No. 24-_____

In the Supreme Court of the United States

ROBERT F. KENNEDY JR.,

Petitioner,

v.

CAROLINE CARTWRIGHT, ET AL.,

Respondents.

On Petition for a Writ of Certiorari to the Court of Appeals of New York

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

In 2024, New York applied the requirement for candidates to publish their residential address on ballot access petitions to deny Petitioner access to New York's presidential ballot. Imposing the requirement to publish a private address as a condition precedent for ballot access, as applied to presidential candidates, creates an additional qualification in violation of the Qualifications Clause of the United States Constitution. Further, New York's residency rules are more stringent than the test for state inhabitancy impairing operation of the Twelfth Amendment to the United States Constitution.

The New York Court of Appeals denied Petitioner leave to appeal a decision of the Albany County Supreme Court removing Petitioner from the 2024 New York general election ballot for the sole reason that Petitioner recorded his New York address which failed to comply with New York's definition of a residential address. The Albany County Supreme Court ruled, and the Appellate Division, Third Department upheld, that the New York State Board of Elections should not list Petitioner on New York's 2024 presidential general election ballot. The Questions Presented Are:

1. Does N.Y. ELEC. LAW §§ 6-140(1)(a), 1-104(22), acting in tandem, and as applied to presidential and vice-presidential candidates, violate the Qualifications Clause of U.S. CONST. art. II, § 1, cl. 5?

2. Does N.Y. ELEC. LAW §§ 6-140(1)(a), 1-104(22), acting in tandem, and as applied to presidential and vice-presidential candidates, impermissibly impair operation of the Twelfth Amendment to the United States Constitution?

PARTIES TO THE PROCEEDINGS

Petitioner

Petitioner is Robert F. Kennedy Jr. Petitioner was the respondent-candidate in the Albany County Supreme Court, and the appellant in the New York Appellate Division, Third Judicial Department.

Respondents

Respondents are Caroline Cartwright, Matthew Nelson, Joseph R. Rhone, Jr., and Alexander Pease. Respondents were petitioners-objectors in the Albany County Supreme Court and the appellees in the New York Appellate Division, Third Judicial Department.

CORPORATE DISCLOSURE STATEMENT

A corporate disclosure statement is not required because Petitioner is a natural born person and not a corporation. *See* Sup. Ct. R. 29.6

LIST OF PROCEEDINGS

State New York Court of Appeals
Motion No: 2024-632
In the Matter of Caroline Cartwright, Et Al., *Respondents,* v. Robert F. Kennedy Jr., Et Al., *Appellants,*
Order Denying Leave to Appeal: September 10, 2024

New York Appellate Division, Third Judicial Dept.
No. CV-24-1294
In the Matter of Caroline Cartwright Et Al., *Respondents*, v. Robert F. Kennedy Jr. Et Al., *Appellants*
August 29, 2024

Supreme Court, Albany County
Index No. 906349-24
Caroline Cartwright, Et Al., *Petitioners-Objections,* v. Robert F. Kennedy, Jr., Et Al., *Respondents-Candidates.*
Opinion: August 13, 2024

Supreme Court, Dutchess County
Index No. 2024-52389
Caroline Cartwright, Et Al., *Petitioners-Objections,* v. Robert F. Kennedy, Jr., Et Al., *Respondents-Candidates.*
Order Changing Venue: July 5, 2024

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The New York Court of Appeals order denying leave to appeal is at 42 N.Y.3d 943 (2024); 2024 WL 4127460 (N.Y. Sept. 10, 2024), and is reproduced at App. 1a. The New York Third Judicial Department opinion affirming the order of the Albany County Supreme Court is at 230 A.D.3d 969 (2024); 2024 WL 3977541 (3rd Dep't Aug 29, 2024) and is reproduced at App.2a-11a. The opinion of the Albany County Supreme Court is at 2024 WL 3894605 (Sup. Ct. Albany Cnty. Aug. 13, 2024) and is reproduced at App.12a-51a.

JURISDICTION

The New York Court of Appeals entered final judgment on September 10, 2024. App.1a. Petitioner timely filed this Petition on December 9, 2024. This Court has jurisdiction under 28 U.S.C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S. CONST. art. II, § 1, cl. 5
(hereinafter the "Qualifications Clause"):

> No person except a natural born Citizen . . . 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. 2
(hereinafter the "Electors Clause"):

> Each State shall appoint, in such Manner as the Legislature thereof may direct, a Number of Electors, equal to the whole Number of Senators and Representatives to which the State may be entitled in the Congress: but no Senator or Representative, or Person holding an Office of Trust or Profit under the United States, shall be appointed an Elector.

U.S. CONST. art. I, § 4, cl. 1
(hereinafter the "Elections Clause"):

> The Times Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof.

U.S. CONST. amend XII, in relevant part (hereinafter the "Twelfth Amendment"):

> The Electors shall meet in their respective states and vote by ballot for President and Vice-President, one of whom, at least, shall not be an inhabitant of the same state with themselves; they shall name in their ballots the person voted for as President, and in distinct ballots the person voted for as Vice-President, and they shall make distinct lists of all persons voted for as President, and of all persons voted for as Vice-President, and of the number of votes for each, which lists they shall sign and certify, and transmit sealed to the seat of the government of the United States, directed to the President of the Senate;. . . .

N.Y. ELEC. LAW § 6-140(1)(a)

> Each sheet of an independent nominating petition shall be signed in ink, shall contain the following information and shall be in substantially the following form:

Name of Candidate	Public Office (include district number, if applicable)	Place of residence (also post office address if not identical)

> I do hereby appoint _____ (here insert the names and addresses of at least three persons, all of whom shall be registered voters within such political unit), as a committee to fill vacancies in

accordance with the provisions of the election law.

In witness whereof, I have hereunto set my hand, the day and year placed opposite my signature.

