wrongly promoted this for their own political self–interest concerning Trump. There are federal statutes that are answerable only in federal court – not state courts. It is inconsistent to assume a state can predetermine a federal question of law.

If the Court permits the Colorado Supreme Court's standard of insurrection to stand, this will deprive me of my right to vote by allowing a state trial court to find facts which may be politically motivated to thereby disenfranchise half of the nation. That would in itself amount to an

insurrection to overthrow the democratic process nationally.

The Colorado Supreme Court's decision deprived the people of Colorado the opportunity nominate a candidate of their choice to serve as the political party's presidential nominee. Colorado Supreme Court's actions have in violated to Equal Protection under Smith v Allwright. Moreover, the Fourteenth Amendment limits the jurisdiction to that of Congress and allowing all 50 states to make such a decision would lead to absurdity and chaos. Congress has not enacted legislation providing a private cause of action, and there is no implied grant of jurisdiction to anyone other than Congress by expressly stating only "Congress may by a vote of two–thirds of each House, remove such disability." Thus, Colorado Supreme Court's decision must be overruled as it threatens the break up of the United States.

ARGUMENT

I. THE COLORADO SUPREME COURT'S BROAD INTERPRETATION OF SECTION THREE OF THE 14TH AMENDMENT VIOLATED THE SPIRIT OF THE COMMERCE CLAUSE WITHOUT SUBJECT MATTER JURISDICTION

The Colorado Supreme Court's broad ruling would allow one state to remove a national candidate from the local ballot usurping power that was denied to a state by the Commerce Clause thereby allowing a single state to interfere in issues of national importance without Subject Matter Jurisdiction, which cannot be waived.

While nobody raised the Commerce Clause, Article 1, Section 8, Clause 3 of the U.S. Constitution, the Founding Fathers may have never anticipated a rogue state taking action like Colorado and Maine

banning any candidate from the national ballot. The last time this took place was the removal of Abraham Lincoln from the ballot in the Southern States which was finally resolved in civil war.

Nevertheless, they did address this issue of one state interfering in the national economy with the Commerce Clause prohibiting such acts trying to impose a ban on the exports of another state to its own self–interest. Surely, the Founding Fathers realized that States must be confined to their own boundaries under the Commerce Clause giving Congress the exclusive power "to regulate commerce with foreign nations, among states, and with the Indian tribes." It cannot rationally be assumed that they would allow a single state to inflict political chaos for a national post that is not domiciled within their own jurisdiction.

The Commerce Clause expressly forbids a state from interfering in national commerce. That jurisdiction is reserved strictly to Congress. I cannot imagine how any state can claim such a power to interfere in the federal election for the national office in the Federal Government that is not a local state office. Any such power would be confined to a congressman or senator exclusively from their state. They cannot remove a congressman from another state because they dislike him or disagree with his political views. The same must be upheld by this court when considering the national office of President.

If the Supreme Court upholds Colorado's decision, then it will be only justifying the polarization of the nation and that would risk once again a civil war by removing Abraham Lincoln from the ballot in some states.

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The Colorado Supreme Court's decision deprived the people of Colorado the opportunity nominate a former president to serve as his political party's presidential nominee. It concluded that Section Three of the Fourteenth Amendment provides authority for it is clearly not self–executing when Congress has not enacted legislation providing a

private cause of action, but the plain language anticipated exclusive jurisdiction

by expressly stating only "Congress may by a vote of two–thirds of each House, remove such disability." The very reasoning behind the Commerce Clause must apply in this case or else the Constitution, which was a negative restraint upon government, M, would lead to total chaos undermining the very union the Constitution sought to create.

II. THE CONSTITUTION IS NEGATIVE NOT POSITIVE AND IT IS A RESTRAINT UPON GOVERNMENT DEPRIVING THE COLORADO SUPREME COURT OF SUBJECT MATTER JURISDICTION TO DECIDE THE CASE AT BAR

The unanswered question is obvious. Did the Colorado Supreme Court have subject matter jurisdiction to decide a nonresident running for national office unilaterally that would infringe upon the voting rights of everyone in other states? The answer to that question is a resounding NO. Colorado had no more right to put a federal candidate on trial under the 14th Amendment and remove them from the ballot than removing a senator or congressman of another state. To allow the usurpation of such jurisdiction defies the clear constitutional restraints upon government intended by the Constitution.

This court has long held that "if there was an absence of federal jurisdiction, this court could not consider the merits, but would have to reverse the decrees" **Smith v. McCullough**, 270 U.S. 456, 460 (1926). Even the renowned Judge Posner of the 7th Circuit made it clear that "Issues thus are treated as jurisdictional when the Constitution, statutes, or rules evince a purpose to limit judicial power whether or not a party objects to its exercise." **Troelstrup v. Index Futures Group, Inc**., 130 F.3d 1274, 1276 (7th Cir. 1997).

