

No. 23-719

In the Supreme Court of the United States

DONALD J. TRUMP,
Petitioner,

v.

NORMA ANDERSON, ET AL.,
Respondents.

On Writ of Certiorari to the
Supreme Court of Colorado

**BRIEF OF FORMER REPUBLICAN
GOVERNORS AS *AMICI CURIAE*
IN SUPPORT OF RESPONDENTS**

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INTEREST OF *AMICI CURIAE*¹

Amici are former Republican Governors who, like public officers throughout the United States—including former-President Donald J. Trump—knowingly and voluntarily swore fealty to the Constitution of the United States before, and as a condition of, taking office. Indeed, having held multiple public positions, *amici* have taken such an oath several times. *Amici* believe, as the Framers expressly wrote in our Constitution, that by taking an oath they made a solemn promise and assumed a sacred obligation, contracting with we the people of the United States—the wellspring of our government’s power and authenticity—to faithfully preserve, protect, and defend the Constitution. *See, e.g.*, George Washington, Farewell Address to the People of the United States (Sept. 19, 1796), *reprinted in* S. Doc. No. 106–21 (noting that the Constitution “is sacredly obligatory upon all”); The Federalist No. 49, at 251 (James Madison) (Oxford ed., 2008) (veneration of the government is, at least to some degree given that government “rest[s] on opinion,” required to provide necessary stability).

In keeping with the wisdom that animates our founding documents, and recognizing that our democratic republic depends upon the consent of the

¹ No party’s counsel authored this brief in whole or in part; no party’s counsel contributed money intended to fund preparing or submitting the brief; and no person—other than *amici*—contributed money to fund preparing or submitting the brief.

governed, *amici* have sworn to uphold the U.S. Constitution as a matter of personal integrity, public trust, longstanding tradition, and legal duty. As former governors, *amici* recognize that the oath has a special salience for chief executives, constitutionally tasked with taking care that the laws be faithfully executed; this is even more pronounced in the case of the President of the United States, who bears ultimate responsibility for the enforcement of all federal law. Additionally, as former governors, *amici* have each played a key role in the peaceful transfer of power, carrying out such transitions in their states and certifying their states' election results in presidential elections. *Amici* note that Republican state governors, including Brian Kemp in Georgia and Doug Ducey in Arizona, played an essential role as a bulwark against Mr. Trump's insurrection efforts. All of this underscores the centrality of the oaths that *amici* have taken and that they address in more detail below.

Marc Racicot served as Governor of Montana from 1993 to 2001. Before serving as Governor, Mr. Racicot was Montana's Attorney General from 1989 to 1993, held state and local prosecutorial roles before that, and began his career as an Army prosecutor in the Judge Advocate General's Corps. From 2001 to 2003, Mr. Racicot served as Chair of the Republican National Committee.

William Weld served as Governor of Massachusetts from 1991 to 1997. Before serving as Governor, Mr. Weld was Assistant Attorney General

leading the Criminal Division of the United States Department of Justice. He also served as the U.S. Attorney for Massachusetts during the Reagan Administration. In 2016, Mr. Weld was the Libertarian Party candidate for Vice President, and in 2020, was a candidate to become the Republican Party's nominee for President.

Christine Todd Whitman served as Governor of New Jersey from 1994 to 2001. Before serving as Governor, Ms. Todd Whitman served two terms as an elected freeholder in Somerset County, New Jersey, and chaired New Jersey's Board of Public Utilities upon appointment by Governor Tom Kean. In 2001, President George W. Bush appointed Ms. Todd Whitman as Administrator of the U.S. Environmental Protection Agency.

Amici have been members of the Republican Party for decades. Their objectives in filing this brief are not partisan, but purely patriotic, motivated by their commitment to public service and adherence to longstanding tenets of fidelity, integrity, and honor.