Date	Name of Signer	Residence
		Town or city (except in the city of New York, the county)

N.Y. ELEC. LAW § 1-104(22)

The term "residence" shall be deemed to mean that place where a person maintains a fixed, permanent and principal home and to which he, wherever temporarily located, always intends to return.

INTRODUCTION

It is a "'fundamental principal of our representative democracy' embodied in the Constitution, that 'the people should choose whom they please to govern them.'" *U.S. Term Limits v. Thornton*, 514 U.S. 779, 783 (1995) (quoting *Powell v. McCormack*, 395 U.S. 486, 547 (1969)). Petitioner collected over 1 million

signatures[1] from registered voters to secure ballot access for the 2024 general election ballot in the 48 states that require the collection of signatures to secure access to the general election ballot.

In 2024, for the first time in the history of the United States, a New York state court removed an otherwise qualified candidate for the office of President of the United States from a state general election ballot because he recorded, in the estimation of a state court trial judge, the wrong address of the candidate's three residential addresses as his domicile address on New York's ballot access petition. The normally banal act of recording an address on a ballot access petition is now used by state court judges as a potentially partisan cudgel to deny ballot access to presidential candidates in a national election.

The requirement to correctly select an address which complies with each State's unique state ballot access rules is now elevated as an additional state-imposed qualification for the office of President not contemplated by the United States Constitution and creating a new 50-state patchwork of conflicting ballot access rules which uniquely impose on independent and third-party presidential candidates the requirement to record different addresses on ballot access forms for different states giving rise to the threat that political opponents in all 50 states will be able to claim any address recorded on their state's ballot access petitions is wrong because the candidate used a different address

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[1] *See RFK Jr. Surpasses 1 million signatures, completes 8 more states*, United Press International, https://www.upi.com/Top_News/US/2024/07/31/Robert-F-Kennedy-Jr-petitions-states/7401722482427

on other state ballot access petitions. This patchwork of ballot access rules threatens the ability of any independent presidential candidate with more than one residential address to secure ballot access and the right of voters to find a candidate on the ballot for whom they may wish to vote.

In our system of "government of the people, by the people, [and] for the people,"[2] the United States Constitution provides the exclusive list of qualifications to hold the office of President of the United States. Just this year in *Trump v. Anderson*, 601 U.S. 100 (2024), this Court commanded that state courts may not deny ballot access to presidential candidates based on application of local ballot access rules. New York's ruling is not and cannot be correct.

The question of qualification to appear on state general election ballots for the offices of President and Vice President of the United States is governed under the United States Constitution, not in the courts of the several States to consider and decide on an *ad hoc* patchwork basis, applying local ballot access rules which have no application to the conduct of the election for President and Vice President of the United States. Further, the imposition by New York of a residential analysis more stringent than the inhabitancy analysis imposed under the Twelfth Amendment to the United States Constitution impairs the ability of presidential candidates to properly determine their state of inhabitance so that they may both confidently select a vice-presidential candidate from a different state and not be

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[2] *See* Abraham Lincoln, *Gettysburg address delivered at Gettysburg Pa. Nov. 19th, 1983*, Nat'l Archives, https://www.loc.gov/resource/rbpe.24404500/?st=text.

threatened with unnecessary ballot access challenges based on a single state's application of a more stringent residency standard which may be at variance with the candidate's proper Twelfth Amendment analysis. A presidential candidate has the right to rely on Twelfth Amendment inhabitancy analysis without any state interference through the application of their own local state ballot access rules or residency standard.

This Court should grant certiorari to consider this question of paramount importance to prevent the growth of this new basis to deny access to state general election ballots and to staunch the looming chaos in the ballot access arena for independent and minor political party presidential candidates in future national elections.

STATEMENT OF THE CASE

Petitioner is the son of the former United States Senator representing the State of New York prior to his untimely assassination in California while campaigning for the 1968 Democratic Party nomination for the Office of President of the United States. On April 19, 2023, Petitioner announced his intention to challenge President Biden for the Democratic Party's 2024 nomination for the Office of President of the United States. Following his announcement, a man was arrested at Petitioner's California property described as a "mentally ill intruder" with "a history of delusional ideation regarding the candidate."[3] At a Kennedy

[3] *See*, Pool Report, *Intruder Arrested Twice in 1 Day at Home of RFK Jr. in Los Angeles, LAPD Says*, ABC 7 Chicago News, Oct-

campaign event in September, Adrian Paul Aispuro was arrested impersonating a U.S. Marshall charged with carrying a loaded firearm, carrying a concealed weapon and for impersonating an officer.[4]

Petitioner first moved to the state of New York with his father in 1964 and has been a resident of New York ever since. Upon any absence, whether temporary or prolonged, Petitioner always maintained an intent, and did in fact, return to New York to maintain his permanent residency within the State. In addition to his residence in New York, Petitioner owns his well-known summer home in Massachusetts and a home in California. Petitioner, at all times, has maintained an intent to always return to New York. App.27a-29a.

Petitioner has been aggressive to maintain a physical residence in New York, even in times of personal turmoil – including the need to find a new residency in the midst of his busy presidential campaign schedule. Despite a campaign schedule far afield from New York, and a lack of any immediate need for a New York abode, Petitioner immediately secured new rental accommodation in the home of a longtime friend in New York as his intended domicile at 84 Croton Lake Road in Katonah, New York in 2023. App.23a-29a.

