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 Colorado Supreme Court

BRIEF OF *AMICUS CURIAE* VIVEK RAMASWAMY IN SUPPORT OF PETITIONER

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INTEREST OF AMICUS CURIAE

Amicus Curiae Vivek Ramaswamy is a Republican candidate for President of the United States.[1] Mr. Ramaswamy has a unique perspective as a competitor in the Republican presidential primary race who has satisfied all the constitutional qualifications, and who has also qualified for the Colorado Republican Presidential Primary ballot. He has a profound interest in preserving the right of every voter to cast a ballot for the candidate that best suits his or her preferences, even if that candidate is someone other than Mr. Ramaswamy.

SUMMARY OF ARGUMENT

The conclusion is inescapable: President Trump's political opponents have sought to disqualify him from the ballot in multiple states because they fear they cannot beat him in a free and fair election. Needless to say, the distress of competing against a formidable opponent cannot justify disqualification under Section 3 of the Fourteenth Amendment. And the consequences of affirming the Colorado Supreme Court's decision will extend far beyond the dispute over President Trump's eligibility.

Specifically, this Court's blessing of the state supreme court's interpretation of Section 3 will warp incentives for state decision-makers and voters alike. For secretaries of state and state supreme court

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[1] Pursuant to Supreme Court Rule 37.6, *amicus curiae* states that no counsel for a party authored this brief in whole or in part; and that no person or entity, other than *amicus* and his counsel, made a monetary contribution intended to fund the preparation and submission of this brief.

justices, the path to national notoriety will be illuminated: To enhance your credibility among co-partisans, simply concoct a reason to declare a disfavored presidential candidate of the opposing party ineligible to run for office. For voters, the message will be equally clear: Scour the records of disfavored candidates for speeches containing martial rhetoric, or even policies that had unintended consequences, and then file challenges under Section 3. The number of Section 3 complaints will proliferate, as will the number of divergent outcomes.

But even if the Court finds these consequences unconvincing, there are strong textual and structural reasons for rejecting the Colorado Supreme Court's reading of Section 3. Most obviously, the phrase "officer of the United States" in the context of Section 3 has never been understood to include the President of the United States. The constitutional evidence, combined with the disruptive effects of disqualification, should lead this Court to reverse the decision below.

ARGUMENT

I. President Trump's opponents have resorted to antidemocratic methods because they doubt that they can beat him in a fair election.

There is an obvious reason why President Trump is the only presidential candidate in American history to face a challenge to his qualifications under Section 3: Democrats fear the potential consequences of Trump's election in 2024 more than any party has ever feared the victory of an opposing candidate.

Histrionic screeds warning of a potential Trumpian dictatorship have proliferated in the pages of mainstream publications.[2] And thanks to a deluge of worsening polls, Democrats now lack confidence that they can beat President Trump in a free and fair election. So, they have resorted to grasping for any tool that might allow them to avoid the humiliation of defeat at his hands.

Because the Court has never pronounced upon Section 3's meaning, Trump's opponents have sensed an opportunity. Mr. Ramaswamy suggests, however, that the Court should refrain from opening this Pandora's box. Indeed, Americans' faith in the electoral process depends on this Court's prudence.

Constitutional interpretation "isn't supposed to be the art of methodically ignoring what everyone knows to be true." See *Ramos* v. *Louisiana*, 140 S. Ct. 1390, 1405 (2020). When evaluating this case, the Court should first consider the consequences of affirming the decision below.

A. In judicial silence, President Trump's political opponents have sensed opportunity.

Although neither the Fourteenth Amendment's drafters nor this Court have addressed definitively

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[2] See, *e. g.*, R. Kagan, A Trump Dictatorship Is Increasingly Inevitable. We Should Stop Pretending., Wash. Post (Nov. 30, 2023), https://www.washingtonpost.com/opinions/2023/11/30/trump-dictator-2024-election-robert-kagan/; C. Savage, J. Martin, & M. Haberman, Why A Second Trump Presidency May Be More Radical Than His First, N.Y. Times (Dec. 4, 2023), https://www.nytimes.com/2023/12/04/us/politics/trump-2025-overview.html.

whether Section 3 applies to Presidents, see Section II(A), *infra*, plaintiffs in multiple states have already weaponized Section 3 in seriatim attempts to force President Trump off the ballot.[3] The reason for these concerted efforts is obvious: Given President Biden's historically low popularity and President Trump's consistently strong polling as a candidate, Trump's political opponents lack confidence in their ability to prevail in a free and fair election.

These disqualification efforts are not based on a defensible textualist reading of Section 3. See Section II, *infra*. But even if they were, disqualifying the candidate who is now leading in both primary and general election polls would be tremendously disruptive, obliterating public confidence in our electoral system.

One need not admire President Trump to perceive this matter objectively. Professor Lawrence Lessig has written that, in his opinion, the reelection of Trump "would be the worst political decision of the nation since the Civil War."[4] Yet he has explained at length why the historical record has convinced him that Section 3 does not apply to the President. *Id.* Professor Lessig is correct that "[o]ne does not need to like Donald Trump in order to see that the law does not preclude him from being a candidate." *Id.* But

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[3] For the status of each of these Section 3 challenges, see Lawfare, Tracking Section 3 Trump Disqualification Challenges, https://www.lawfaremedia.org/current-projects/the-trump-trials/section-3-litigation-tracker.