SUMMARY OF ARGUMENT

Core to our democratic republic is the bedrock principle that public officials are elected and serve the public good, not to benefit themselves, any other individual, or a particular political party, but rather to advance the welfare of "We, the People" as a whole. So central is this foundational principle to the functioning of our government and to the legitimacy

of our national project that our Constitution contains several overlapping protections to secure its inviolability. These include:

- the separation of powers among three coequal branches, which precludes any one branch or official from running roughshod and imposing tyranny, U.S. Const. arts. I–III;
- the principle of federalism, which limits the federal government’s powers to those specifically enumerated and preserves key issues as solely within the province of state government, *id.* amend. X;
- the Guarantee Clause, which provides that “The United States shall guarantee to every State in this Union a Republican Form of Government,” *id.* art. IV, § 4;
- the Emoluments Clauses, which preclude federal officeholders from receiving any thing of value from a foreign state during their term of office and specifically preclude the President from accepting value beyond his salary during his term of office, *id.* art. I, § 9, cl. 8; art. II, § 1, cl. 7.
- the removal and impeachment mechanisms, which provide safeguards to allow the removal of rogue officials from positions of power and public trust, *id.* art. I, § 3; art. II, § 4; art. III, §§ 2–3.

- the Bill of Rights, which enshrines key individual rights and protects them from government overreach, *id.* amends. I–X; and
- the Fourteenth Amendment, which ensures that no state violates fundamental rights, including due process and equal protection under law, *id.* amend. XIV, § 1.

But these are not all. Among the protections built into our Constitution is the prescription of basic qualifications for our highest-ranking federal and state officials. Moreover, from its inception, the Constitution has required that certain public officials bind themselves by oath to uphold the U.S. Constitution. *Id.* art. II, § 1; art. VI, cl. 3. And, for more than 150 years, since the adoption of the Fourteenth Amendment in the wake of the Civil War, an officer who makes such an oath under the U.S. Constitution and engages in “insurrection or rebellion against the same” is thereafter disqualified from holding public office in the United States. *Id.* amend. XIV, § 3. The Fourteenth Amendment’s proscription makes sense. After all, for a democratic republic to survive, such treason or treachery once employed *cannot* be ignored or forgotten, lest the perpetrator seize the moment once again to betray the People and our Constitution. *See* Resp’ts’ Br. 3–6. Allowing this to happen would recklessly and irresponsibly risk the end of our republic.

This case turns the Court’s focus, for the first time in our nation’s history, to Section 3 of the Fourteenth Amendment. *Amici*, each of whom has repeatedly and

individually sworn their fealty and faithfulness to the U.S. Constitution, recognize that uncompromising adherence to this requirement is essential to the continuing survival of our republic, and urge this Court—the members of whom have all also sworn such an oath—to reflect ever so carefully and vigilantly on the meaning, power, and import of these oaths.

ARGUMENT

I. The Constitution imposes eligibility requirements for the Office of President that must be strictly enforced and cannot be waived.

To be eligible for the presidency, a person must meet certain baseline qualifications. These may seem simple, even irrelevant, but the architects of our Constitution included them as safeguards against entrusting the people's authority to someone ill-suited to hold the highest office of the United States. *See* The Federalist No. 64, at 316 (John Jay) (Oxford ed., 2008); 3 Joseph Story, Commentaries on the Constitution of the United States 332 (1833). The Constitution expressly sets forth three affirmative qualifications that an eligible candidate must meet and establish: they must be a natural born citizen of the United States; at least 35 years old; and a resident of the United States for at least fourteen years. U.S. Const. art. II, § 1, cl. 5. Moreover, two amendments set forth criteria that also disqualify candidates from

holding office. The 22nd Amendment prohibits someone from serving more than two terms as President. *Id.* amend. XXII. And Section 3 of the Fourteenth Amendment expressly provides that a candidate who previously held public office and was sworn “to support the Constitution of the United States” must not have subsequently participated in insurrection or rebellion against the Constitution. *Id.* amend. XIV, § 3.

Across the United States, before attaining ballot access, would-be candidates for the presidency are often required to file written, sworn declarations confirming their eligibility for office. For example, in Colorado, the Major Party Candidate Statement of Intent for Presidential Primary requires that a candidate affirm that he or she intends to run for the office of President and “solemnly affirm[s] that [he or she meets] all qualifications for the office prescribed by law.”²

In both Colorado and Maine, as well as in several other states across the country, individual voters have filed complaints challenging the qualifications of Mr. Trump to seek inclusion on the ballot as a candidate for President, arguing that he was disqualified under Section 3 of the Fourteenth Amendment. In both Colorado and Maine, appropriate investigations and

² Major Party Candidate Statement of Intent for Presidential Primary, <https://www.coloradosos.gov/pubs/elections/Candidates/files/MajorPartyCandidateStatementOfIntentForPresidentialPrimary.pdf> (last accessed Jan. 28, 2024).

adjudicatory proceedings have ensued, providing due process at every stage.