Upon the realization that the Democratic Party exhibited no interest in conducting an open nomination process, on October 9, 2023, Petitioner declared his candidacy as an independent candidate for the Office of President of the United States for the 2024 general

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ober 26, 2023; http://abc7chicago.com/rfk-jr-intruder-brentwood-homa/13977106/

[4] *Id.*

election. Shortly after Petitioner announced his independent candidacy for President, on October 25, 2023, at about 9:30 a.m., a mentally disturbed intruder scaled the fence at Petitioner's California property and demanded to see the candidate. The intruder was apprehended by Petitioner's private security detail and was arrested. The intruder was released by police and on the same day at about 5:45 p.m. again scaled Petitioner's security fence and invaded Petitioner's home. Both Petitioner and his wife were home at the time of the invasion.[5]

Consistent with the Elections Clause, to secure access to the general election ballot, independent presidential candidates are required to collect and timely file a certain number of valid signatures from either registered voters or voter eligible residents of the state on ballot access petitions to demonstrate sufficient support within each state to warrant ballot access. *Anderson v. Celebrezze*, 460 U.S. 780, 788 (1983); *Storer v. Brown*, 415 U.S. 724, 732 (1974); *Bullock v. Carter*, 405 U.S. 134, 145 (1972); *Jenness v. Fortson*, 403 U.S. 431, 442 (1971); *Williams v. Rhodes*, 393 U.S. 23, 32 (1968). New York requires the collection and filing of 45,000 valid ballot access petition signatures to secure ballot access within a short 90-day time-period mandated by the State. The New York State Board of Elections certified Petitioner filed a sufficient number of valid signatures to secure access to New York's 2024 general election ballot.

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[5] *Id.*

I. The Albany County Supreme Court Proceedings

The Cartwright litigants filed their litigation challenging the validity of Petitioner's New York ballot access petition through a filing of "General Objections" on May 28, 2024, and "Specific Objections" on June 5, 2024 pursuant to New York Election Law § 16-102. The sole issue to be determined by the Albany County Supreme Court hearing and adjudication was "whether the address that Kennedy listed on the nominating petition as is 'place of residence', *i.e.*, 84 Croton Lake Road, Katonah, New York, is his true place of residence within the meaning of Election Law § 1-104 (22)." In addition to arguing that the New York address was his domicile, Petitioner raised federal constitutional defenses that New York Election Law is unconstitutional to the extent it imposed residency requirements for candidates running for the offices of President and Vice-President of the United States beyond those set forth in the United States Constitution and the Twelfth Amendment to the United States Constitution. App.14a; 49a-50a.

The Albany County Supreme Court set forth the applicable standard of residency under New York law as follows:

> According to Election Law § 1-104 (22) and New York case law, a residence is that place where a person maintains a fixed, permanent, and principal home to which he or she, whenever temporarily located, always intends to return. As used in the Election Law, the term 'residence' is synonymous with 'domicile'. Case law has also established that an individual having two residences may choose one to

> which she or he has legitimate, significant and continuing attachments as her or his residence for purposes of the Election Law. The crucial factor in determining whether a particular residence complies with the requirements of the Election Law is that the individual must manifest an intent to reside there, coupled with physical presence, without any aura of sham.

App.16a. After a hearing, the Albany County Supreme Court determined that Petitioner's New York address was not his *bona fide* residence within the meaning of the Election Law. App.46a-47a. The Albany County Supreme Court determined that Petitioner lacked the necessary presence and intent to remain at the 84 Croton Lake Road address to establish that address as his residence. App.46a. The Albany County Supreme Court discounted all evidence to establish: "[R]esidence through proof that he maintains New York State fishing and falconry licenses, a New York State driver's license and vehicle registration, a New York State Voter registration, a law practice, and a license to practice law in New York State" is not relevant "to establishing that the 84 Croton Lake Road address that Kennedy listed on his nominating petition was his actual place of residence within the meaning of the Election Law. App.45a. "Kennedy's ability to drive, work and vote in this State, without proof of the requisite physical presence at a specific address where he intends to reside on a permanent basis, is immaterial." App.45a. "The Court reaches the same conclusion with respect to evidence relating to Kennedy's family history and past contributions to environmental and other worthy causes in this State." "While no doubt

admirable, Kennedy's accomplishments and family history from decades past have absolutely no bearing on the sole issue to be determined by this Court." App.45a-46a. The Albany County Supreme Court rejected Petitioner's federal constitutional arguments as a mere red hearing. App.49a-50a.

The Albany County Supreme Court essentially ignored Petitioner's federal constitutional defenses and instead summarily dismissed all constitutional arguments that should have prevented application of New York Election Law § 1-104 (22) to any presidential or vice-presidential candidate. The Albany County Supreme Court failed to provide a substantive analysis as to the constitutionality of the application of local ballot access restrictions against presidential and vice-presidential candidates. The Albany County Supreme Court failed to address New York's diminished interest in imposing local ballot access rules on a national election and failed to address this Court's decisions in *Anderson v. Celebrezze*, 460 U.S. 780 (1983); *Trump v. Anderson*, 601 U.S. 100 (2024); and, *Cousins v. Wigoda*, 419 U.S. 477 (1975) limiting State authority over presidential elections.

The Albany County Supreme Court failed to address or provide any substantive analysis as to how the requirement to publish a private address on a ballot access petition as a condition precedent to secure ballot access, in an election where residency has no application to the conduct of the election, is not an additional qualification in violation of the Qualifications Clause of the United States Constitution. As part of its failure to engage in any legitimate analysis on Petitioner's Qualifications Clause defense, the Albany County Supreme Court failed to address this Court's precedents

in *U.S. Term Limits, Inc. v. Thornton*, 510 U.S. 779 (1995) and *Cook v. Gralicke*, 531 U.S. 510 (2001). Likewise, the Albany County Supreme Court failed to articulate the standard for physical presence to establish residency and how the New York standard comports with Twelfth Amendment standards, and how a more stringent standard is permissible for States to impose on presidential and vice-presidential candidates than that imposed under the Twelfth Amendment.

