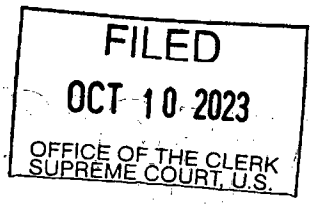
23-5825

No. _____

In the Supreme Court of the United States



ROBERT ROBINSON

PETITIONER

v.

SAVVY VENTURES, LLC.

GREGORY PROPERTY MANAGEMENT

ON PETITION FOR A WRIT OF CERTIORARI

To The United States Court of Appeals for the Fifth Circuit

Petition for Writ of Certiorari

Robert Robinson, Petitioner
16897 Pine Lane
Flint, Texas 75762
(903) 245-0908
Cilantro519@yahoo.com

Questions Presented

No. 1: Does the third section of Amendment XIV guarantee citizens of the United States freedom from government officials who rebel against the Constitution of the United States?

No. 2: Did *Bostock v. Clayton County Georgia*, 140 S. Ct. 1731 -Supreme Court 2020 impliedly overrule *Georgia v. Rachel*, 384 US 780, 792 - Supreme Court 1966?

Although the Court of Appeals was asked to answer these identical questions, a panel of that court ignored the first and provided no meaningful evaluation of the second. The panel's opinion appears to be yet another impediment to this Court's goal of "the absolute equality of all citizens" under the law, *Students Fair Adm. v. President Fellows Harvard*, 143 S. Ct. 2141, 2159 - Supreme Court 2023. The Court's goal will undoubtedly receive the same sort of subtle yet concerted resistance the Fourteenth Amendment has always received. *Students Fair Adm.* and *Bostock* are logical steps toward ensuring a republican form of government when no other form of government is "worth maintaining". This petition seeks to unleash the tools the Fourteenth Amendment framers gave us to insure its survival.

List of Parties Related Cases

All parties appear in the caption of the case on the cover page.

Related Cases

1) United States Court of Appeals for the Fifth Circuit No. 22-40699 SAVVY VENTURES, L.L.C., c/o Gregory Real Estate) Inc.) doing business as Gregory Property Management v. ROBERT ROBINSON, AND ALL OCCUPANTS.

2) United States District Court for the Eastern District of Texas - Tyler No. 6:22-cv-00242 Savvy Ventures, LLC, Plaintiff, v. Robert Robinson, Defendant

3) PRECINCT TWO Justice Court of Smith County, Texas Savvy Ventures, LLC c/o NO. E22-011JP2 Gregory Real Estate, Inc. d/b/a Gregory Property Management . v. Robert Robinson, et al

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The opinion of the United States Court of Appeals for the Fifth Circuit (No. 22-40699 SAVVY VENTURES, L.L.C., *c/o Gregory Real Estate) Inc.) doing business as Gregory Property Management v.* ROBERT ROBINSON, AND ALL OCCUPANTS appears at **Appendix A** to the petition and is unpublished.

The opinion of the United States District Court for the Eastern District of Texas -Tyler (No. 6:22-cv-00242 Savvy Ventures, LLC, Plaintiff, v. Robert Robinson, Defendant. appears at **Appendix B** to the petition and is unpublished.

REPORT AND RECOMMENDATION OF UNITED STATES MAGISTRATE JUDGE of the United States District Court for the Eastern District of Texas -Tyler (No. 6:22-cv-00242 Savvy Ventures, LLC, Plaintiff, v. Robert Robinson, Defendant. appears at **Appendix C** to the petition.

Jurisdiction

The date on which the United States Court of Appeals decided Petitioner's case was July 12, 2023. No petition for rehearing was timely filed in Petitioner's case The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

Constitutional and Statutory Provisions Involved

US Const. Amend. XIV, Section Three:

> No person shall be a Senator or Representative in Congress, or elector of President and Vice-President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof.

28 U.S. Code § 1443(1):

> Any of the following civil actions or criminal prosecutions, commenced in a State court may be removed by the defendant to the district court of the United States for the district and division embracing the place wherein it is pending: (1) Against any person who is denied or cannot enforce in the courts of such State a right under any law providing for the equal civil rights of citizens of the United States, or of all persons within the jurisdiction thereof

STATEMENT OF THE CASE

Few constitutional rights are as firmly established as the right to notice and an opportunity to be heard at a meaningful time and in a meaningful manner.