In Colorado, Mr. Trump’s eligibility for a second term of office was reviewed through the crucible of adversarial litigation, followed by appellate review. *See Polk Cnty. v. Dodson*, 454 U.S. 312, 318 (1981) (noting that our legal “system assumes that adversarial testing will ultimately advance the public interest in truth and fairness.”). The parties held a five-day trial with more than a dozen witnesses, nearly 100 exhibits, and many pages of briefing. *See Resp’ts’ Br.* 8–11. Through this extensive process, Mr. Trump’s failure to uphold his oath of office—by plotting, colluding, inciting, and countenancing an insurrection—was presented and scrutinized. Mr. Trump availed himself of competent legal counsel and had the opportunity to cross-examine witnesses, offer rebuttal evidence, and even testify himself. Following this extensive litigation on the merits and full appellate review, the Colorado Supreme Court ultimately concluded that Mr. Trump “is disqualified from holding the office of President under Section Three.” (Pet’r App. 10a); *see also Resp’ts’ Br.* 11–12.³

³ In Maine, the Secretary of State received and investigated three challenges to Mr. Trump’s nomination to the office of President. *See In re: Challenges of Kimberly Rosen, Thomas Saviello, and Ethan Strimling; Paul Gordon; and Mary Ann Royal to Primary Nomination Petition of Donald J. Trump, Republican Candidate for President of the United States* (Dec. 28, 2023), <https://www.maine.gov/sos/news/2023/Decision%20in%20Challenge%20to%20Trump%20Presidential%20Primary%20Petitions.pdf> (last accessed Jan. 28, 2024). After an evidentiary hearing, the

In both cases, the issue is whether Section 3 of the Fourteenth Amendment disqualifies Mr. Trump from again serving as President. The U.S. Constitution is the “supreme law of the land,” U.S. Const. art. VI, cl. 2, and its provisions, including the presidential eligibility requirements, cannot be waived. It follows that the Fourteenth Amendment’s disqualification clause similarly cannot be waived, ignored, or wished away. Section 3 is as essential a part of the Constitution as any other, and by its own terms, applies to any person who, attendant to service in certain public offices, takes an oath to support the U.S. Constitution and then breaks that oath by engaging in insurrection or rebellion against the Constitution.

Each of *Amici* has repeatedly taken such an oath. In doing so, they voluntarily assumed substantial power and rightly regarded the oath as a limitation on that power, a sacred obligation to serve the people of the United States, including by preserving,

Secretary of State determined that Mr. Trump’s engaged in insurrection, thus demonstrating “the falsity of Mr. Trump’s declaration that he meets the qualifications of the office of the presidency,” invalidating his petition for ballot access. (*Id.* at 33) This decision was appealed and, by agreement of the parties, stayed pending this Court’s decision in this proceeding. See *Trump v. Bellows*, No. AP-24-1 (Me. Sup. Ct. Jan. 17, 2024), available at <https://www.courts.maine.gov/news/trump/order-and-decision.pdf> (last accessed Jan. 28, 2024), *appeal dismissed*, *Trump v. Sec’y of State*, 2024 ME 5 (Jan. 24, 2024) (per curiam), available at https://www.courts.maine.gov/news/trump/Ken-24-24_2024.01.24_decision.pdf (last accessed Jan. 28, 2024).

protecting, and defending the U.S. Constitution, just as other faithful servants of the United States have done throughout our nation's history.

II. Oaths are solemn, binding promises that the Founders viewed as indispensable to our republic.

Oaths have permeated American governance since the nation's founding.⁴ During the Revolutionary War, the Continental Congress adopted an oath of loyalty, required of all military officers, which read:

I do acknowledge the United States of America, to be Free, Independent and Sovereign States, and declare that the people thereof owe no allegiance or obedience to George the Third, King of Great-Britain; and I renounce, refuse and abjure any allegiance or obedience to him; and I do swear (or affirm) that I will