II. The Supreme Court, Appellate Division, Third Department Proceedings

Petitioner timely filed an appeal of the Supreme Court of Albany County's dismissal of Petitioner's New York ballot access petition with the Supreme Court, Appellate Division, Third Department. The Appellate Division affirmed the decision of the Albany County Supreme Court. App.4a; 9a. The Appellate Court determined that despite strong personal and professional ties to New York for the majority of his life, a current physical presence, including a dedicated place to stay at the recorded residential address in New York and an unimpeached stated intention to return to New York, the kind of residence (a rental room in a friend's house) and failure of having actually resided at Petitioner's new address for more than one day during his then current campaign for the Office of President of the United States, was insufficient to overturn the Albany County Supreme Court's adjudication of Petitioner's residency under New York law. App.6a-9a. The Appellate Division rejected Kennedy's testimony that he intended to return to New York at some point as "intention without residence" which it determined was unavailing. App.9a.

Again, following the lead of the Albany County Supreme Court, the Appellate Division failed to substantively address the constitutionality of Election Law §§ 6-140(1)(a), 1-104 (22), under either the Qualifications Clause or the Twelfth Amendment to the Constitution. App.9a-10a.

III. The New York Court of Appeals Order

The New York Court of Appeals dismissed Petitioner's appeal holding "no substantial constitutional question is directly involved." App.1a. The New York Court of Appeals denied leave for Petitioner to appeal the decision of the Supreme Court, Appellate Division, Third Department, New York. App.1a.

REASONS FOR GRANTING THE PETITION

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

The questions presented in this Petition are of the utmost importance. As this Court has recognized, independent and third-party presidential candidates play an important role in the political development of this nation. *Anderson*, 460 U.S. at 794. As this Court has also recognized, with respect to the conduct of the election for President and Vice President, States have a reduced interest in imposing their state and local ballot access rules to prevent them from securing access to the general election ballot. *Id.* at 795.

Contrary to this Court's clear line of cases, state courts in 2024 ignored the limits placed on the States

with respect to the regulation of presidential elections. New York imposed its own state ballot access rules without regard to this Court's decisions or the impact of their adjudication on the conduct of a national election.

In 2024, for the first time in American history, New York struck the name of a presidential candidate from the general election ballot because, in its estimation, the address recorded by Petitioner on New York ballot access petitions failed to comply with the definition of residency under New York law. New York courts refused to conduct any substantive analysis as to whether application of state ballot access rules designed to make sure state and local candidates resided within their election district could be applied to candidates for the Office of President and Vice President consistent with the requirements of the federal Constitution and this Court's prior decisions. New York state courts failed to conduct any substantive analysis as to whether application of New York's residency rules under Election Law §§ 6-140(1)(a) and 1-104 (22), acting in tandem, as applied to presidential and vice-presidential candidates violated the Qualifications Clause and impermissibly interfered with the operation of the Twelfth Amendment to the United States Constitution.

State expansion of the patchwork of ballot access restrictions beyond those permitted under the Elections Clause fosters ballot access chaos and promote endless litigation which will continue to severely impair the ability of independent and third-party presidential candidates to join the national debate in 2028 and beyond. The threat posed to the only national election

conducted within this nation strongly militates in favor of this Court to grant this Petition.

II. N.Y. ELEC. LAW §§ 6-140(1)(A), 1-104(22), AS APPLIED TO PRESIDENTIAL AND VICE-PRESIDENTIAL CANDIDATES, VIOLATE THE QUALIFICATIONS CLAUSE & EXCEEDS STATE AUTHORITY UNDER THE ELECTIONS CLAUSE.

A. Enforcement of N.Y. Elec. Law §§ 6-140 (1)(a) and 1-104(22) Against Presidential and Vice-Presidential Candidates Violates the Qualifications Clause.

State imposed ballot access restrictions employed to deny ballot access to otherwise qualified presidential and vice-presidential candidates implicate a violation of the Qualifications Clause unless the requirement falls within the procedural powers delegated to the States under the Elections Clause. Unlike the Electors Clause, which delegates broad authority to the States to select presidential electors, the Elections Clause delegates a more constrained grant of authority to the States limited to the time, place and manner of conducting federal elections and does not expand state authority to impinge on the qualification of national candidates for the Offices of President and Vice President. This Court's precedent establishes that the authority granted to the States under the Elections Clause may not be used to expand the list of presidential eligibility requirements enumerated under the Qualifications Clause.

The Qualifications Clause of the United States Constitution sets forth the exclusive eligibility requirements for the Office of President. The Elections Clause

provides the exclusive grant of State authority over the conduct of federal elections.

Independent and minor political party candidates for the Office of President and Vice President must collect and timely file 45,000 valid signatures from registered voters of the state of New York on nominating petitions promulgated by the New York State Board of Elections within a short 90-day time window to secure access to New York's general election ballot. N.Y. Election Law §§ 6-140(1) and 1-104(22), acting in tandem, require candidates to record their primary residential address on the nominating petition which is then publicly circulated to collect the required number of signatures to secure ballot access for the general election.

In 2024, New York state courts applied N.Y. Election Law §§ 6-140(1) and 1-104(22) to exclude the name of Petitioner from appearing on New York's 2024 presidential general election ballot for his alleged failure to publish a correct residential address on his ballot access petition. For the first time in American history, a previous seemingly innocuous ministerial requirement to provide an address was used to exclude an otherwise qualified presidential candidate from the general election ballot. By elevating compliance with §§ 6-140(1) and 1-104(22) as a condition precedent to appearing on New York's general election ballot, New York state courts have elevated §§ 6-140(1) and 1-104(22) as an additional qualification for the Office of President of the United States in clear violation of this Court's precedents.

This Court has previously analyzed application of the Constitution's qualifications clauses in the seminal case *U.S. Term Limits, Inc. v. Thornton*, 514 U.S. 779,

115 S.Ct. 1842, 131 L.Ed.2d 881 (1995). In *Term Limits*, this Court held the Framers intended the qualifications clauses to "fix as exclusive the qualifications in the Constitution," "thereby divest[ing] States of any power to add qualifications." *Id.* at 801, 806, 115 S.Ct. 1842. This Court reasoned that "the text and structure of the Constitution, the relevant historical materials, and, most importantly, the 'basic principles of our democratic system' all demonstrate that the qualifications clauses were intended to preclude the States from exercising any such power. . . . ;" *Id.* at 806, 115 S.Ct. 1842.