> "For more than a century the central meaning of procedural due process has been clear: `Parties whose rights are to be affected are entitled to be heard; and in order that they may enjoy that right they must first be notified'" (quoting *Baldwin* v. *Hale,* 1 Wall. 223, 233 (1864) *Wilkinson v. Austin*, 545 US 209 - Supreme Court 2005

Record citations herein are to the case record in USDC No. 6:22-cv-242 Savvy Ventures v Robinson.

This case arose out of a 2018 dispute over a dangerous condition presented by a large pine tree which had been struck by lightning and was leaning over one of the bedrooms in the rental house where Petitioner lived. After Petitioner complained to the property managers, Respondents filed an eviction suit when the rent was one day late. Respondents hired a tree expert to testify, but their case collapsed when the tree expert informed them the tree was in fact a dangerous condition. The parties agreed to an out of court settlement. On or about September 24, 2018 Petitioner and Respondents entered into an

agreement to settle all future disputes via mediation and arbitration. (Doc. 12 at 6).

A new dispute arose when Petitioner was told by a long-term resident of the same neighborhood that Petitioner's leased residence had been used as a meth lab at some point prior to Petitioner moving in. Due to the invisible meth contamination which remained in the house, Petitioner suffered 4 heart attacks and nearly $1 million in medical bills. Respondents chose NOT to disclose this additional dangerous condition (doc. 1-6 at 4).

On December 31, 2021 Petitioner notified Respondents he was invoking the arbitration clause (doc. 1-6 at 4). Fourteen days later, Respondents filed an eviction suit in violation of the agreement (doc. 1-3 at 1).

After notice and hearing the court ordered the parties to comply with the terms of the agreement and stayed the proceedings (doc. 1-6 at 2-3). The arbitration clause states:

> *In the event of any dispute, claim, question, or disagreement arising from or relating to this Agreement, in any way, the performance or breach thereof, or any future dispute concerning*

injury or damage, the Parties hereto shall use their best efforts to settle the dispute, claim, question, or disagreement. To this effect, they shall consult and negotiate with each other in good faith and, recognizing their mutual interests, attempt to reach a just and equitable solution satisfactory to both parties. If a resolution cannot be reached through negotiation after 30 days from first written notice of any dispute, and prior to the filing of any action, complaint, or arbitration claim, the Parties agree to participate in a full-day mediation in Tyler, Texas within 30 days of a request by any party by a mediator agreeable to all Parties, and subject to the rules and guidelines imposed by the mediator.

Respondents did NOT comply with the court order and sought to skip mediation altogether (doc. 1-8 at 6 -asking for arbitration rather than mediation). Then on March 15, 2022 Plaintiffs' counsel communicated with the judge without any kind of prior notice. Respondents' attorney persuaded the judge to sign an order appointing an **arbitrator solely of Respondents' choosing**. That order included among other falsehoods:

The Court finds that informal resolution efforts have been unsuccessful and that mediation is likely to be unsuccessful, and the Court also finds that the previously-agreed method of appointing the arbitrator and the procedures for arbitration, including preliminary conditions for same, have failed. Defendant is raising issues that appear to have been released, and Defendant seemingly wants to try to convince the Plaintiff to allow Defendant to purchase the property for a reduced price by raising older issues that have likely been released in lieu of addressing the substance of this dispute by raising issues that have been released by prior agreement (and previously dismissed, with prejudice in Cause No.

68318- B, County Court at Law No. 3, Smith County, Texas). (Doc. 1-9 at 3- 4).

The unlawful order was signed at the same time the motion was filed. Both the motion and the order were signed at 2:17 PM on March 15, 2022 (doc. 1-9) and Defendant was first notified of the motion and the already-signed order at 2:42 PM on March 15th (doc. 5-1 at 1).

Defendant filed motions in the originating court on March 22, 2022 to amend the unlawful order (doc. 1-7) citing the violations of ethical rules and also filed a motion to disqualify the offending attorney (doc. 1-8). The judge of that court refused to hear either motion (doc. 1-6 at 1).

Respondents' arbitrator refused to comply with the terms of the arbitration agreement, refused to grant a continuance when Respondents attorney submitted evasive and incomplete answers to discovery requests, and the arbitration award was tainted by Respondents' attorney's misconduct in persuading the judge to appoint the arbitrator in an ex parte proceeding (doc.12 Motion to Vacate Arbitration Award).

Petitioner removed the case to the United States District Court for the Eastern District of Texas -Tyler on June 28, 2022 pursuant to 28 U.S. Code § 1443(1), 9 US Code § 10 (doc. 1). The grounds for removal were that Defendant was denied or could not enforce his equal civil rights in the state court and that the Fourteenth Amendment is a law providing for equal civil rights as well as 42 USC § 1983.