⁴ The concept and importance of oaths to social and governmental stability traces much further back in history, at least to antiquity. In Greece, oaths were critical to adjudicating disputes, supporting stability among allied governments, and binding community leaders to the rule of law, thereby limiting the rise of tyrants and revolutionaries. Matthew A. Pauley, *I Do Solemnly Swear: The President's Constitutional Oath: Its Meaning and Importance in the History of Oaths* 45–48 (1999). And nothing “bound [the Romans] more strongly to the laws” than oaths. *Id.* at 55 (quoting Baron de Montesquieu, *The Spirit of the Laws* Vol. I 118–19 (Thomas Nugent trans., 1949)). Indeed, the Romans “were more afraid of breaking an oath than of breaking a law.” *Id.* at 92 (quoting Niccolo Machiavelli, *The Discourses* Book I 139 (Bernard Crick ed., Leslie Walker trans., 1970)).

to the utmost of my power, support, maintain and defend the said United States ... and will serve the said United States in the office of which I now hold, with fidelity, according to the best of my skill and understanding.

10 *Journals of the Continental Congress 1774–1789*, at 114-115 (Worthington Chauncey Ford et al., eds.)⁵

Within ten years, the delegates to the Constitutional Convention of 1787 doubled down on the belief that oaths are fundamental and indispensable, explicitly including in the Constitution a requirement that the president-elect take “the following Oath or Affirmation” before assuming the office of President: “I do solemnly swear (or affirm) that I will faithfully execute the Office of President of the United States, and will to the best of my Ability, preserve, protect and defend the Constitution of the United States.” U.S. Const. art. II, § 1, cl. 8.

After serious debate as to which other public officials should take a similar oath, the drafters unanimously agreed that both state and federal officers would swear such an oath of allegiance to the Constitution. *See, e.g.*, James Madison, *The Debates in the Federal Convention of 1787 Which Framed the Constitution of the United States of America* 304 (Gallard Hunt & James Brown Scott eds., 1920). Accordingly, the Constitution mandates that “[t]he

⁵ Available at <https://tile.loc.gov/storage-services/service/l1/l1scd/ljc010/ljc010.pdf> (last accessed Jan. 28, 2024).

Senators and Representatives before mentioned, and the Members of the several State Legislatures, and all executive and judicial Officers, both of the United States and of the several States, shall be bound by Oath or Affirmation, to support this Constitution.” U.S. Const., art. VI, cl. 3. While the Founders mandated that all government officials “be bound by Oath or Affirmation to support this Constitution,” only for the office of President does the Constitution prescribe the precise text of the necessary oath. The detailed attention the Framers devoted to the presidential oath underscores the seriousness with which they imbued that oath.

The Founding Fathers so valued the Constitution that the first Congress’s opening order of business was requiring all civil and military officials to pledge their allegiance to it. In March of 1789, the first Congress convened in New York City. The Constitution had just been ratified, and Congress faced a mountainous list of priorities, including the creation of the Departments of Treasury, War, and Foreign Affairs, establishment of the federal judiciary, considering amendments to the Constitution, and much more. See David P. Currie, *The Constitution in Congress: Substantive Issues in the First Congress, 1789–1791*, 61 U. Chi. L. Rev. 775 (1994). But before addressing any of that pressing business, Congress focused on a task that even more urgently required the body’s attention. On May 5, 1789, the Senate chose as its very first legislative priority passage of the Oath Act, which enshrined the following oath into law: “I do solemnly swear (or affirm) that I will support the

Constitution of the United States.” 1 Annals of Cong. 31 (1789) (Joseph Gales ed., 1834). This simple, straightforward oath fulfilled the constitutional mandate presented in Article VI. President George Washington signed “An Act to Regulate the Time and Manner of Administering Certain Oaths” into law on June 1, 1789. Act of June 1, 1789, ch. 1, § 1, 1 Stat. 23–24 (1789). The oath was required to be administered to all members of the first Congress within three days of passage of the Act. *Id.* This same formulation remains at the heart of the oath, set forth in the U.S. Code, that inferior federal officers, elected and appointed alike, swear today. *See* 5 U.S.C. § 3331.