B. Application of N.Y. Elec. Law §§ 6-140(1)(a) and 1-104 (22) to Presidential and Vice-Presidential Candidates Exceeds New York's Elections Clause Authority.

In *Term Limits*, this Court emphatically rejected any notion that a state can cloak an otherwise impermissible qualification as a ballot access issue subject to regulation by the States under the Elections Clause,[6] stating that the States cannot indirectly create new eligibility requirements by "dressing eligibility to stand for [public office] in ballot access clothing." *Id.* at 831, 115 S.Ct. 1842. In *Term Limits*, this Court confronted an amendment to the Arkansas state constitution which prohibited any candidate having served more than three terms in the United States House of Representatives, or two terms in the United States Senate, from appearing on the Arkansas general election ballot for federal congressional office. In *Term Limits*, this Court held

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[6] The Elections Clause delegates to the States the limited authority to set the "times, places and manner" of holding elections. U.S. CONST. art. I, § 4, cl. 1.

Arkansas' attempt to alter federal eligibility unconstitutional. In delineating the line between a state's permissible power to craft procedural requirements designed to foster ballot access under the Elections Clause and its impermissible power to create new substantive qualifications for federal office in violation of the qualifications clauses, this Court in *Term Limits* noted that a statute certainly crosses the line if it "has the likely effect of handicapping a class of candidates and has the sole purpose of creating additional qualifications indirectly." *Id.* at 836. 115 S.Ct. 1842.

In *Term Limits*, this Court held the Elections Clause implicitly prohibits states from enacting provisions designed to hinder certain candidates. *Term Limits*, 514 U.S. at 833-34, 115 S.Ct. 1842 ("[T]he Framers understood the Elections Clause as a grant of authority to issue procedural regulations, and not as a source of power to dictate electoral outcomes, to favor or disfavor a class of candidates, or to evade important constitutional restraints."). This Court has made clear that the procedural grant of power to the States extended by the Elections Clause instead "encompasses matters like 'notices, registration, supervision of voting protection of voters, prevention of fraud and corrupt practices, counting of votes, duties of inspectors and canvassers and making and publication of election returns." *Cook v. Gralike*, 531 U.S. 510, 523-24, 121 S.Ct. 1029, 149 L.Ed.2d 44 (2001) (citing *Smiley v. Holm*, 285 U.S. 355, 366, 52 S.Ct. 397, 76 L.Ed. 795 (1932).

Federal courts in the Ninth Circuit have regularly employed this Court's analysis in *Term Limits* to strike down impermissible additional qualifications masquerading as ballot access requirements. In

Schaefer v. Townsend, 215 F.3d 1031 (9th Cir. 2000), the Ninth Circuit Court of Appeals further explained that a statute creates a new, unconstitutional qualification for federal office if it either "create[s] an absolute bar to candidates who would otherwise qualify," or "ha[s] the likely effect of handicapping an otherwise qualified class of candidates." 215 F.3d at 1035. In *Schaefer*, the statute at issue required California candidates for federal office to be registered voters, and therefore, residents of California at the start of their campaign. In *Schaefer*, California argued the requirement to be a resident of California was a mere ballot access restriction permissible under the authority delegated to California under the Elections Clause. California argued it had the authority to adopt any "generally-applicable and evenhanded restriction that protects the integrity and reliability of the electoral process itself." *Id.* at 1037 (quoting *Anderson v. Celebrezze*, 460 U.S. 780, 788, 103 S.Ct. 1564, 75 L.Ed.2d 547 (1983)). The Ninth Circuit rejected California's Elections Clause defense holding that regulations passing constitutional muster under the Elections Clause regulated election procedures only and "did not even arguably impose any substantive qualification rendering a class of potential candidates ineligible for a ballot position." *Id.* at 1038 (citing *Term Limits*, 514 U.S. at 835, 115 S.Ct. 1842).

Applying this Court's decision in *Term Limits*, in *Griffin v. Padilla*, 408 F.Supp.3d 1169 (E.D. Ca. 2019) the United States District Court for the Eastern District of California granted preliminary injunctive relief against enforcement of the "Presidential Tax and Transparency Act" a 2019 California statute requiring, among other things, presidential candidates seeking access to

California's primary election ballot to publish their federal income tax returns for the previous 5 years as a condition precedent to appearing on California's presidential primary ballot. The decision in *Griffin*, if properly decided, is instructive as to the unconstitutionality of state laws requiring presidential and vice-presidential candidates to publish their residential address on ballot access petitions. If it is unconstitutional under the Qualifications Clause to require presidential candidates to publish their federal income tax returns for public review as a condition precedent to appear on a state primary ballot, then it must also be unconstitutional to require presidential and vice-presidential candidates to publish their actual residential address as a condition precedent to appear on a state general election ballot.

The *Griffin* court noted that as in *Schaefer* the requirement to publish federal tax returns while not presenting an absolute bar for a presidential candidate to appear on the California primary election ballot it nevertheless "has the likely effect of 'handicapping' non-disclosing candidates" from securing ballot access of the type found impermissible under this Court's decision in *Term Limits*. *Griffin*, 408 F.Supp.3d at 1179. As applied to the instant controversy, the requirement to publicly disclose a residential address handicaps any candidate who either refuses or fails to make the required disclosure as a condition to appearing on a state's general election ballot. The *Griffin* court further explained that:

> The Act has nothing to do with the extent of support a candidate may enjoy and plays no role in ensuring the procedural integrity of the election. To the contrary, it prevents a

> number of candidates from appearing on the primary ballot absent disclosure of their tax returns, and in so doing impairs their ability to win California's Republican presidential primary election, to obtain the support of California's delegates to the Republican National Convention, and to secure the party's nomination for President. This complete denial of ballot access constitutes a severe handicap because "there is no denying that the ballot restrictions will make it significantly more difficult for the barred candidate to win the election."