[4] L. Lessig, Excluding the President From Section 3 Is Not "Absurd," Medium (Dec. 21, 2023), https://lessig.medium.com/excluding-the-president-from-section-3-is-not-absurd-1c7a739fdf5b.

judging from the available evidence, one apparently *does* need to dislike Trump to conclude otherwise.

Mr. Ramaswamy has advanced himself as a candidate for the Republican presidential nomination because he believes in the strength of his ideas and in his ability to communicate the virtue of his platform to voters. Arguably, the inclusion of a strong competitor on state primary ballots will make it harder for Mr. Ramaswamy to win the Republican nomination. But he still opposes partisan efforts to disqualify President Trump because of the effect that such a decision will have on the voters whose support they are both courting. Vigorous political competition ultimately benefits voters more than the candidates permitted to compete for their support. Indeed, the First Amendment:

> [I]s designed and intended to remove governmental restraints from the arena of public discussion, putting the decision as to what views shall be voiced largely into the hands of each of us in the hope that use of such freedom will ultimately produce a more capable citizenry and more perfect polity and in the belief that no other approach would comport with the premise of individual dignity and choice upon which our political system rests.

Cohen v. *California*, 403 U. S. 15, 24 (1971).

Those who seek to disqualify presidential candidates from even appearing on the ballot fundamentally distrust the American people. They

fear that the voters, if allowed to evaluate a full range of options, may make the "wrong" choice as perceived by political elites, and so they seek to deprive voters of that choice entirely. There is a better way, and it is the route that Mr. Ramaswamy himself has chosen: President Trump's opponents should focus on persuading voters that their candidate is the best choice, and then trust that voters will choose the candidate who best meets the moment.

B. The decision below incentivizes inconsistent partisan determination of Section 3 ballot-access decisions.

The Colorado Supreme Court's decision has opened the courthouse door to similar challenges brought under the aegis of Section 3, and more plaintiffs of all political persuasions will gladly accept that invitation unless this Court cabins the Amendment's application. Moreover, in the absence of clear guardrails, Section 3 will mean whatever a given state official decides that it means. Section 3 will become a patchwork law whose words will hold different meanings depending on the constituency to which the relevant state decisionmaker feels accountable.

The decision below creates perverse incentives for state decisionmakers, whether they are state supreme court justices (as in Colorado) or secretaries of state (as in Maine). Those two states have already disqualified President Trump from placement on their presidential primary ballots, and if their actions are allowed to stand, more will follow.

If state officials are endowed with this new power to disqualify, they will use it enthusiastically. When they do, it will undoubtably be wielded to advantage their co-partisans. As demonstrated over the last month, disqualifying a prominent presidential candidate of the opposing party is a fast-track to national notoriety. The Maine Secretary of State has already appeared on CNN and MSNBC and been given a national platform to explain her decision—and, simultaneously, to increase her name recognition.[5] And although this time we have witnessed a state supreme court composed of Democrat appointees vote to disqualify a Republican presidential candidate, the temptation to wield ballot-access decisions as a partisan cudgel will be universal—and bipartisan.

The hypothetical is not particularly far-fetched. Imagine a 2028 election in which state officials proudly tout their willingness to disqualify disfavored candidates belonging to the opposition party as proof of their partisan bona fides and "courage." It is easy to foresee a world in which candidates for reelection use Section 3 cases to curry favor with their co-partisans while hiding behind the Fourteenth Amendment, promoting their votes before cheering crowds while somberly informing the media

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[5] CNN, Maine Official Who Removed Trump From Ballot Responds to Fierce Criticism, https://www.cnn.com/videos/politics/2023/12/29/maine-secretary-of-state-response-trump-ballot-cnntm-intv-sot-vpx.cnn (last visited Jan. 9, 2024); MSNBC, ME Sec. of State: The Constitution "Does Not Tolerate An Assault on the Peaceful Transfer of Power" (Jan. 6, 2024), https://www.msnbc.com/ali-velshi/watch/maine-sec-of-state-the-constitution-does-not-tolerate-an-assault-on-the-peaceful-transfer-of-power-201473605854.

that "I had no choice—the Constitution made me do it." Unless this temptation is quickly squelched, it is not hard to imagine a presidential election in the not-too-distant future in which each major-party candidate will appear on ballots in only half of the states, hamstringing election administration and undermining public confidence in the entire system.

Permitting the states to have the final say on questions of presidential qualifications will also encourage forum-shopping. A motivated group of partisans could continue filing qualification challenges to a presidential candidate under Section 3 in various state courts until they find a receptive audience. The results of this scattershot approach to evaluating candidate eligibility would inevitably be inconsistent. Section 3 would have an entirely different meaning in Montpelier than it does in Cheyenne, not because of the merits of the underlying question but because of the political goals of the relevant decisionmakers.

