

In the Supreme Court of the United States

No. 23-719

DONALD J. TRUMP,
Petitioner,

v.

NORMA ANDERSON, ET AL.,
Respondents.

On Writ of Certiorari to the Colorado Supreme Court

**ANDERSON RESPONDENTS' OPPOSITION TO MOTION OF PROFESSOR
TILLMAN FOR LEAVE TO PARTICIPATE IN ORAL ARGUMENT AS
AMICUS CURIAE AND FOR DIVIDED ARGUMENT**

The Anderson Respondents respectfully submit that, as with the motion for divided argument by the Secretary of State, undivided argument would be most appropriate and beneficial to the Court.

Contrary to the impression left by Professor Tillman's motion for leave to argue, no *amicus curiae*—including Professor Tillman—has argued at any point in this case. At the Colorado Supreme Court, Trump agreed to cede 10 minutes of his allotted hour of argument time to Professor Tillman to argue as *amicus curiae* in support of Trump and the court granted Professor Tillman's request for divided argument. But less than a week later, counsel for Professor Tillman moved to withdraw that leave, stating, "Due to a family scheduling conflict, Attorney Blackman will no longer be able to travel from Texas to Denver." Mot. for Leave Regarding Oral

Argument 2. The court then reallocated the full hour for argument back to Trump. In this Court, Trump has not agreed to cede any argument time.

In the main, Professor Tillman’s amicus brief merely duplicates arguments made by Trump. He claims that Section 3 is not “self-executing,” Amicus Br. 4-9, a point made by both Trump and the Colorado Republican State Central Committee. He repeats Trump’s lead argument that the President is not an “officer of the United States.” *Id.* at 9-14. And he also presses a related argument that the Presidency is not an “office under the United States,” *id.* at 14-20, which Trump advanced below but has now mostly (but not completely) abandoned. *Compare* Petr. Br. 25-26 with Pet. App. 62a-70a (Colorado Supreme Court opinion rejecting this argument). The astonishing logical conclusion of Professor Tillman’s argument reveals a likely reason why Trump has distanced himself from this position. As Professor Tillman explains in his amicus brief, such a novel holding would mean:

- “The President [is] not covered by the Foreign Emoluments Clause,” page 16, and thus could accept bribes or titles of nobility from foreign sovereigns;
- “The Elector Incompatibility Clause does not bar the President from serving as an elector,” page 18, including in his own re-election;
- “The Incompatibility Clause does not bar the President from holding a seat in Congress,” *id.*; and
- “Disqualification after impeachment and conviction does not extend to the presidency,” page 19.

Trump can present argument about self-execution or whether the President is not an “officer of the United States” without intervention from an *amicus curiae*. See Petr. Br. 20-33, 38-40. And there is no reason to provide argument time for an *amicus curiae* to argue a point that Trump previously pressed but has now largely abandoned, in the face of an opinion below rejecting it for sound reasons. This is not one of those rare cases where an *amicus curiae* brings an important perspective all parties have overlooked. *Contra Dalmazzi v. United States*, 138 S. Ct. 576 (2018) (granting *amicus curiae* Professor Bamzai argument time because they addressed jurisdictional argument that neither party advanced); Mot. of Professor Bamzai for Leave to Participate in Oral Argument as *Amicus Curiae* and for Divided Argument (No. 16-961) 1-4. Duplicative argument by Professor Tillman here, by contrast, does not present “the most extraordinary circumstances” that Rule 28.7 requires.

Conclusion

The Anderson Respondents respectfully request that the Motion of Professor Tillman for Leave to Participate in Oral Argument as *Amicus Curiae* and for Divided Argument be denied.

Respectfully submitted,

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