The Founders’ understanding of oaths as the ultimate testament of commitment and contract is further bolstered by dictionaries and other contemporary written sources. For example, consider these definitions and descriptions of an “oath” from late-Eighteenth Century dictionaries:

- “A solemn appeal to heaven.” William Perry, *The Royal Standard English Dictionary* (1788).⁶
- “A solemn attestation, the form of attestation before a magistrate; an appeal to the Divine Being by the mention of something sacred.” 2

⁶ Available at https://www.google.com/books/edition/The_Royal_Standard_English_Dictionary/OpkRAAAIAAJ?hl=en&gbpv=1&pg=PA387&printsec=frontcover&dq=oath (last accessed Jan. 28, 2024).

John Ash, *The New and Complete Dictionary of the English Language* (1795).⁷

- “An affirmation, negation, or promise, corroborated by the attestation of the Divine Being.” 2 Thomas Sheridan, *A Complete Dictionary of the English Language* (4th ed. 1797).⁸

But it is not only dictionaries that underscore the Founders’ understanding of oaths as sacred, moral obligations. Alexander Hamilton described Article VI as mandating that all officers, legislative, executive, and judicial alike, “*will be bound by the sanctity of an oath.*” *The Federalist* No. 27, at 134 (Oxford ed., 2008) (emphasis added). And John Locke, whose writings informed the ideas incorporated into our Constitution, opined that “promises, covenants, and oaths” formed the “bonds of human society.” John Locke, *A Letter Concerning Toleration* at 51 (James H. Tully ed., 1983).

⁷ Available at https://www.google.com/books/edition/The_new_and_complete_dictionary_of_the_E/hu0IAAAAQAAJ?hl=en&gbpv=1 (last accessed Jan. 28, 2024).

⁸ Available at https://www.google.com/books/edition/A_complete_dictionary_of_the_English_lan/z-YIAAAAQAAJ?hl=en&gbpv=1&dq=A+Complete+Dictionary+of+the+English+Language&printsec=frontcover (last accessed Jan. 28, 2024). This Court has repeatedly cited this dictionary. *See, e.g., District of Columbia v. Heller*, 554 U.S. 570, 584 (2008); *Eldred v. Ashcroft*, 537 U.S. 186, 199 (2003).

The principles that oaths are sacred and that fidelity to oaths is essential to maintaining civic order animated the American social conscience through and beyond the Civil War. In the 1830s, Justice Story opined that the idea that those “who are entrusted with the execution of the powers of the national government[] should be bound by some solemn obligation to the due execution of the trusts reposed in them ... would seem to be a proposition too clear to render any reasoning necessary in support of it.” Story, *supra*, at 702–707. He nonetheless proceeded to offer a rationale, explaining that there was a “plain right of society to require some guaranty from every officer, that he will be conscientious in the discharge of his duty” and described oaths as providing such a guarantee because an oath is “a solemn obligation upon the minds of all reflecting men.” *Id.*

At the time the Fourteenth Amendment was passed by Congress in 1866, considered by the states, and ratified in 1868, the same sense of moral obligation associated with, and the same veneration for, oaths persisted. *See* Resp’ts’ Br. 3–6. This is evidenced by the inclusion of the disqualification clause in Section 3, which clearly regarded oaths as not only meaningful but also mandatory. But external sources also bolster the point. Dictionaries from the time, both legal and general, defined an oath as:

- “A solemn affirmation or declaration, made with an appeal to God for the truth of what is

affirmed.” *Webster’s Dictionary* (1828 online ed.).⁹

- An “external pledge or asseveration, made in verification of statements made or to be made, coupled with an appeal to a sacred or venerated object, in evidence of the serious and reverent state of mind of the party.” Oath, *Black’s Law Dictionary* (1st ed. 1891).
- “An outward pledge given by the person taking it that his attestation of promise is made under an immediate sense of his responsibility to God.” 2 John Bouvier, *Bouvier’s Law Dictionary* 529 (1897).¹⁰

Political movements wax and wane, and social mores change. But the consistency and survival of our constitutional republic is and always has been anchored in the faith of the people, which, in turn, relies upon and is buttressed by public officials who revere and abide by their oaths to support the U.S. Constitution. The oaths that public officials take to our Constitution bind our nation together, enable our union, and allow our national experiment to continue. This was true at the time of the founding, its importance was emphasized by the Civil War and Reconstruction, and it remains a signal value today.

⁹ Available at <https://webstersdictionary1828.com/Dictionary/oath> (last accessed Jan. 28, 2024).