If the lower court's interpretation prevails, ambition will no longer "counteract ambition." The Federalist No. 51, p. 396 (Sweetwater Press ed. 2010) (J. Madison). Instead, the ambition of the state officer who exercises the final say over ballot access will trump the ambition of those who present themselves as candidates for the consideration of the voters. People will begin to "seek [these] platforms in order to be seen taking the side of their tribe in these struggles." Y. Levin, A Time To Build: From Family and Community to Congress and the Campus, How Recommitting to Our Institutions Can Revive the American Dream 35 (2020). Inevitably, "as we increasingly come to assume that people working within institutions are using them to perform and to

be seen, the underlying institutions [will] become harder to trust." *Id.*, at 36.

All these factors show that states are not properly equipped to resolve the Section 3 inquiry. If this Court allows them to do so, they will quickly undermine the uniformity of federal law.

C. Adopting the Colorado Supreme Court's theory will require this Court to adjudicate political questions.

Beyond the perverse effect on state officeholders, the decision below also creates dangerous incentives for the American people that will in turn fuel jurisprudential headaches for this Court. If President Trump's political opponents manage to get him thrown off of the ballot, then it will equate to a clarion call to partisans nationwide. The number of Section 3 challenges will proliferate even as the allegations leveled against candidates become more tenuous. There will be no limiting principle.

While some components of Section 3 lend themselves to easy judicial interpretation, see Section II *supra*, this is not true of *every* element. To find President Trump ineligible under Section 3, the Colorado Supreme Court had to determine that he "engaged in insurrection or rebellion against" the United States. U. S. Const., Amdt. 14, §3. Given space constraints, Mr. Ramaswamy will not attempt to define that phrase, but he does assert that neither the lower court here nor secretaries of state in other jurisdictions are properly equipped to do so either. This Court's precedent commands that a nonjusticiable political question will typically exhibit

"a lack of judicially discoverable and manageable standards for resolving it," as well as an "impossibility of deciding without an initial policy determination of a kind clearly for nonjudicial discretion." *Baker* v. *Carr*, 369 U. S. 186, 217 (1962). The presence of both factors here indicates that Congress is the appropriate governmental body to render judgment regarding Section 3—and, in the absence of such a congressional determination, the people should be permitted to decide for themselves who will be their Chief Executive.

First, Article I expressly vests Congress with the power "[t]o provide for calling forth the militia to . . . suppress insurrections" and "[t]o declare war." U. S. Const., Art. I, §8. Section 3 also gives Congress (but no other branch) a role in disqualification, permitting the legislature to "remove such disability" by supermajority vote. *Id.*, Amdt. 14, §3. These clues reveal "an initial policy determination of a kind clearly for nonjudicial discretion." *Baker*, 369 U. S., at 217.

Nor is it clear what standards a court—*any* court—could use to decide these questions. The inherent difficulty can be shown by evaluating some examples from the recent past to see how the new universe of Section 3 challenges might work in practice. Consider: If a former President can be disqualified under Section 3 based on actions taken by his political supporters, could an incumbent President also be disqualified from running for reelection based on the unintended (yet perhaps foreseeable) violent consequences of an intentional presidential policy? If so, how will courts determine when a presidential

policy goes so far off the rails that it implicates Section 3?

Mr. Ramaswamy understands that each of these examples will strike the Court as tenuous or even absurd. That's because they are. But this *reductio ad absurdum* underscores that there are no judicially manageable standards to resolve the Section 3 question at the heart of this case.

1. Presidents Carter and Reagan.

In 1980, President Carter "signed a finding authorizing the covert provision of arms to the Afghan mujahideen fighting against the Soviet occupation of their country." W. Inboden, The Peacemaker: Ronald Reagan, The Cold War, and the World on the Brink 88 (2022). The Reagan administration continued the Carter aid program and eventually increased the level of military support to $100 million with congressional authorization, supplying increasingly lethal weapons to the Afghan resistance. *Id.*, at 210.

After the Soviet military withdrew from Afghanistan in 1989, many of the mujahideen fighters who had benefited from American largesse formed a new organization: The Taliban.[6] This violent group gained control of the entire country in 1996 after a bloody four-year civil war and proceeded to offer a safe haven to the al-Qaeda terrorists who planned the September 11th attacks. The Taliban then "refused to hand over Osama bin Laden, the mastermind of the 9/11 attacks." *Id.*

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[6] Council on Foreign Relations, The Taliban in Afghanistan (last updated Jan. 19, 2023), https://www.cfr.org/backgrounder/taliban-afghanistan.

Now imagine that political opponents of President Carter in 1980 or President Reagan in 1984 had filed challenges to their eligibility under Section 3, predicated upon the notion that each man had deliberately pursued a policy of delivering dangerous weapons to a group of dangerous men who intended—once they had gained the necessary capability—to attack United States government and civilian targets (which, tragically, did in fact come to pass). In short, the complaint would allege that these administrations had intentionally "given aid or comfort to the enemies" of the United States, with deadly consequences. U. S. Const., Amdt. 14, §3. Although the long-term effects of this bipartisan policy may not have been clear at the time (and were not intended by either Reagan or Carter), the inherent risks are obvious in hindsight.