The district court remanded the case on September 19, 2022 and Petitioner timely appealed the remand order to the United States Court of Appeals for the Fifth Circuit. A panel of the Fifth Circuit affirmed the remand order on July 12, 2023.

REASONS FOR GRANTING THE WRIT

Issue No. 1

Does the third section of Amendment XIV guarantee citizens of the United States freedom from government officials who rebel against the Constitution of the United States?

This case is one of many wherein this Court will be asked to determine the sweep and force of U.S. Const. Amendment XIV, Section Three. For purposes of *this* case, the relevant text of Section Three states:

> *No person shall hold any office, civil or military, under any State, who, having previously taken an oath,*[1] *as judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same.*

Also known as the "disqualification clause", Section Three's reach extends to virtually every official in the executive, legislative, and judicial branches of state and federal government. While this petition

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[1] IN THE NAME AND BY THE AUTHORITY OF THE STATE OF TEXAS,
I, _____, do solemnly swear (or affirm), that I will faithfully execute the duties of the office of _____of the State of Texas, and will to the best of my ability preserve, protect, and defend the Constitution and laws of the United States and of this State, so help me God.

-Source: Texas Secretary of State
Form 2204 - Oath of Office (state.tx.us)

does **not** seek to disqualify Donald Trump, events surrounding efforts to overturn the result of the presidential election of 2020 have sparked renewed scholarly, judicial, and political interest in Section Three's ramifications in the twenty-first century.

And while the instant case was pending, two law professors active in the Federalist Society, — William Baude of the University of Chicago and Michael Stokes Paulsen of the University of St. Thomas — studied the question for more than a year and detailed their findings in *The Sweep and Force of Section Three.*[2] Baude & Paulsen therein state:

> *Section Three's language is language of automatic legal effect: "No person shall be" directly enacts the officeholding bar it describes where its rule is satisfied. It lays down a rule by saying what shall be. It does not grant a power to Congress (or any other body) to enact or effectuate a rule of disqualification. It enacts the rule itself. Section Three directly adopts a constitutional rule of disqualification from office.* Id. at 17-18. [3]

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[2] 172 U. PA. L. REV. (forthcoming 2024) William Baude & Michael Stokes Paulsen

[3] Section Three contains the same mandatory language ("No person shall . . .") as Section One ("No state shall . . ."), and there is no doubt that Section One is self executing. Second, nothing indicates that Congress saw Section Three as anything other than self-executing when the Fourteenth Amendment was drafted. AMNESTY AND SECTION THREE OF THE FOURTEENTH AMENDMENT Gerard N. Magliocca*, 106 CONSTITUTIONAL COMMENTARY [Vol. 36:87

Citizens for Responsibility and Ethics in Washington (CREW) and Free Speech For People are political watchdog groups who have announced plans to file suits around the country seeking to disqualify former President Trump by virtue of Section Three. As of this writing, Free Speech For People has filed suit in Michigan and Minnesota while CREW has filed in Colorado.[4]

On August 31, 2023 the Associated Press wrote:

> *The effort is likely to trigger a chain of lawsuits and appeals across several states that ultimately would lead to the U.S. Supreme Court, possibly in the midst of the 2024 primary season. The matter adds even more potential legal chaos to a nomination process already roiled by the front-runner facing four criminal trials.*[5]

- What constitutes insurrection or rebellion against the Constitution of the United States?

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[4] Another suit to disqualify Trump under Constitution's "insurrection" clause filed in Michigan **NICHOLAS RICCARDI Associated Press** Updated: September 29, 2023 - 1:20 PM Another suit to disqualify Trump under Constitution's "insurrection" clause filed in Michigan - WDIO.com – With you for life

[5] Liberal groups seek to use the Constitution's insurrection clause to block Trump from 2024 ballots BY NICHOLAS RICCARDI Updated 9:51 AM CDT, August 31, 2023

Liberal groups seek to use the Constitution's insurrection clause to block Trump from 2024 ballots | AP News

Before "stepping back a bit, but only a bit" in 2013, and ever since 1821, this Court categorically held that either declining the "exercise of jurisdiction which is given" or usurping "that which is not given" would be "treason to the constitution".[6] Given that treason, insurrection, and rebellion all have similar connotations in the context of a constitutional oath, rebelling against the Fourteenth Amendment, attempting to undermine that amendment's dictates, or trying to replace a lawful government which recognizes and enforces the Fourteenth Amendment -with an unlawful government acting in hostility to the Constitution of the United States, should all trigger the disqualification clause.