¹⁰ Available at https://books.google.com/books?id=CYZOAAAYAAJ&printsec=frontcover&source=gbs_ge_summary_r&cad=0#v=onepage&q&f=false (last accessed Jan. 28, 2024).

III. Oaths continue to play an integral role in American society and law.

The U.S. Constitution and federal law require specific oaths for various public officials. On April 30, 1789, George Washington first swore the 35-word constitutional oath that every President since has taken before assuming office. The gravity of the oath is underscored by how punctiliously it must be sworn. In 2009, Chief Justice John Roberts privately re-administered the oath to President Obama to ensure it was sworn precisely as set forth in the U.S. Constitution. Jeff Mason, *Obama takes oath again after inauguration mistake*, Reuters (Jan. 21, 2009).¹¹

Today, the oath required of elected or appointed federal employees other than the President, to meet the mandate in Article VI of the Constitution, is longer and more specific than it was in 1791, but the thrust is the same. The oath now reads:

I do solemnly swear (or affirm) that I will support and defend the Constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and

¹¹ Available at [https://www.reuters.com/article/idUSTRE50L09A/#:~:text=WASHINGTON%20\(Reuters\)%20%2D%20Out%20of%20was%20sworn%20in%20on%20Tuesday](https://www.reuters.com/article/idUSTRE50L09A/#:~:text=WASHINGTON%20(Reuters)%20%2D%20Out%20of%20was%20sworn%20in%20on%20Tuesday) (last accessed Jan. 28, 2024).

faithfully discharge the duties of the office on which I am about to enter: So help me God.

5 U.S.C. § 3331.

Federal officials are not the only ones who must swear allegiance to the U.S. Constitution. As Article VI mandates, and as federal statute has echoed for more than 75 years, state legislators, executive officials, and judges must also swear to uphold the U.S. Constitution. *See* U.S. Const. art. VI., cl. 3; 4 U.S.C. § 101 (“Every member of a State legislature, and every executive and judicial officer of a State, shall, before he proceeds to execute the duties of his office, take an oath in the following form, to wit: ‘I, A B, do solemnly swear that I will support the Constitution of the United States.’”). In compliance with this mandate, Montana requires its governor to make the following oath, which Mr. Racicot repeatedly swore: “I do solemnly swear (or affirm) that I will support, protect and defend the constitution of the United States, and the constitution of the state of Montana, and that I will discharge the duties of my office with fidelity (so help me God).” Mont. Const. art. III, § 3. And the oath Ms. Whitman took in New Jersey, like those required in many states, similarly includes an express averment of devotion and faithfulness to the U.S. Constitution. *See* N.J. Const. art. VII, § 1.

Failure to abide by an oath can result in criminal and civil penalties under both federal and state law. At the federal level, 18 U.S.C. § 1918 provides

penalties for the violation of the oath of office. The prescribed penalties include removal from office as well as imprisonment or a fine. At the state level, for example, Georgia law punishes the willful and intentional violation of the terms of a public officer's oath by imprisonment of one to five years. *See* Ga. Code Ann. § 16-10-1.

All this underscores that, from the beginning to this moment, oaths have been and are sacred, and public officials have both legal and moral obligations to uphold them. Taking an oath is infinitely more than a ritual; it is also the instant at which the agreement between the President's solemn agreement with the People to protect and support the Constitution is consummated. This is an essential part of the through-line sustaining our constitutional republic, and it is also the adhesive that holds us together as a nation. *Amici* fervently urge this Court to keep this in mind and diligently avoid construing or applying Section 3 of the Fourteenth Amendment in a way that diminishes the solemnity and significance of the oaths taken by officials who serve the public. *See* Resp'ts' Br. 43–45 (rebutting suggestions that the prescribed presidential oath “to preserve, protect, and defend the Constitution” is somehow lesser than one to “support” the Constitution and that Section 3 is inapplicable because the prescribed presidential oath does not include the word “support”). Applying a diminished interpretation amid a near-historic ebb of public trust in American governmental institutions threatens the very existence of our constitutional republic. *Public*

Trust in Government: 1958–2023, PEW Research Center (Sept. 19, 2023).¹²

IV. This case turns upon a fundamental question about fidelity to Constitution and country, not politics or partisanship.