2. President Clinton.

On August 11, 1999, President Clinton granted clemency to sixteen incarcerated members of the Puerto Rican terrorist group Armed Forces of National Liberation ("FALN").[7] According to the FBI, this group was responsible for "146 bombings and a string of armed robberies—a reign of terror that resulted in nine deaths and hundreds of injured victims." *Id.* Bombs linked to FALN were detonated "at FBI headquarters in Manhattan and the federal courthouse in Brooklyn," thereby directly targeting federal government offices and personnel. *Id.*

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[7] D. Burlingame, The Clintons' Terror Pardons, Wall St. J. (Feb. 12, 2008), https://www.wsj.com/articles/SB120277819085260827.

President Clinton's claims that "the sentences were disproportionate to the crimes" was quickly belied by the U.S. Sentencing Commission, which "affirmed a pre-existing Justice Department assessment" that all the sentences the President commuted were "in line with sentences imposed in other cases for similar terrorist activity." *Id.* One federal prosecutor who had worked to convict the men wrote that "[t]he conspirators made every effort to murder and maim. . . . A few dedicated federal agents are the only people who stood in their way." *Id.* By any definition, these terrorists were enemies of the United States who sought to attack U.S. government targets.

If President Clinton had been eligible to run for reelection in 2000, could his political opponents have filed a Section 3 challenge to his eligibility based on those commutations? It would not have been difficult to marshal evidence that the FALN terrorists were dangerous men; practically the entire federal government opposed President Clinton's action. The FBI had uncovered evidence that "two of those on the clemency list . . . intended [] an imminent attack at a U.S. military installation" before their arrests. *Id.* Both chambers of Congress passed resolutions condemning the commutations by overwhelming bipartisan margins (95–2 in the Senate, 311–41 in the House). *Id.* With this mountain of evidence on their side, President Clinton's opponents could have attempted to establish that releasing these dangerous men from prison even when they had never requested clemency constituted the President unilaterally "giv[ing] aid or comfort to the enemies" of the United States. U. S. Const., Amdt. 14, §3.

3. President Obama.

From late 2009 to early 2011, the Obama Administration, operating through the Bureau of Alcohol, Tobacco, Firearms, and Explosives, conducted "Operation Fast and Furious," a program focused on "monitoring—rather than intervening with—particular people who continued to acquire weapons that ended up with [Mexican drug] cartels."[8] Essentially, the ATF allowed cartel-connected buyers to purchase firearms in the hope that the ATF could then trace those weapons back to cartel leaders and make arrests. One of these "straw buyers" that was monitored but not arrested "bought more than 600 of the 2,000 weapons linked to the ring." *Id.*

Once again, a federal policy of providing dangerous weapons to a group of dangerous men ended with predictably tragic consequences: "[G]uns linked to Fast and Furious straw buyers were found at the scene where a Border Patrol agent was killed in December 2010." *Id.* And in that instance, the unintended (but fatal) consequences of the operation were revealed *before* the President who implemented the policy competed as a candidate for reelection.

If political opponents of President Obama had then filed a challenge to his eligibility predicated on Section 3, this Court would have been forced to weigh in. Again, the situation would have demanded a judicial determination of whether a presidential policy that resulted in the death of a federal agent rose to

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[8] C. Savage, Agent Who Supervised Gun-Trafficking Operation Testifies on His Failings, N.Y. Times (July 26, 2011), https://www.nytimes.com/2011/07/27/us/politics/27guns.html.

the level of "giv[ing] aid or comfort to the enemies" of the United States. U. S. Const., Amdt. 14, §3.

* * *

To make the question less hypothetical and even more contemporarily relevant, President Biden voted for President Reagan's request to increase military aid to Pakistan in 1981 (and thereby facilitated the mujahideen resistance against the Soviets)[9], and he also served as Obama's Vice President when Operation Fast and Furious was conducted. If this Court blesses the Colorado Supreme Court's overly broad reading of Section 3, it could throw *both* major-party nomination processes into disarray. To be certain, multiple eligibility challenges can—and will—be lodged against the leading candidates, with a rapidly shrinking window within which the Court can fully adjudicate those challenges.

Make no mistake: If the lower court's decision is allowed to stand, these are *precisely* the kinds of Sections 3 challenges that partisan litigants will file. There will be far more chaff than wheat. Courts are not well-equipped to evaluate the wisdom of a given presidential policy, particularly when the adverse effects of such policies do not become apparent until after implementation. Without judicially manageable standards, courts should defer to the political process and the collective wisdom of the American people as expressed through elections.

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[9] J. Scahill, 1979–1989: Response to the Soviet Invasion of Afghanistan, the Intercept (Apr. 27, 2021), https://theintercept.com/2021/04/27/biden-soviet-invasion-afghanistan-mujahideen-pakistan/.

II. The President is not an "officer of the United States" within the meaning of the Fourteenth Amendment.

Even beyond the many prudential concerns outlined above, there are also strong textual reasons why Section 3 does not apply to a former President of the United States who has never taken an oath for any other state or federal office. Specifically, the structure of the Constitution and traditional canons of construction indicate that the President is not "an officer of the United States" within the meaning of Section 3.