Insurrectionist sentiments in Texas and the rest of the South have historically been *strong*. After the 1866 congressional elections, former Confederates who arrived in Washington in order to assume federal office included "four Confederate generals, four colonels, several

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[6] In *Cohens* v. *Virginia,* 6 Wheat. 264 (1821), Chief Justice Marshall's opinion for the Court famously proclaimed: "We have no more right to decline the exercise of jurisdiction which is given, than to usurp that which is not given. The one or the other would be treason to the constitution." *Id.,* at 404.

The Court has stepped back a bit from this categorical pronouncement—but only a bit. See, e.g., *Sprint Communications, Inc.*, 571 U. S. 69,77. 2013. *Texas v. California,* 141 S. Ct. 1469, 1470 - Supreme Court 2021, Alito, J. dissenting.

Confederate congressmen and members of Confederate state legislatures, and even the vice president of the Confederacy, Alexander Stephens."[7] Had these men and other insurrectionists been permitted to hold federal office, there probably would never have been a Fourteenth Amendment or a Fifteenth Amendment.[8] With both the war *and* the southern intent to *continue* the insurrection as a backdrop, Section 3 was ratified.

In *Smith v. Allwright*,[9] the Court traced the all-white primaries in Texas from 1924-1944 including *Nixon v. Herndon*[10], which struck down a Texas statute declaring "in no event shall a Negro be eligible to participate in a Democratic Party primary election in the State of

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[7] Akhil Reed Amar, America's Constitution: A Biography 377 (2005); see also Eric L. McKitrick, Andrew Johnson and Reconstruction 176-179 (1960); Allen C. Guelzo, Reconstruction: A Concise History 25 (2018).

[8] "The old Constitution set out with a wrong idea on this subject; it was based upon an erroneous principle; it was founded upon the idea that African Slavery is wrong, and it looked forward to the ultimate extinction of that institution. But time has proved the error, and we have corrected it in the new Constitution.

We have based ours upon principle of the inequality of races, and the principle is spreading -- it is becoming appreciated and better understood; and though there are many, even in the South, who are still in the shell upon this subject, yet the day is not far distant when it will be generally understood and appreciated..."

—**Alexander H. Stephens**, speaking of the Confederate Constitution in speech to The Savannah Theatre (March 1861)

[9] 321 US 649, 658 - Supreme Court 1944.

[10] 273 US 536 - Supreme Court 1927.

Texas" ("We find it unnecessary to consider the Fifteenth Amendment, because it seems to us hard to imagine a more direct and obvious infringement of the Fourteenth." 273 U.S. at 540-541); then in *Nixon v. Condon*[11], the Court examined a resolution of the State Executive Committee of the Democratic party stating "that all white democrats who are qualified under the constitution and laws of Texas and who subscribe to the statutory pledge provided in Article 3110, Revised Civil Statutes of Texas, and none other, be allowed to participate in the primary elections to be held July 28, 1928, and August 25, 1928." In *Allwright* the Court finally ended the all-white primaries for good.

> *In 1940, approximately 200,000 voters were registered in Texas. After the Smith vs. Allwright decision, the number of Southern blacks registered to vote rose to between 700,000 and 800,000 by 1948 and then to one million by 1952. According to Donald S. Strong's, the Rise of Negro Voting in Texas", he questioned Black leaders and White informants across Texas in 1947 about violence at the polls. Strong states his interviews revealed restraints hidden in legalities. For instance in Marshall, Texas the National Guard were stationed at each voting booth to exclude Blacks from voting. The Black leaders in Marshall requested the guardsmen sign affidavits with the intent to start legal proceedings. The guardsmen withdrew from the polls. In Colorado County, voters were presented with two ballots, one for state offices and one for county offices. White voters received both ballots but Black voters*

[11] 286 US 73, 82 - Supreme Court 1932

only received the state-wide ballot. Presumably to keep the Blacks from having power within the county.[12]

Was any of this really necessary when the Constitution of the United States plainly states that those who rebel against the constitution are disqualified from holding state or federal office?

Section Three specifically applies to "a member of any State legislature". But recently the Alabama legislature defied a Supreme Court order to comply with the 1965 Voting Rights Act issued in June of 2023.