Id. citing *Term Limits*, 514 U.S. at 831, 115 S.Ct. 1842. Citing this Court's decision in *Term Limits*, the *Griffin* court rejected California's argument that the Presidential Tax and Transparency Act was a "time, places and manner" requirement permissible under the Elections Clause which "implicitly prohibits states from enacting provisions to benefit or to hinder certain candidates." *Griffin*, 408 F.Supp.3d at 1179; citing *Term Limits*, 514 U.S. at 833-34, 115 S.Ct. 1842.

State laws applied to presidential and vice-presidential candidates requiring them to publish their residential addresses on ballot access petitions fail to constitute a permissible exercise of a state's power under the Elections Clause as such rules play no role in demonstrating the extent of support a candidate enjoys within a state sufficient to require ballot access or in ensuring the procedural integrity the election. As the court explained in *Griffin*, procedural rules pertain to the actual administration of an election such as the reduction of ballot clutter by excluding candidates without sufficient electoral support or a rule designed

to protect the integrity of the election to ensure an "orderly, fair and honest election[]" *Griffin*, 408 F.Supp.3d at 1179 (citing *Term Limits*, 514 U.S. at 834, 115 S.Ct. 1842).

As applied to presidential and vice-presidential candidates, the requirement to publish a residential address on a ballot access petition fails to advance any legitimate purpose under the Elections Clause. Unlike state and local election districts, the entire country is the election district for the Offices of President and Vice President so that where a presidential and vice-presidential candidate resides is not relevant to the conduct or integrity of the election. In contrast with the broad power delegated to the States under the Electors Cause under which the States may properly require presidential electors to provide their address to establish they are residents of the state they seek to represent, the Elections Clause provides no such broad grant of authority to the States to require presidential and vice-presidential candidates to publish their private residential address. Several States already comprehend this distinction. Massachusetts, Arizona, South Dakota Minnesota and Nebraska do not require the presidential or vice-presidential candidate to record their residential address on their ballot access petitions – but do require presidential electors to publish their residential address on their ballot access petitions to demonstrate they are residents (and sometimes registered voters) of the state they seek to represent in the Electoral College. App.58a-61a; 73a-82a; 96a-99a; Neb. Rev. Stat. § 32-620.

Accordingly, there is no nexus between election integrity and the need to publish the residential address of a presidential and vice-presidential candidate as may exist for state and local candidates contesting

geographically confined election districts where the residential address of the candidate implicates a legitimate qualification data point *(i.e.*, that the candidate lives within the election district) which does not exist at the presidential and vice-presidential level. This analysis is wholly consistent under this Court's express direction in *Anderson v. Celebrezze*, 460 U.S. 780 (1983), that:

> [I]n the context of a Presidential election, state-imposed restrictions implicate a uniquely important national interest. For the President and the Vice President of the United States are the only elected officials who represent all the voters in the Nation. Moreover, the impact of the votes cast in each State is affected by the votes cast for the various candidates in other States. Thus, in a Presidential election a State's enforcement of more stringent ballot access requirements . . . has an impact beyond its own borders. Similarly, the State has a less important interest in regulating Presidential elections than statewide or local elections, because the outcome of the former will be largely determined by voters beyond the State's boundaries.

Anderson, 460 U.S. at 795. "[T]he pervasive national interest in the selection of candidates for national office . . . is greater than any interest of an individual State." *Cousins v. Wigoda*, 419 U.S. 477, 490 (1975).

The *Griffin* Court's analysis is further supported by this Court's analysis in *Cook v. Gralicke*, 531 U.S. 510, 121 S.Ct. 1029, 149 L.Ed.2d 44 (2001). In *Cook*, this Court held a Missouri law (passed by an initiative vote) unconstitutional as it required Missouri to publish

on Missouri's ballot whether federal candidates supported term limits for federal legislative candidates. *Cook*, 531 U.S. at 514. This Court rejected Missouri's defense that the requirement simply "regulated the manner in which elections are held by disclosing information about congressional candidates" as a permissible exercise of power delegated to Missouri under the Elections Clause. *Cook*, 531 U.S. at 523, 121 S.Ct. 1029. This Court rejected Missouri's argument. This Court held the law bore "no relation to the 'manner' of elections as we understand it." *Id*. *Cook* reinforced this Court's understanding of Elections Clause delegation of authority "to prescribe the procedural mechanisms for federal elections" which does not include the authority to "dictate electoral outcomes, to favor or disfavor a class of candidates, or to evade important constitutional constraints." *Id*. In the instant case, failure of a presidential and vice-presidential candidate to publish their residential address on a public ballot access petition now triggers an absolute bar from the ballot. The *Griffin* court cited to *Cook* in support of its analysis that California's Presidential Tax and Transparency Act was unconstitutional as it imposed "an additional substantive qualification beyond the exclusive confines of the Qualifications Clause and is likely invalid on that basis as well." *Griffin*, 408 F.Supp.3d at 1180.

In *Cook*, the law was held unconstitutional where federal candidates were subjected only to a notation on the ballot as to whether they supported term limits for federal candidates. This year's novation of banning presidential and vice-presidential candidates from the ballot based on their refusal or failure to publish their private residential address is more severe than the

sanction imposed by the Missouri law reviewed in *Cook* as it does not just handicap a class of candidates but, rather, imposes an absolute electoral bar for those candidates who refuse or fail to publish their private residential address on a state's public ballot access petition. Accordingly, the requirement to publish a private residential address on public ballot access petitions as a condition precedent to securing ballot access as applied to presidential and vice-presidential candidates imposes a requirement which is not a proper exercise of authority delegated to the States under the Elections Clause and implicates an additional qualification in violation of Qualifications Clause.