Mr. Justice Jackson observed that the "task of translating the majestic generalities of the Bill of Rights . . . into concrete restraints on officials dealing with the problems of the twentieth century, is one to disturb self–confidence." **West Virginia State Bd. of Education v. Barnette**, 319 U.S. 624, 639 (1943).

These constitutional principles, Justice Jackson carefully observed for the Court, **"*grew in soil which also produced a philosophy that the individual['s] . . . liberty was attainable through mere absence of governmental restraints."*** Ibid.

Those principles must be ***"transplant[ed] . . . to a soil in which the laissez-faire concept or principle of non-interference has withered at least as to economic affairs, and social advancements are increasingly sought through closer integration of society and through expanded and strengthened governmental controls."*** Id., at 640.

The Bill of Rights is NOT a document of positive rights created by man for man. They are negative restraints upon government rather than a list of positive rights that people wrongly think they possess. Thomas Jefferson encapsulated the spirit of

the Founding Fathers in the Declaration of Independence that *"Powers of the Earth, the separate and equal Station to which the Laws of Nature and of Nature's God entitle them."* Clearly, the Bill of Rights is a negative restraint upon government and not a shopping list of claimed rights, but are endowed by our creator.

The **First Amendment** states: *"Congress shall make no law…"* The **Second Amendment** read *"the right of the people to keep and bear arms, shall not be infringed."* The **Third Amendment** states *"No soldier shall, in time of peace be quartered in any house…"* The **Fourth Amendment** states: *"The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated…"*

The **Fifth Amendment** *states "No person shall be held to answer …"* The **Sixth Amendment** also starts out *"In all criminal prosecutions, the accused shall enjoy …"* The **Seventh Amendment** is also of particular importance for its states universally regardless of the State of the Federal government that *"the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise reexamined in any court of the United States…"*

The **Eighth Amendment** is clearly negative stating: *"Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted."* The **Ninth Amendment** then secures all other rights not enumerated in the first eight Amendments: *"The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people."*

The first nine Amendments of the Bill of Rights are negative restraints upon government and as such

are not actual positive rights of a citizen but prohibitions against government actions. One cannot waive a **Fifth Amendment** prohibition against torture or due process for that would deny equal protection of the law and amount to a constructive amendment itself of the Constitution which can only be done by a Constitutional Convention.

Therefore, no State can interfere in a federal election when the Constitution is a negative restraint upon government rather than a positive right of an individual when they have no subject matter jurisdiction to interfere with the election process of national candidates in contrast to candidates only representing their exclusive jurisdiction over state actors.

This Court has also pointed out that a court must have "jurisdiction of both subject and person." **Bradley v Fisher**, 80 US (13 WALL) 335, 352 (1872). With respect to the attempt to apply The Labor Management Relations Act of 1947 to a foreign ship with foreign seamen, this Court rejected the idea noting that the Act made no mention of foreign ships or and it concluded such an application would lead to *"international discord are so evident and retaliative action so certain."* **Benz v. Compania Naviera Hidalgo**, 353 U.S. 138, 147 (1957). Here we have a similar situation where by allowing a single state to remove a national candidate from the ballot would lead to utter chaos and discord in the process of American elections.

Justice Sutherland in **Kline v. Burke Construction Co**., 260 U.S. 226 (1922) articulated the principle of Comity that is presented here which is critical to

prevent national discord quoting **Covell v. Heyman**,

111 U. S. 176, 182 (1884). He said:

"The forbearance which courts of coordinate jurisdiction, administered under a single system exercise towards each other, whereby conflicts are avoided by avoiding interference with the process of each other, is a principle of comity, with perhaps no higher sanction than the utility which comes from concord; but, between state courts and those of the United States, it is something more. It is a principle of right and of law, and therefore, of necessity. It leaves nothing to discretion or mere convenience. These courts do not belong to the same system, so far as their jurisdiction is concurrent, and although they coexist in the same space, they are independent, and have no common superior. They exercise jurisdiction, it is true, within the same territory, but not in the same plane, and when one takes into its jurisdiction a specific thing, that res is as much withdrawn from the judicial power of the other as if it had been carried physically into a different territorial sovereignty. To attempt to seize it by a foreign process is futile and void. The regulation of process, and the decision of questions relating to it, are part of the jurisdiction of the court from which it issues."