The judges, in a 217-page opinion, also expressed deep concerns about the state's ***defiance*** *of prior court rulings for them to fix key elements of the congressional map, a situation that the court described as unprecedented.*

"The law requires the creation of an additional district that affords Black Alabamians, like everyone else, a fair and reasonable opportunity to elect candidates of their choice. The 2023 Plan plainly fails to do so," wrote U.S. Circuit Judge Stanley Marcus and U.S. District Judges Anna Manasco and Terry Moorer.[13]

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[12] "The Rise of Negro Voting in Texas", Donald S. Strong, University of Alabama Content provided by NAACP Legal Defense Fund and the The American Political Science Review A peek at The Historic Impact of the African American Vote in Texas – SAAACAM

[13] Federal court rejects Alabama congressional map in racial gerrymandering case PUBLISHED TUE, SEP 5 202312:19 PM EDTUPDATED TUE, SEP 5 20232:29 PM EDT Kevin Breuninger@KEVINWILLIAMB

Defiance of a Supreme Court order by a state legislature appears to fit squarely within both the nineteenth century definitions and the current definitions of "rebellion" and "insurrection." Insurrection included "the open and active opposition of a number of persons to the execution of law in a city or state" (19th century) and "an act or instance of revolting against civil authority or an established government" (21st century). Rebellion was "[a]n open and avowed renunciation of the authority of the government to which one owes allegiance" (19th century)[14] and "opposition to one in authority or dominance" (21st century).[15]

While speaking of the 1861 secession of Texas, Chief Justice Salmon Chase wrote in *Texas v. White*:

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[14] Nineteenth century dictionaries contain definitions of "insurrection" and "rebellion". Webster defined "insurrection" as "[a] rising against civil or political authority; the open and active opposition of a number of persons to the execution of law in a city or state." Rebellion was "[a]n open and avowed renunciation of the authority of the government to which one owes allegiance."

Noah Webster, American Dictionary of the English Language 111 (1828, photoreprint 1993) ("Insurrection"); see also Dr. Webster's Complete Dictionary of the English Language 702 (Chauncy A. Goodrich and Noah Porter, eds. 1864) (similar); 1 John Boag, A Popular and Complete English Dictionary 727 (1850) (similar). 245 2 Webster (1828), supra note 244, at 51 ("Rebellion"); see also Webster's (Porter 1864), supra note 244, at 1094 (similar); 2 Boag, supra note 244, at 319 (similar).

[15] Merriam-Webster online dictionary
Insurrection Definition & Meaning - Merriam-Webster
Rebellion Definition & Meaning - Merriam-Webster

> *The government and the citizens of the State, refusing to recognize their constitutional obligations, assumed the character of enemies, and incurred the consequences of rebellion.*
>
> *These new relations imposed new duties upon the United States. The first was that of suppressing the rebellion.*[16]

If this sounds like 1860s déjà vu, consider the 2022 platform of the Republican Party of Texas:

> *But perhaps its most attention-grabbing line called for the state legislature to authorize a secession referendum. Early in the document, Texas Republicans called for the legislature to pass a law affirming the state's right to secede from the United States. Then in the 224th plank, it asks for a referendum in the 2023 election "to determine whether or not the State of Texas should reassert its status as an independent nation."*

The platform also calls for abolishing the direct election of U.S. Senators, nullifying Supreme Court decisions, ending birthright citizenship, repealing the Voting Rights Act, and holding an Article V convention to rewrite the U.S. Constitution. The document endorses former President Trump's baseless 2020 election conspiracy by referring

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[16] *Texas v. White*, 74 US 700, 727 - Supreme Court 1869

to "acting President Biden" and claiming that he was "not legitimately elected." [17]

Insurrectionists in the 1860s *also* claimed that Abraham Lincoln was "not legitimately elected."

> *Lincoln's election motivated seven Southern states, all voting for Breckinridge, to secede before the inauguration in March. The American Civil War began less than two months after Lincoln's inauguration, with the Battle of Fort Sumter; afterwards four further states seceded.*[18]

Now consider U.S. Senator Ted Cruz's (R-TX) comments concerning a 21st century secession by Texas:

> *"Now listen, if the Democrats end the filibuster, if they fundamentally destroy the country, if they pack the Supreme Court, if they make [Washington] D.C. a state, if they federalize elections and massively expand voter fraud, there may come a point where it's hopeless," Cruz said. "We're not there yet."*

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[17] Did Texas Republicans endorse secession at their party convention?
David Faris, Contributing Writer
June 24, 2022 Did Texas Republicans endorse secession at their party convention? (yahoo.com)

[18] 1860 United States presidential election
1860 United States presidential election - Wikipedia

> *"If there comes a point where it's hopeless, then I think we take NASA, we take the military and we take the oil," Cruz added, evoking more applause.*[19]

Cruz's remarks came less than eight months prior to the Texas Republican Party's endorsement of a secession referendum.