The presidential oath includes a binding promise to “preserve, protect and defend the Constitution of the United States.” U.S. Const. art. II, § 1, cl. 8. Multiple tribunals have determined that Mr. Trump deserted his sworn duty and engaged in insurrection, elevating his own political interests over the governmental stability secured by the peaceful transition of power, in direct violation of his constitutional oath.

The Disqualification Rule in Section 3 of the Fourteenth Amendment is unmistakably clear, and there is no mystery shrouding its application. It plainly commands that a President who has sworn “to preserve, protect, and defend” the Constitution and then betrays that oath by engaging in insurrection against the Constitution is forever barred from serving in office again, unless the disqualification is “removed” by a supermajority vote of both houses of Congress. U.S. Const. amend. XIV, § 3. This last sentence of Section 3 dispenses with the argument that disqualification requires specific congressional action; it makes clear that Section 3 is self-executing

¹² Available at <https://www.pewresearch.org/politics/2023/09/19/public-trust-in-government-1958-2023/> (last accessed Jan. 28, 2024).

and attaches of its own force, without congressional action, persisting until and unless Congress takes action to grant relief. *See Resp'ts' Br. 53–55.*¹³

The plain language of the U.S. Constitution compels the conclusion that Mr. Trump is ineligible to be a candidate for President. The fact that Section 3 of the Fourteenth Amendment has not previously been applied to a presidential candidate does not diminish the materiality or the clarity of the constitutional mandate. Instead, the disgraceful novelty of this case follows from the unprecedented, and largely unimaginable, nature of the conduct at issue; never before has our nation seen a President incite an insurrection to disrupt the peaceful transition of power and entrench himself in office, much less then, after his insurrectionist efforts failed, later seek to recapture the presidency. This being a question of first impression does not, in any way, reduce the threat posed to the survival of our constitutional republic by a conclusion that the

¹³ The Republican National Committee argues that the potential for Congress to relieve someone from disqualification precludes exclusion from the ballot on the basis of Section 3. (Republican Nat'l Comm. Br. 14–15) This is incorrect. Among other flaws, this argument would implicitly upend the Constitution's deliberate design of leaving responsibility for election administration to the states. U.S. Const. art. I, § 4, cl. 1 There is no basis in the Constitution to understand only the next Congress of being capable of lifting Mr. Trump's disqualification. States can, and should, take note of the fact that Mr. Trump's own actions disqualify him from serving as President and that Congress has taken no steps to consider, much less approve, measures to lift this disqualification.

President of the United States may engage in, incite, and endorse domestic insurrection with impunity.

Without doubt, life circumstances change, and a person who swears an oath may later conclude that it is no longer possible to uphold its terms. Upon reaching a conclusion that fidelity to an oath is no longer possible as a matter of conscience, one can ethically withdraw from it by formal, public renunciation and by abandoning the benefits and privileges that one obtained by swearing the oath. Here, it is a matter of public record that Mr. Trump received legal advice warning him that what he sought to do on January 6, 2021, violated the U.S. Constitution. *See* Final Report, Select Committee to Investigate the January 6th Attack on the United States Capitol, H.R. Rep. No. 117-663, at 428, 432-438, 445-449, 452 (2022).¹⁴ It follows that, if he insisted on his planned course of action, personal integrity and public duty alike demanded that he renounce his oath to support the U.S. Constitution and recognize that his actions would preclude him from personally holding public office in the future.¹⁵

¹⁴ Available at https://d3i6fh83elv35t.cloudfront.net/static/2022/12/Report_FinalReport_Jan6SelectCommittee.pdf (last accessed Jan. 28, 2024).

¹⁵ Notably, many officials did resign in the chaotic final weeks of the Trump Administration, as the scope and depth of Mr. Trump's commitment to contravening constitutional principles, and the incompatibility of working for him and keeping their own oaths, became increasingly clear. Kevin Liptak, Kaitlan Collins & Jeremy Diamond, *Some Trump administration officials resign while others stay to prevent chaos*, CNN (Jan. 7, 2021), available

Instead, he flagrantly and repetitively defied this country's Constitution and core principles, which he had sworn to support, and now, notwithstanding his publicly announced promises to violate it again, seeks another opportunity to take the constitutionally mandated oath to uphold the Constitution—a promise that would not only ring hollow but also would license his ability to violate the Constitution as he has planned to do.¹⁶

at <https://www.cnn.com/2021/01/07/politics/resignations-trump-white-house/index.html> (last accessed Jan. 28, 2024). Tellingly, that list includes the chief law enforcement officers of the United States, Attorney General William Barr, who resigned effective December 24, 2020, and acting Attorney General Jeffrey Rosen, who announced his resignation on January 20, 2021.