A. Neither the drafters of the Fourteenth Amendment nor this Court have addressed whether the Disqualification Provision of Section 3 applies to former Presidents.

Proponents of the lower court's disqualification theory must first contend with the fact that some of the earliest drafts of what became Section 3 *did* expressly mention the President, but the final enacted version does not. Rep. Samuel McKee of Kentucky filed a proposed amendment on February 19, 1866, that would have prohibited any person from qualifying for or "hold[ing] the office of President of the United States" if they "ha[d] been or shall hereafter be engaged in any armed conspiracy or rebellion against the government of the United States[.]" See Lash, The Meaning and Ambiguity of Section Three of the Fourteenth Amendment (Dec. 28, 2023) (manuscript, at 15–16). This original draft is a model of textual clarity, inarguably prohibiting *any*

person who had engaged in rebellion[10] or did so in the future (whether they were an officeholder or not) from qualifying as a candidate for President or holding office.

The scope of the provision, however, narrowed considerably through subsequent revisions. By the time the final version reached the Senate floor, the only debate over the application of the Amendment to the Presidency focused on the offices that Section 3 prohibits a disqualified individual from *holding* (*i. e.*, "any office, civil or military, under the United States"), rather than *which types of officeholders* are disqualified from holding those offices (*i. e.*, "an officer of the United States," the phrase that Section II of this brief analyzes in detail). U. S. Const., Amdt. 14, §3. One Senator questioned why ex-Confederates should not be "excluded from the privilege of holding the two highest offices in the gift of the nation." Cong. Globe, 39th Cong. 1st Sess. 2899 (1866) (statement of Sen. Johnson). A colleague then "call[ed] the Senator's attention to the words 'or hold any office, civil or military, under the United States,'" implying that those words encompassed the President and Vice President. *Id.* (statement of Sen. Morrill). Even if one finds the opinion of a single Senator on this point convincing—a dubious prospect given that "[w]e are governed by laws, not by the intentions of legislators," *Conroy* v. *Aniskoff*, 507 U. S. 511, 519 (1993) (Scalia,

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[10] This assumes that President Trump's speech is, first, not protected by the First Amendment, and, second, qualifies as "engag[ing] in insurrection or rebellion" within the meaning of Section 3. Both are dubious contentions that have been rebutted elsewhere. See, *e. g.*, Blackman & Tillman, Sweeping and Forcing the President Into Section 3, 28 Tex. Rev. L. & Po. 30 (forthcoming 2024) (manuscript, at 505–34).

J., concurring)—no Senator raised any questions (or offered any answers) about the meaning of the phrase "an officer of the United States" within the context of Section 3.

Although twenty-first century commentators believe that the drafters of the Fourteenth Amendment *should* have been concerned about the prospect of reelecting an insurrectionist President, that does not mean that those working in 1866 devoted any thought to that possibility. Drafters of constitutional amendments are not omniscient. Sometimes, "the [drafters]' silence is best explained by the simple fact that no one, not even the [Amendment]'s most ardent opponents, suggested the document might" have such an effect. *Alden* v. *Maine*, 527 U. S. 706, 741 (1999). In this case, "one can find scattered examples of non-ratifiers who believed the text applied to the President," but that evidence is no more dispositive than the opinions of the loudest voices on Substack today. Lash, (manuscript, at 47–48). "What this case requires are examples of framers and ratifiers testimony sufficient to support a claim of consensus understanding. Such a body of evidence does not exist." *Id.*

The oft-cited examples of John Tyler (President from 1841–45) and John C. Breckinridge (Vice President from 1857–61)—both of whom later joined the Confederacy—shed no additional light on whether Section 3 applies to former Presidents. Along with their stints in the executive branch, both Tyler and Breckinridge had also served several terms in the U.S. Senate and House of Representatives. As such, they had each taken the Article VI oath to support the Constitution several times, meaning that Section 3

did not need to be stretched to encompass them. As has been ably demonstrated elsewhere, the language of Section 3 overlaps with the language of the Article VI Oath or Affirmation Clause. It does not, however, overlap with the language of the Presidential Oath prescribed in Article II, Section 1, Clause 8. Blackman & Tillman, Is The President An "Officer of the United States" for Purposes of Section 3 of the Fourteenth Amendment?, 15(1) N.Y.U. J.L. & Liberty 1, 11–16 (2021). Therefore, Section 3 unambiguously disqualified both Tyler and Breckinridge from further government service without reference to their tenures as President and Vice President.[11]

In short, proponents of disqualification look at the scant evidence from the ratification debates and see a blank slate on which they can project their desire to sweep the President within the scope of Section 3. The more reasonable conclusion—that the drafters of Section 3 did not believe it was possible for a President to engage in "insurrection or rebellion" against the very government that he led—might be less satisfying to modern ears, but it is more consonant with reality. As Professor Lash's historical research has shown, the concept of the United States electing an insurrectionist President in the immediate aftermath of the Civil War "was no more than a punchline to a joke," and thus not realistic enough to require a constitutional amendment. Lash, (manuscript, at 48).

[11] For Tyler, who died in 1862 before the conclusion of the war, Section 3 was a moot point. C. Leahy, President Without a Party: The Life of John Tyler 411–12 (2020).