If Salmon Chase was correct in his assessment that the first duty of the United States is to *suppress the rebellion,* then the framers of Section Three have provided the vehicle to do so. But the current rebellion is not a *new* rebellion, it is yet another iteration of the 1861 rebellion -with some of the *same* state legislatures providing the impetus. The 1861 vision of an insurrectionist utopia was an oligarchy where *inequality* of races and social classes was the law of the land.[20]

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[19] Ted Cruz Wants Texas to Secede if U.S. Comes to a 'Point Where It's Hopeless' Newsweek, BY ALEXANDRA HUTZLER ON 11/8/21 AT 10:53 AM EST
Ted Cruz Wants Texas to Secede if U.S. Comes to a 'Point Where It's Hopeless' (newsweek.com)

[20] "Slavery, by building up a ruling and dominant class, had produced a spirit of oligarchy adverse to republican institutions, which finally inaugurated civil war. The tendency of continuing the domination of such a class, by leaving it in the exclusive possession of political power, would be to encourage the same spirit, and lead to a similar result." - JOINT COMM. ON RECONSTRUCTION, 39th Cong., REPORT OF THE JOINT COMMITTEE ON RECONSTRUCTION, at xiii (1st Sess.

At the time of Section Three's enactment, estimates of disqualified southern officials were around fourteen thousand, but subsequently it was ascertained to be much greater."[21] Insurrectionist governments tend to be *oppressive*. Surely Section Three is as much a declaration of freedom from oppressive government as Section One is, with the caveat that Section Three *also* applies to federal officials who rebel against their constitutional oath.

It would be naïve to believe that insurrectionist epicenters would **not** set up insurrectionist courts in our time, as they did during reconstruction. It would also be naïve to believe that, over time, the insurrectionists would **not** become entrenched and dug-in to the degree that *custom* supersedes the written law. And since swearing an oath to the constitution is a prerequisite to becoming *clothed* is state authority, the oath itself becomes a *necessary evil* to the acquisition of power. But

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1866). note 19, see also ERIC FONER, THE SECOND FOUNDING: HOW THE CIVIL WAR AND RECONSTRUCTION REMADE THE CONSTITUTION 84 (2019) note 15, (quoting a Republican Congressman who supported Section Three on the grounds that the South needed new officials with "some regard for the principles that are contained in the Declaration of Independence").

[21] JAMES G. BLAINE, TWENTY YEARS OF CONGRESS: FROM LINCOLN TO GARFIELD note 3, at 511 (Norwich, Conn., Henry Bill Publ'g Co. 1886).

it is also the swearing of the oath which triggers the disqualification from office of *all* who rebel against the constitution.

The framers of the Fourteenth Amendment knew what they were up against in converting a southern aristocracy into an egalitarian society. See i.e. *STUDENTS FAIR ADM. v. PRESIDENT FELLOWS HARVARD*, 143 S. Ct. 2141, 2159 - Supreme Court 2023 (internal citations and quotations omitted):

States ratified the Fourteenth Amendment, providing that no State shall deny to any person ... the equal protection of the laws. To its proponents, the Equal Protection Clause represented a foundational principle—the absolute equality of all citizens of the United States politically and civilly before their own laws. Any law which operates upon one man should operate *equally* upon all, the Amendment would give to the humblest, the poorest, the most despised of the race the same rights and the same protection before the law as it gives to the most powerful, the most wealthy, or the most haughty. For without this principle of equal justice, there is no republican government and none that is really worth maintaining.

Citizens *are* possessed of the right, by virtue of Section Three, to be free from government officials who betray their solemn oath to the Constitution of the United States.

Issue No. 2

> Did *Bostock v. Clayton County Georgia*, 140 S. Ct. 1731 -Supreme Court 2020 impliedly overrule *Georgia v. Rachel*, 384 US 780, 792 -Supreme Court 1966?

This second issue is intertwined with the first. From 1924-1944 this Court reviewed the all-white Democratic Primaries in Texas on four occasions. On the fourth, *Smith v. Allwright*, the Court stated:

> "We granted the petition for certiorari to resolve a claimed inconsistency between the decision in the *Grovey* [22] case and that of *United States* v. *Classic*," 313 U.S. 299, 319.