¹⁶ Mr. Trump has directly threatened not only the lives of U.S. officials, but also the ongoing existence of our constitutional republic. *See, e.g., Top US general taking steps to protect family after Trump death comments*, Reuters (Sept. 27, 2023), available at <https://www.reuters.com/world/us/top-us-general-taking-steps-protect-family-after-trump-death-comments-2023-09-28/> (last accessed Jan. 28, 2024) (accusing Milley of “an act so egregious that, in times gone by, the punishment would have been DEATH!”); Tim Reid, *Trump: I won't be a dictator if I become U.S. president again*, Reuters (Dec. 5, 2023), available at [*****.reuters.com/world/us/trump-i-wont-be-dictator-if-i-become-us-president-again-2023-12-06/](https://www.reuters.com/world/us/trump-i-wont-be-dictator-if-i-become-us-president-again-2023-12-06/) (last accessed Jan. 28, 2024) (“[W]hen asked to deny he would become a ‘dictator’ if he wins the November election” said “No. No. Other than day one.”); Hope Yen, *Trump rebuked for call to ‘terminate’ Constitution over 2020 election results*, Associated Press (Dec. 4, 2022), available at <https://www.pbs.org/newshour/politics/trump-rebuked-for-call-to-terminate-constitution-over-2020-election-results> (last accessed Jan. 28, 2024) (quoting Trump: “A Massive Fraud of this type and magnitude allows for the

“The oath [of office] must not be administered to one who has deliberately and flagrantly flouted and mocked it.” 93 Cong. Rec. 12 (1947). Those words were spoken on the Senate floor more than 75 years ago by Idaho Senator Glen Taylor. He was objecting—on principle, not as a matter of applying the Fourteenth Amendment—to allowing Mississippi Senator Theodore Bilbo, who had just been re-elected after running a campaign steeped in racism and violence, to be sworn in for another term. Senator Taylor continued:

In encouraging large numbers of people flagrantly to violate the law, Bilbo violated his own oath to protect and defend the Constitution, the oath which he seeks to renew here today. What a mockery it would be if we should again permit him to perjure himself by swearing to support the Constitution which he has so openly conspired to violate.

Id. In a different age and under different circumstances, *amici* come to this Court and invoke Senator Taylor’s prescient, powerful, principled words.

Senator Taylor’s plea, that our institutions uphold the sanctity of the oaths our officials have sworn and in so doing both manifest and reinforce the bedrock

termination of all rules, regulations, and articles, even those found in the Constitution.”).

values that informed the prescription of those oaths, is even more urgent here for three reasons. *First*, the issue arises here not in the context of one member out of hundreds in Congress, but instead in relation to a former President, seeking again to occupy the singular office of President and serve as head of state and leader of the executive branch. *Second*, the actions at issue here were fully insurrectionary, in direct derogation of the presidential oath. They are not just ill-advised statements in tension with the values that animate our Constitution but instead were made in outright contravention of the oath's binding precepts, with the intention of undermining the very Constitution to which he swore allegiance and support. And *third*, the actions at issue here were not taken in the context of a candidate exuberantly stumping on the campaign trail but instead as a considered, planned strategy to disrupt the bedrock presidential function of peacefully transferring power to a newly elected executive, were fully robed in the office of the President, and were deliberately engaged in within and around the Oval Office.

These differences are not trifles. Should Mr. Trump be permitted to stand again for election to the presidency, despite his past actions, neither Section 3 of the Fourteenth Amendment nor the oaths that undergird the bedrock premise that public officials serve to advance the welfare of the people and our common national project will ever be the same. They will have been rendered meaningless in their legal force and stripped of their moral authority and power. They will, in effect, have been written out of our

Constitution, and its abrogation will have been completed.

CONCLUSION

Amici urge this Court to uphold the primacy of the Constitution's plain text, to protect the central premise of our democratic republic, and to affirm the holding of the Colorado Supreme Court.

Respectfully submitted,

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