B. The Constitution's plain text demonstrates that the President is not an "officer."

The word "officer" is used twelve times in the seven articles of the U.S. Constitution. In none of those twelve instances does the word encompass the President of the United States. Instead, "officer" refers to:

- officers elected by the House and Senate, see U. S. Const., Art. I, §2;
- officers of the militia, see *id.*, at Art. I, §8;
- officers of the federal government in general, see *id.*;
- persons within the line of presidential succession (while specifically excluding the President and Vice President), see *id.*, at Art. II, §1;
- the principal officers of executive departments, see *id.*, at Art. II, §2;
- officers of the federal government who are appointed by the President, see *id.*;
- officers of the federal government who are commissioned by the President, see *id.,* at Art. II, §3;
- federal civil officers who may be removed from office via impeachment (while specifically excluding the

President and Vice President), see *id.* at Art. II, §4; and

- "all executive and judicial officers" required to take the Article VI oath, which excludes the President who takes the constitutionally prescribed Article II oath, *id.*, at Art. VI.

Early nineteenth century jurists were not confused by this mountain of one-sided evidence. Justice Joseph Story wrote that the Impeachment Clause, which refers to "the President, Vice President, and all civil officers of the United States (not all *other* civil officers)," made clear that the only two persons elected on a national ticket were "contradistinguished from, rather than . . . included in the description of, civil officers of the United States." 2 Joseph Story, Commentaries on the Constitution of the United States 260 (Boston, Hilliard, Gray, and Co. 1833) (emphasis added). Justice Story's interpretation remains the most natural way to read that text.

Although at least two Founding-era sources conflict with this evidence, both provide a thin reed on which to conclude that "officer" encompasses the Nation's Chief Executive. In Federalist No. 69, Alexander Hamilton wrote that "[t]he President of the United States would be an officer elected by the people for *four* years," in a passage in which he contrasted the limited powers of the Presidency with the "perpetual" reign of the English king. The Federalist No. 69, p. 531 (Sweetwater Press ed. 2010) (A. Hamilton); see also Federalist No. 76, p. 580 (discussing the power of appointment "in the hands of that officer," referring to the President).

The likeliest explanation is that Hamilton was speaking colloquially, altering his vocabulary for the sake of readability. Elsewhere in the Federalist Papers, he appeared to distinguish between the President and "officers of the United States," such as when he declared that "[a] change of the Chief Magistrate . . . would not occasion so violent or so general a revolution *in the officers of the government* as might be expected." The Federalist No. 77, p. 584 (Sweetwater Press ed. 2010) (A. Hamilton) (emphasis added). But most importantly, he only ever referred to the President as an *officer*, and never as an *officer of the United States*. The difference may sound inconsequential to the unpracticed ear, but this Court has counseled that "two words together may assume a more particular meaning than those words in isolation." *FCC* v. *AT&T, Inc.*, 562 U. S. 397, 406 (2011). The President may very well be an "officer" in that he occupies a particular office, but the mere "creation of an office . . . does not automatically make its holder an 'Officer of the United States.'" *Financial Oversight & Mgmt. Bd. for P.R.* v. *Aurelius Inv., LLC*, 140 S. Ct. 1649, 1659 (2020). And in any event, these references come from one of the foremost defenders of robust executive power. See generally Federalist No. 70.

In other words, faced with plain textual evidence and treatises that pre-date the drafting of the Fourteenth Amendment (all of which point in a single direction), proponents of disqualification are forced to rely solely on *extratextual* evidence in support of their theory. This carries them no further toward their extraconstitutional goal.

C. Traditional canons of construction support the plain reading of Section 3's text.

In recent decades, the Court has "redirect[ed] the judge's interpretive task back to its roots, away from open-ended policy appeals and toward the traditional tools of interpretation judges have employed for centuries to elucidate the law's original public meaning." *Kisor* v. *Wilkie*, 139 S. Ct. 2400, 2442 (2019) (Roberts, C. J., concurring). Unless the application of "traditional tools of interpretation" leads "to a 'linguistically impossible' or contextually implausible outcome," there is no need to resort to alternative interpretive methods. *Facebook, Inc.* v. *Duguid*, 141 S. Ct. 1163, 1171 (2021).

To be clear, here there is no need to go beyond the unambiguous constitutional text. But to the extent the Court finds traditional canons of statutory construction useful while interpreting constitutional text, the application of the following canons reinforces Mr. Ramaswamy's argument.

1. *Expressio unius est exclusio alterius.*

The Supreme Court has traditionally applied the negative implication canon, which provides that "[t]he expression of one thing implies the exclusion of others (*expressio unius est exclusio alterius*)." *Jennings* v. *Rodriguez*, 583 U. S. 281, 300 (2018) (quoting A. Scalia & B. Garner, Reading Law 107 (2012)). "This maxim properly applies only when . . . that which is expressed is so set over by way of strong contrast to that which is omitted that the contrast enforces the affirmative inference that that

which is omitted must be intended to have opposite and contrary treatment." *Ford* v. *United States*, 273 U. S. 593, 611 (1927).