Why then, would a panel of the Court of Appeals threaten Petitioner with "*monetary sanctions, and restrictions on his ability to file pleadings*

22 *Grovey v. Townsend*, 295 US 45 - Supreme Court 1935

in this court and any court subject to this court's jurisdiction", for attempting to resolve the tension between *Bostock* and *Rachel*? Appendix "A".

Ideological differences existed between the *Grovey* Court and the *Allwright* Court just as they exist now between the *Rachel* Court and the *Bostock* Court. The rejection of the sort of judicial activism/ legislating from the bench -which was common with the *Rachel* Court, was recently expressed by Justice Gorsuch: "In this country, only the written word is the law, and all persons are entitled to its benefit. When judges disregard these principles and enforce rules inspired only by extratextual sources and their own imaginations, they usurp a lawmaking function reserved for the people's representatives."[23]

In *United States v. Classic*[24], speaking of such ideological differences Justice Harlan Stone wrote:

> "[F]our Justices of this Court were of opinion that the term 'elections' in § 4 of Article I did not embrace a primary election,

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[23] See *STUDENTS FAIR ADM. v. PRESIDENT FELLOWS HARVARD*, 143 S. Ct. 2141, 2220-2221 - Supreme Court 2023 Gorsuch, J. Concurring. (Internal citations, quotations, and punctuations omitted).

[24] 313 US 299 - Supreme Court 1941

> since that procedure was unknown to the framers. A fifth Justice, who with them pronounced the judgment of the Court, was of opinion that a primary, held under a law enacted before the adoption of the Seventeenth Amendment, for the nomination of candidates for Senator, was not an election within the meaning of § 4 of Article I."[25]

By the time *Classic* and *Allwright* were decided, the judges who decided *Grovey* had almost entirely been replaced with *New Dealers*[26].

Justice Stone wrote in *Allwright*, "when convinced of former error, this Court has never felt constrained to follow precedent." 321 US at 665.

Assuming that *Bostock* and *Students Fair Adm. v. President Fellows Harvard*[27] are the law of the land, it must be recognized that those cases are irreconcilable with *Georgia v. Rachel.*

In *Students Fair Adm.* Justice Thomas concurred in the judgement by writing:

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[25] Id. at 317

[26] The **New Deal** was a series of programs, public work projects, financial reforms, and regulations enacted by President Franklin D. Roosevelt in the United States between 1933 and 1939.
New Deal - Wikipedia

[27] 143 S. Ct. 2141 - Supreme Court 2023

> *Throughout the debates on each of these measures, their proponents repeatedly affirmed their view of equal citizenship and the racial equality that flows from it. In fact, they held this principle so deeply that their crowning accomplishment —the Fourteenth Amendment—ensures racial equality with no textual reference to race whatsoever. The history of these measures' enactment renders their motivating principle as clear as their text: All citizens of the United States, regardless of skin color, are equal before the law.* 143 S. Ct. at 2177.

And writing for the Court, Justice Roberts said: *To its proponents, the Equal Protection Clause represented a "foundation[al] principle"—"the absolute equality of all citizens of the United States politically and civilly before their own laws."* Id. at 2159.[28]

- This view is contradicted by *Georgia v. Rachel.*

The naked text of 28 U.S. Code § 1443(1) provides:

> *Any of the following civil actions or criminal prosecutions, commenced in a State court may be removed by the defendant to the district court of the United States for the district and division embracing the place wherein it is pending: (1) Against any person who is denied or cannot enforce in the courts of such State a right under* ***any law providing for the equal civil rights of citizens of the United States****, or of all persons within the jurisdiction thereof*

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[28] And, it is the view adopted in the Court's opinion today, requiring "the absolute equality of all citizens" under the law. *Ante,* at 2159 (internal quotation marks omitted). Thomas, J. concurring at 2177.

In no uncertain terms, *Students Fair Adm.* plainly recognizes the Fourteenth Amendment as a *law providing for the equal civil rights of citizens of the United States.* As noted by Justice Thomas, the *Fourteenth Amendment—ensures racial equality with* <u>*no textual reference to race whatsoever*</u>. Why then, should this Court countenance a prior interpretation which *rejects* the Fourteenth Amendment, the supreme law of the land, as *not* being a law providing for the equal civil rights of citizens of the United States *because* it is *not* stated in terms of racial equality?