C. New York's Requirement, As Applied to Presidential and Vice-Presidential Candidates, to Record Their Private Residential Address on Ballot Access Petitions as a Condition Precedent to Appear on the General Election Ballot Creates an Impermissible Patchwork of Ballot Access Restrictions on Our National Election.

Consistent with this Court's analysis in *Anderson*, just this year, this Court explained in *Trump v. Anderson*, 601 U.S. 100 (2024), that the States may not create a "patchwork" of ballot access restrictions for presidential and vice-presidential candidates. In *Trump*, this Court explained that allowing the States to strike presidential candidates off their state general election ballots based on their individual enforcement of the Fourteenth Amendment's bar against the election of those engaged in insurrection against the United States would impair the conduct of the national election. This Court explained:

> The result could well be that a single candidate would be declared ineligible in some States, but not in others, based on the same conduct (and perhaps even the same factual record). The "patchwork" that would likely result from state enforcement would "sever the direct link that the Framers found so critical between the National Government and the people of the United States as a whole. *U.S. Term Limits*, 514 U.S. at 822. But in a Presidential election "the impact of the votes cast in each State is affected by the votes cast" – or in this case, the votes not allowed to be cast

> – "for the various candidates in other States." *Anderson*, 460 U.S. at 795. An evolving electoral map could dramatically change the behavior of voters, parties and States across the country, in different ways and at different times. The disruption would be all the more acute – an could nullify the votes of millions and change the election results.

Trump, 601 U.S. 100 (2024), slip op at 12. Allowing some States to require presidential and vice-presidential candidates to publish their residential address while other states to require presidential and vice-presidential candidates to record their voter registration address, such as Maine and New Hampshire, force independent and minor political party presidential candidates to file inconsistent ballot access filings which provides fuel for expensive challenges to their ballot access petitions. App.68a-72a; 91a-92a; 108a-109a.

A patchwork of state ballot access restrictions creates a unique threat to the ability of independent and minor political party presidential candidates to secure general election ballot access. Minor and independent presidential candidates, unlike major political party candidates for the same office, are constantly threatened with organized efforts to challenge their ballot access petitions in state courts to keep them off the general election ballot. App.108a-109a. Major party presidential candidates secure automatic ballot access without the need to circulate ballot access petitions and are, therefore, not exposed to the threat of ballot access litigation as are independent and minor political party presidential candidates.

The requirement to publish an address on ballot access petitions perfectly illustrates the patchwork

problem addressed by this Court in *Trump*. Maine and New Hampshire require presidential and vice-presidential candidates to record the address at which the presidential and vice-presidential candidate is registered to vote – an address which New York declared in this action was not Petitioner's primary residence and the basis to deny Petitioner access to New York's 2024 presidential ballot. App.42a-43a. If a single state requires presidential and vice-presidential candidates to record an address on their ballot access petitions which other states do not permit to be recorded, such a patchwork exposes every state ballot access petition filed by an independent and minor political party presidential campaign to expensive and potentially crippling legal challenges in every state where a residential address must be recorded on a ballot access petition. A challenger aligned with the Republican or Democratic party can always point to a different address recorded on another state's ballot access petition as the basis to challenge the validity of the address recorded in the state the challenger seeks to deny ballot access for the minor political party or independent presidential candidate because the varied requirements will always permit a challenger in any state to point to a different state where the challenged candidate recorded a different address on their ballot access petition. It is a ballot access threat the Republican and Democratic presidential and vice-presidential nominees are not exposed to as they secure automatic ballot access by virtue of past electoral success – a status not subject to any challenge.

There is no need for any state to require presidential and vice-presidential candidates to publish their private residential address on ballot access petitions

to conduct an orderly and fair election. Oregon, Arizona, Nevada, Idaho, Alabama, Arkansas, Montana, Massachusetts, South Dakota, Utah and Nebraska (*See*, Neb. Rev. Stat. § 32-620) conduct orderly and fair presidential elections without requiring either the presidential or vice-presidential candidate to publish their domicile or residential address to the public on ballot access petitions. App.56a-67a; 73a-79a; 83a-90a; 93a-102a. Accordingly, the Elections Clause does not save the requirement to publish a residential address on a ballot access petition as unconstitutional under the Qualifications Clause.

III. N.Y. ELEC. LAW §§ 6-140(1)(A), 1-104(22), AS APPLIED TO PRESIDENTIAL AND VICE-PRESIDENTIAL CANDIDATES, IMPAIRS APPLICATION OF THE TWELFTH AMENDMENT TO THE UNITED STATES CONSTITUTION.

The Twelfth Amendment's prohibition against members of the electoral college from casting both of their ballots for candidates who are residents of their state requires presidential candidates to ascertain their state of residence and the state of residence for their prospective vice-presidential running mate to make sure their vice-presidential running mate is not a resident of their state so that every state electoral college delegation may cast both of their ballots for the entire winning ticket. Independent presidential candidates are required to engage in this Twelfth Amendment analysis early in their campaign as 48 states[7]

[7] Oklahoma and Louisiana are the only two states who provide presidential and vice-presidential candidates an avenue to secure access to the general election ballot without the requirement to collect signatures on ballot access petitions.

require them to collect several hundred thousand signatures on petitions to secure access to the general election ballot, many of which (but not all)[8] require the presidential candidate to publicly name their residential address as a condition precedent to the circulation of the ballot access petition in their state. A significant number of states also require independent presidential candidates to name their vice-presidential candidate before they may circulate ballot access petitions in their state. *See, e.g.*, Nevada Petition at App.88a-90a. Accordingly, independent presidential candidates must be permitted to rely on the inhabitancy test established under the Twelfth Amendment free from more restrictive residency requirements imposed in individual states such as New York.