Page 260 U. S. 230–231

III. THE SEVENTH AMENDMENT RESTRAINS STATES CONFLICTING WITH ECH OTHER BY OVERRULING A JURY TRIAL IN ONE STATE SHOULD ALSO APPLY TO A STATE INTERFERING IN A NATIONAL FDERAL ELECTION WOULD

The Colorado Supreme Court erred in concluding that former President Trump engaged in insurrection which would have entitled to Donald Trump a jury trial under the Sixth Amendment and Due Process of law under the Fifth and Fourteenth Amendment even assuming that they have Subject Matter Jurisdiction to prosecute a federal crime under state law.

Justice Black made it clear speaking for the Court in **Reid v Covert**, 354 US 1 (1957)

> *"In the exercise of that jurisdiction, it is bound by two rules, to which it has rigidly adhered, one never anticipate a question of Constitutional law in advance of the necessity of deciding it."*

The Sevent Amendment clearly contemplates that a finding by a jury shall not be reexamined in any court. This clearly infers that the State of Colorado cannot be allowed to create even a jury trial to remove a possible candidate from the federal election who is not a state resident intending to hold a representative position in either House or president. The Seventh Amendment infers a person is entitle to a trial by jury and that such a jury finding would then exclusively dictate the outcome for the entire nation.

If a state has no such right to prosecute a federal statute created by Congress such as a felon in possession of a gun, then they cannot have the subject matter jurisdiction to prosecute Section 3 of the Fourteenth Amendment on a citizen who is not even a resident of a state. Such a precedent would then allow states to remove senators or congressmen of other states.

The finality of the Seventh Amendment implies allowing a state to remove a presidential candidate from the ballot must be confined to jurisdictionally to prevent one state from usurping the rights of all others.

"[T]he mandatory 'shall' … normally creates an obligation impervious to judicial discretion."
Miller v French 530 US 327, 147 Led 2d 326, 336 (2000)

IV. SUPREME COURT OF COLORADO HAS DENIED EQUAL PROTECTION OF THE LAW TO NON–RESIDENTS OF COLORADO

In **Smith v. Allwright**, 321 U.S. 649 (1944), this Court held that States must make voting in their primary elections equally accessible to voters of all races, even if they do not manage the election process themselves. There, this Court struck down a law where a state law prohibited black primary voters declaring that only whites were allowed to participate. This Court held that the state's actions denied Smith equal protection under the law in violation of the Fourteenth Amendment. By delegating its authority to the Democratic Party to regulate its primaries, the state was allowing discrimination to be practiced, which was unconstitutional.

This Court made it explicitly clear that what the state in that instance violated the Equal Protection Clause as Colorado has done here as well. The Court held:

"The United States is a constitutional democracy. Its organic law grants to all citizens a right to participate in the choice of elected officials without restriction by any state because of race. This grant to the people of the opportunity for choice is not to be nullified by a state through casting its electoral process in a form which permits a private organization to practice racial discrimination in the election. Constitutional rights would be of little value if they could be thus indirectly denied. ***Lane v. Wilson****, 307 U. S. 268, 307 U. S. 275 (1939).*

The privilege of membership in a party may be, as this Court said in ***Grovey v. Townsend****, 295 U. S. 45, 295 U. S. 55, no concern of a state. But when, as here, that privilege is also the essential qualification for voting in a primary to select nominees for a general election, the state makes the action of the party the action of the state. In reaching this conclusion, we are not unmindful of the desirability of continuity of decision in constitutional questions. [Footnote 8] However, when convinced of former error, this Court has never felt constrained to follow precedent. In constitutional questions, where correction depends upon amendment, and not upon legislative action, this Court throughout its history has freely exercised its power to reexamine the basis of its constitutional decisions. This has long been accepted practice, [Footnote 9] and this*

practice has continued to this day. [Footnote 10] This is particularly true when the decision believed erroneous is the application of a constitutional principle, rather than an interpretation of the Constitution to extract the principle itself. [Footnote 11] Here, we are applying, contrary to the recent decision in ***Grovey v. Townsend****, the well established principle of the Fifteenth Amendment, forbidding the abridgement by a state of a citizen's right to vote.* ***Grovey v. Townsend*** *is overruled.*

321 US at 665-667.

For these reasons, the Court should reverse the decision of the Colorado Supreme Court for it has violated the Equal Protection of Law Clause and they cannot claim to be interpreting Sections 3 that violates the remainder of the Amendment.

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CONCLUSION

For these reasons, the Court should reverse the decision of the Colorado Supreme Court. The Commerce Clause shows the restraint and lack of jurisdiction of states to interfere in national commerce or elections. Moreover, never shall the interpretation of one clause in the Constitution violate others. To allow a single state to alter the federal election without subject matter jurisdiction further denying Equal Protection of the law to countless Americans not represented in these proceedings would be inconsistent with the "equitable powers of federal courts." **Whole Woman's Health v. Jackson**, 595 U. S. 30, 44 (2021).

Respectfully submitted,

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