This judicially-created exception was clearly applied in *Rachel* when the Court stated:

> "Thus, the defendants' broad contentions under the First Amendment and the Due Process Clause of the Fourteenth Amendment cannot support a valid claim for removal under §1443, because the guarantees of those clauses are phrased in terms of general application <u>available to all persons</u> or citizens rather than in the specific language of racial equality that § 1443 demands." *Rachel* 384 US at 792.

§ 1443(1) makes no such demands.

This Court's decisions in *Bostock* and *Students Fair Adm* have evoked more than a few halleluiahs because they advance the cause of liberty

and the Court has plainly shown itself to be a friend of liberty. "The absolute equality of all citizens" under the law. For real, for real?

Since the earliest days of the Republic, this Court has held:

> The very essence of civil liberty certainly consists in the right of every individual to claim the protection of the laws, whenever he receives an injury. One of the first duties of government is to afford that protection.[29]

And writing for the Court in *Bostock*, Justice Gorsuch reaffirmed this fundamental principle of Republican government:

> When the express terms of a statute give us one answer and extratextual considerations suggest another, it's no contest. Only the written word is the law, and all persons are entitled to its benefit. -*Bostock*, id. at 1737.
>
> This Court has explained many times over many years that, when the meaning of the statute's terms is plain, our job is at an end. The people are entitled to rely on the law as written, without fearing that courts might disregard its plain terms based on some extratextual consideration. -Id. at 1749.

The *extratextual* consideration employed by the *Rachel* Court was the Civil Rights Act of 1866 which was repealed and revised by the Revised Statutes of 1874.

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[29] *Marbury v. Madison*, 5 US 137, 162 - Supreme Court 1803

According to the Library of Congress:

> The Revised Statutes of 1874 was an official codification of the statutes it included. Section 5596 of the Revised Statutes repealed all prior federal statutes passed before December 1, 1873 that were covered by the revision. Additionally, the act of Congress authorizing the publication of the Revised Statutes of 1874 provided that when enacted, the Revised Statutes of 1874 would constitute "legal evidence of the laws and treaties therein contained."(ch. 333, 18 Stat. 113).[30]

The *Rachel* Court questioned the validity of the language by first stating [t]he present language "any law providing for . . . equal civil rights" first appeared in § 641 of the Revised Statutes of 1874. 384 US at 789.

Next, the Court said:

> *Prior to the 1874 revision, Congress had not significantly enlarged the opportunity for removal available to private persons beyond the relatively narrow category of rights specified in the 1866 Act, even though the Fourteenth and Fifteenth Amendments had been adopted and Congress had broadly implemented them in other major civil rights legislation.* Id. at 790.

That logic was later rejected in *United States v. Lanier*, 520 US 259, 264, - Supreme Court 1997 note 1:

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[30] The Revised Statutes of the United States: Predecessor to the U.S. Code | In Custodia Legis: Law Librarians of Congress (loc.gov) July 2, 2015 by Margaret Wood

> *Although those statutory forebears created criminal sanctions only for violations of some enumerated rights and privileges, the consolidated statute of 1874 expanded the law's scope to apply to deprivations of all constitutional rights, despite the "customary stout assertions of the codifiers that they had merely clarified and reorganized without changing substance."*

That logic was further rejected in Bostock:

> When a party seeks relief under a statute, our task is to apply the law's terms as a reasonable reader would have understood them at the time Congress enacted them. "After all, only the words on the page constitute the law adopted by Congress and approved by the President." *Bostock*, 140 S.Ct., at 1738

> "But when Congress chooses not to include any exceptions to a broad rule, this Court applies the broad rule." *Bostock* 140 S. Ct. at 1747.

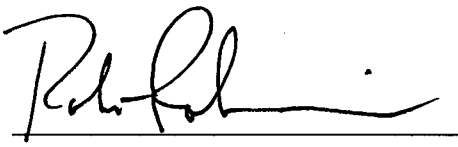
What is § 1443(1) but a broad rule -made exceedingly narrow by judicial legislating? The Revised Statutes of 1874 (enacted into positive law on June 22, 1874) - expanded the removal statutes's scope to apply to <u>any</u> *law providing for the equal civil rights of citizens of the United States* and the criminal law's scope to apply to *deprivations of* <u>*all*</u> *constitutional rights.* Such expansion can be viewed as a "parting gift" from the same people who gave us the Civil War amendments and the civil rights statutes. Later that year Republicans lost a total of 92 seats

in the House and Democrats took control of a chamber of Congress for the first time since the start of the Civil War.[31]

Conclusion

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

Submitted this 10th day of October, 2023



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[31] 1874 United States elections
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