In *Jones v. Bush*, 122 F.Supp.2d 713 (2000), the United States District Court for the Northern District of Texas was confronted with a challenge under the Twelfth Amendment to the right of the members of the Texas Electoral College to cast their ballots in the 2000 presidential election for both Mr. Bush, a resident of Texas, and his running mate Dick Cheney, who plaintiffs alleged was also a resident of the State of Texas. *Jones*, 122 F.Supp2d at 715. Citing this Court's decisions in *Lake County v. Rollins*, 130 U.S. 662, 670, 9 S.Ct. 651, 32 L.Ed. 1060 (1889) and *Solorio v. United States*, 483 U.S. 435, 454 n.3, 107 S.Ct. 2924, 97 L.Ed. 364 (1987), the *Jones* Court determined the plain meaning of "inhabitant" should be enforced. The *Jones* Court accepted this Court's understanding

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[8] New Hampshire, Maine, Montana, Wyoming and Hawaii do not require presidential and vice-presidential candidates to publish their private residential address on petitions to secure access to the general election ballot.

of "inhabitant" as the same as "domicile." *Jones*, 122 F.Supp.2d at 719. Under this understanding of the term "inhabitant" the *Jones* Court applied the test that an inhabitant of a state under the Twelfth Amendment requires: (1) a physical presence within the state; and, (2) an intent to that it be his place of habitation. *Id*. "The test for ascertaining inhabitance is thus a dual inquiry concerning physical presence in fact and intent to remain in or to return to the state after an absence." *Id*. citing, *State of Texas v. State of Florida*, 306 U.S. 398, 424, 59 S.Ct. 563, 83 L.Ed. 817 (1939) (addressing analogous requirements of domicile); *Coury v. Prot*, 85 F.3d 244, 250 (5th Cir. 1996) (holding that "change in domicile typically requires only the concurrence of: (1) physical presence at the new location and (2) an intention to remain there indefinitely . . . or, as some courts articulate it, the absence of any intention to go elsewhere).

In *Coury*, the 5th Circuit explained:

> In determining a litigant's domicile, the court must address a variety of factors. No single factor is determinative. The court should look to all evidence shedding light on the litigant's intention to establish domicile. The factors may include the places where the litigant exercises civil and political rights, pays taxes, owns real and personal property, has driver's and other licenses, maintains bank accounts, belongs to clubs and churches, has places of business and employment, and maintains a home for his family.

Coury, 85 F.3d. at 251. As applied to Cheney, the *Jones* Court found Mr. Cheney had re-established his inhabitancy of Wyoming because he had recently declared

his intent to return to Wyoming, traveled to Wyoming and registered to vote there, requested withdrawal of his Texas voter registration, voted in Wyoming in two elections, obtained a Wyoming driver's license and sold his Texas home and had one of his four vehicles registered and located in the State of Wyoming.

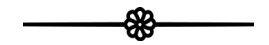
While the instant challenge does not rise or fall on whether Petitioner is correct that he is an inhabitant of the State of New York under the Twelfth Amendment, many of Petitioner's factors militate in favor of New York inhabitancy, equal to or greater than Mr. Cheney's ties to Wyoming. Petitioner has been a registered voter and has voted in New York his entire adult life, his driver's, recreational and professional licenses are in New York, Petitioner pays the majority of his state income taxes to New York, Petitioner is employed in New York and has a physical presence in New York to which he intends to return to with his family after his wife concludes her acting career in California. The fact that Petitioner's New York residence is far more modest than his current property in California and that he currently spends more time in California is not dispositive under the Twelfth Amendment test. This is true because the inhabitancy test under the Twelfth Amendment incorporates the recognition that an inhabitant of a state may not currently be a current resident of that state so long as the intent to return is in place.

The salient issue, however, is that the New York residency standard under N.Y. Election Law §§ 6-140 (1)(a) and 1-104 (22) is more stringent – certainly in light of the adjudication of Petitioner's residency in this action, than the analysis used to establish a presidential and vice-presidential state of inhabitance under the Twelfth Amendment. New York requires the physical

presence to be a primary residence. New York ignores the many factors supporting inhabitancy under the Twelfth Amendment – voter registration, exercise of political rights, driver's license, professional and recreational licenses, vehicle registration, vehicle location, payment of taxes to the forum state. The more narrow and maniacal focus by New York on the amount of time spent at a residence as well as the type of residence (home ownership vs. rental room) evident in the application of §§ 6-140(1)(a) and 1-104(22) by New York courts essentially ignores the entire intent to return to New York from a temporary or prolonged absence as part of any domicile analysis. New York applies an unforgiving virtual mathematical formula in the application of §§ 6-140(1)(a) and 1-104(22) negating the broader spectrum of facts used by federal courts to establish inhabitancy under the Twelfth Amendment. Accordingly, New York's application of §§ 6-140(1)(a) and 1-104(22) is more stringent than the test for inhabitance under the Twelfth Amendment.

Presidential candidates, especially independent and minor political party candidates, must be free to rely on Twelfth Amendment analysis to determine the state they inhabit and be free from state ballot access interference forcing them to apply local residency rules to create inconsistent ballot access filings which threaten to trigger expensive ballot access challenges and which further acts to deplete independent and minor political party presidential campaign funds and severely impair their ability to complete in the national election. The need for uniformity and not forcing independent and minor political party presidential campaigns to file inconsistent ballot access documents providing grist for petition challenges at the front end of the campaign

or, a challenge to their electors casting ballots for a successful ticket at the back end of the campaign based on ballot access documents listing the presidential and vice-presidential candidate from the same state despite a different outcome under the Twelfth Amendment is why the States cannot be permitted to interfere with the operation of the Twelfth Amendment.



CONCLUSION

The petition for writ of certiorari should be granted.

Respectfully submitted,

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December 9, 2024