Section 3 lists four relevant categories of persons who are subject to disqualification for "engag[ing] in insurrection or rebellion": (1) "member[s] of Congress;" (2) "officer[s] of the United States;" (3) "member[s] of any State legislature;" and (4) "executive or judicial officer[s] of any State." U. S. Const., Amdt. 14, §3. The only one of these categories that could encompass President Trump is "officer[s] of the United States." But to accept that argument, the reader would have to assume that the drafters of the Amendment crafted a specific category for Members of Congress while declining to do the same for the most powerful individual actor in our constitutional system.

The drafters of the Fourteenth Amendment were plainly aware of the possibility that a former President could support a movement that took up arms against the United States (indeed, John Tyler had done so a mere five years earlier). It would have been a simple matter to expressly list the President in Section 3 for the sake of clarity and to be certain—and yet the men who drafted the Amendment did no such thing. Because the omission of the President from Section 3 is so glaring, "that which is omitted must be intended to have opposite and contrary treatment" from the categories that were expressly enumerated. *Ford*, 273 U. S., at 611. Here, that means the President is treated differently than Members of Congress and those individuals covered by the other enumerated categories.

2. *Noscitur a sociis* and *ejusdem generis.*

The principle of *noscitur a sociis* means that "a word is known by the company it keeps," and it is applied to "avoid ascribing to one word a meaning so broad that it is inconsistent with its accompanying words[.]" *Yates* v. *United States*, 574 U. S. 528, 543 (2015) (quoting *Gustafson* v. *Alloyd Co.*, 513 U. S. 561, (1995)). Similarly, the *ejusdem generis* canon counsels that "where general words follow specific words in a statutory enumeration, the general words are [usually] construed to embrace only objects similar in nature to those objects enumerated by the preceding specific words." *Id.*, at 545 (quoting *Washington State Dept. of Social and Health Servs.* v. *Guardianship Est. of Keffeler*, 537 U. S. 371, 384 (2008)).

The combined lesson of these two canons is that a single item within a list does not carry a free-floating meaning detached from the phrases that surround it. Instead, the neighboring phrases "cabin the contextual meaning of that term." *Id.*, at 543. Therefore, the meaning of the phrase "officer of the United States" in Section 3 is cabined by the three other categories contained within the same list.

Two of the other categories in Section 3 refer to some—but not all—of the individuals who work within the federal and state legislative branches. Section 3's disqualification provision applies to "a *member* of Congress" and "a *member* of any State legislature," but not to aides, staffers, clerks, and other persons who serve those institutions. U. S. Const., Amdt. 14, §3 (emphases added). Therefore, it is not a reasonable interpretation of Section 3 to argue that each enumerated category encompasses *every*

person who works in the specified branch of government.

Proponents of disqualification may counter that the fourth category—"an executive or judicial officer of any State"—is broad enough to swallow every person employed by either branch in any state, and that the "officer of the United States" category should be read similarly to apply to every person within the federal executive and judicial branches. This might be a plausible reading were it not for the clear textual evidence that the word "officer" *never* refers to the President when used in the Constitution, and for the structural considerations discussed in Section II(C) *infra* that confer upon the President a unique status in our constitutional regime.

3. Congress does not hide elephants in mouseholes.

Finally, this Court's precedent teaches that "Congress . . . does not alter the fundamental details of a [legislative] scheme in vague terms or ancillary provisions—it does not, one might say, hide elephants in mouseholes." *Whitman* v. *American Trucking Assn's*, 531 U. S. 457, 468 (2001). In short, extrapolating beyond the preceding canons that instruct that Congress does not conceal the specific within the vague, this canon goes a step further: Congress certainly does not conceal *significant* specific topics within *inconsequentially* vague language.

It beggars belief that the drafters of the Fourteenth Amendment genuinely intended to conceal the "elephant" of the Presidency within the

"mousehole" of the phrase "officer of the United States," and then expected that hidden meaning to be obvious to future generations. Mr. Ramaswamy's interpretation is substantially more plausible.

D. Structural considerations bolster the President's unique constitutional status.

Prominent legal commentators have called the argument that the President is not "an officer of the United States" an "absurdity." Baude & Paulsen, The Sweep and Force of Section 3, 172 U. Pa. L. Rev. (forthcoming 2024) (manuscript, at 111). But the argument is only "absurd" if one assumes that the President is fundamentally no different from the people who work for him—a bigger cog within the executive branch than the others, perhaps, but a cog all the same.

This reading is belied not only by the constitutional text, but also by its structure. The President is and always has been the *only* person within our constitutional system who is vested with *all the power* of a single branch of the federal government. As discussed in Section I(A) *supra*, "[w]hile history looms large in this debate, . . . the historical record [is] more silent than supportive on the question whether" the drafters of the Fourteenth Amendment intended to apply Section 3 to former Presidents. *Fulton* v. *City of Philadelphia*, 141 S. Ct. 1868, 1883 (2021) (Barrett, J., concurring). In a situation where the historical record is not dispositive, "the textual and structural arguments against" Section 3 disqualification theory "are more compelling." *Id.*

The full extent of the President's power is set out in the very first sentence of Article II: "The executive power shall be vested in a President of the United States of America." U. S. Const., Art. 2, §1, cl. 1. The Constitution could not be clearer: *One* individual (not multiple) is vested with *all* the executive power (not merely some). Full stop. And although the President has always enjoyed the power to appoint officers to assist him in carrying out his duties, see *id.*, at §1, cl. 2, he need not do so. Indeed, a President could lawfully (although perhaps not practically) exercise all the executive power by himself without making a single appointment.

Since the Constitution was ratified, there have been those who claim "that a vigorous executive is inconsistent with the genius of republican government." The Federalist No. 70, p. 534 (Sweetwater Press ed. 2010) (A. Hamilton). Those people, to put it plainly, lost this argument in 1788. As Hamilton explained in Federalist No. 70, the Constitution, while responsive to such concerns, does not endorse them. "A feeble Executive implies a feeble execution of the government," Hamilton posited, and "a government ill executed, whatever it may be in theory, must be, in practice, a bad government." *Id.*, at p. 535. The final constitutional design promotes that same executive energy for which Hamilton advocated.

Rather than hobbling the Executive from within by limiting his powers or diffusing them among multiple actors (a solution that was, for example, imposed on Congress in the form of bicameralism, see The Federalist No. 51, p. 397 (Sweetwater Press ed. 2010) (J. Madison)), the

Founders chose a different approach to guarantee that the Executive retained "competent powers" with which he could fulfill his constitutional duties. The Federalist No. 70, p. 535 (Sweetwater Press ed. 2010) (A. Hamilton). The Founders' answer to the dilemma of executive power was "contriving the interior structure of the government [so] that its several constituent parts may, by their mutual relations, be the means of keeping each other in their proper places." The Federalist No. 51, p. 394–95 (Sweetwater Press ed. 2010) (J. Madison).

As Madison explained in Federalist No. 51, "the great security against a gradual concentration of the several powers in the same department[] consists in giving to those who administer each department the necessary constitutional means and personal motives to resist encroachment of the others." *Id.*, at p. 396. "Ambition must be made to counteract ambition. The interest of the man must be connected with the constitutional rights of the place." *Id.* In other words, the Founders understood that the most effective way to check the executive power is not to limit it outright but to separately empower the legislature and the judiciary so that they can jealously defend their own prerogatives. The Founders' separation of powers reveals an intuitive understanding of human nature that the Constitution's critics have always lacked.

In no branch is "[t]he interest of the man" more intimately "connected with the constitutional rights of the place" than in the case of the Executive, and this Court has consistently ratified the Founders' broad conception of the executive power. *Id.* In a 2020 decision joined by seven Justices, Chief Justice Roberts wrote for the majority that "[t]he President is

the only person who *alone* composes a branch of government." *Trump* v. *Mazars USA, LLP*, 140 S. Ct. 2019, 2034 (2020) (emphasis added). Nor is this an idea of recent vintage; this Court agreed during the era of the Fourteenth Amendment's ratification. See *Mississippi* v. *Johnson*, 71 U. S. 475, 500 (1867) (holding that while Cabinet officers "all constitute but *part* of the executive department of the government," "the President *is* the executive department") (emphases added). The President alone is vested with all the executive power, and he may parcel it out to subordinate officers within the executive branch as he sees fit.

Finally, the President and "officers of the United States" are subject to different mechanisms for accountability that confirm their distinctions. Although the Appointments Clause does not expressly address the removal question, this Court has agreed for roughly a century that "the power of removing those [officers] for whom [the President] can not continue to be responsible" is "essential to the execution of the laws[.]" *Myers* v. *United States*, 272 U. S. 52, 117 (1926). After all, "[i]f such appointments and removals were not an exercise of the executive power, what were they?" *Id.* Accordingly, the President has long enjoyed the power to dismiss the officers that he appoints (with certain exceptions, see *Humphrey's Executor* v. *United States*, 295 U. S. 602, 629 (1935)), from executive-branch service.

The President, of course, answers to a different master. "He shall hold his office during the term of four years, and, together with the Vice President, chosen for the same term, *be elected*[.]" U. S. Const., Art. II, §1, cl. 1 (emphasis added). By contrast, as a

five-Justice majority recently recognized, "[t]he people do not vote for the 'Officers of the United States.'" *Free Enter. Fund* v. *Public Co. Acct. Oversight Bd.*, 561 U. S. 477, 497–98 (2010). Quite so.

The President is not a monarch, but he is not a mere bureaucrat either (nor, for that matter, is he "an officer of the United States"). Although the President may not exercise legislative or judicial authority, he may wield the entirety of the power vested in him within the Executive's constitutional sphere. From 1789 through the present day, an energetic Executive has been vital to the constitutional structure, while the appointment of "officers of the United States" remains what it always has been: Optional.

For all these reasons, both those expressed in the text and those implied by the structure of the Constitution's separation of powers, the President is not "an officer of the United States" within the meaning of Section 3, and so that constitutional provision does not apply to him. For an individual like Donald Trump who has taken only the Presidential Oath and no other, this determination ends the inquiry without the need for further analysis.

CONCLUSION

For the foregoing reasons, the Court should reverse the decision of the Colorado Supreme Court.

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