

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 FOR THE  
SAN FRANCISCO TAXPAYERS ASSOCIATION,  
THE HONORABLE PETE MCCLOSKEY &  
THE HONORABLE QUENTIN L. KOPP  
AS *AMICI CURIAE* IN SUPPORT OF  
RESPONDENTS**

---

PAUL D. SCOTT  
*Counsel of Record*  
LANI ANNE REMICK  
LAW OFFICES OF PAUL D. SCOTT, P.C.  
640 WASHINGTON STREET  
SAN FRANCISCO, CA 94111  
(415) 981-1212  
pdscott@lopds.com

*COUNSEL FOR AMICI CURIAE*

---

---

**TABLE OF CONTENTS**

TABLE OF AUTHORITIES.....ii

INTEREST OF *AMICI CURIAE* ..... 1

SUMMARY OF ARGUMENT ..... 3

ARGUMENT ..... 3

    I.    The Constitution Sets forth Unique  
        Responsibilities for the President Under his Oath  
        of Office. .... 4

    II.   A Textualist Interpretation of the  
        Constitution Starts with its Ordinary Meaning. ... 6

    III.  The Definition of “Rebellion” Includes Open  
        Resistance to, or Defiance of, Lawful Authority. ... 7

    IV.  Section Three Applies to Engaging in  
        Rebellion Against the U.S. Constitution, including  
        the President’s Oath of Office, the Twelfth  
        Amendment, and the Twentieth Amendment. .... 11

    V.   Relevant Legislative History Further  
        Supports Applying the Ordinary Meaning of the  
        Term “Rebellion.” ..... 14

    VI.  “Engaged In” Includes Passive Conduct  
        When There is a Duty to Act. .... 17

    VII.  President Trump’s Conduct Constituted  
        Engaging in Rebellion..... 18

    VIII. Excluding a Disqualified Candidate from the  
        Ballot is Not Anti-Democratic. .... 20

CONCLUSION ..... 21

## TABLE OF AUTHORITIES

### Cases

|   |    |
|---|----|
| <i>Board of Trustees of the Leland Stanford Junior</i>        |    |
| <i>Univ. v. Roche Molecular Systems, Inc.</i> , 563 U.S.      |    |
| 776 (2011).....   | 7  |
| <i>Bostock v. Clayton Cnty.</i> , 140 S. Ct. 1731 (2020)..... | 7  |
| <i>Dahda v. United States</i> , 138 S. Ct. 1491 (2018) .....  | 4  |
| <i>Davis v. United States</i> , 512 U.S. 452 (1994) .....     | 4  |
| <i>District of Columbia v. Heller</i> , 554 U.S. 570 (2008) . | 6  |
| <i>Gibbons v. Ogden</i> , 9 Wheat. 1 (1824).....              | 6  |
| <i>In re Charge to Grand Jury-Treason</i> , 30 F. Cas. 1047   |    |
| (C.C.E.D. Pa. 1851).....                                      | 18 |
| <i>MCI Telecommunications Corp. v. American Tel. &amp;</i>    |    |
| <i>Tel. Co.</i> , 512 U.S. 218 (1994) .....                   | 7  |
| <i>Murr v. Wisconsin</i> , 137 S. Ct. 1933 (2017) .....       | 4  |
| <i>Taniguchi v. Kan Pacific Saipan, Ltd.</i> , 566 U.S. 560   |    |
| (2012) .....  | 7  |
| <i>United States v. Lee</i> , 106 U.S. 196 (1882).....        | 20 |
| <i>United States v. Powell</i> , 27 F. Cas. 605 (C.C.D.N.C.   |    |
| 1871).....  | 15 |
| <i>United States v. Sprague</i> , 282 U.S. 716 (1931).....    | 6  |

### Other Authorities

|   |    |
|---|----|
| 2 J. Story <i>Commentaries</i> § 1488 (Little, Brown, 5 <sup>th</sup> |    |
| ed., 1891).....   | 12 |
| 2 The Records of the Federal Constitution 35 (Max                     |    |
| Farrand, ed. 1911) .....  | 5  |
| Abraham Lincoln, <i>Message to Congress in Special</i>                |    |
| <i>Session</i> (July 4, 1861), IV CWL 421 .....                       | 11 |

|  |    |
|--|----|
| Abraham Lincoln, <i>To Erastus Corning and Others</i><br>(June 12, 1863), VI CWL 260 .....   | 18 |
| Amy Coney Barrett, <i>Congressional Insiders and</i><br><i>Outsiders</i> , 84 U. Chi. L. Rev. 2193 (2017) .....  | 6  |
| Antonin Scalia & Bryan A. Garner, <i>Reading Law:</i><br><i>The Interpretation Of Legal Texts</i> (2012) .....   | 6  |
| Cong. Globe, 39th Cong., 1st Sess. 2093 (1866).....  | 16 |
| Cong. Globe, 39th Cong., 1 <sup>st</sup> Sess. 2898 (1866).....  | 15 |
| Henry Stanbery, <i>The Reconstruction Acts</i> , 12 Op.<br>Att’y Gen. 141 (May 24, 1867) .....   | 15 |
| John Boag, <i>A Popular and Complete English</i><br><i>Dictionary</i> (1848) .....   | 9  |
| John Bouvier, <i>A Law Dictionary</i> (6 <sup>th</sup> ed. 1856) .....   | 11 |
| Kevin Tobia, Brian G. Slocum, & Victoria Nourse,<br><i>Ordinary Meaning and Ordinary People</i> , 171 U.<br>Pa. L. Rev. 365 (2023) .....   | 7  |
| Noah Webster, <i>An American Dictionary of the</i><br><i>English Language</i> (1828).....  | 7  |
| Noah Webster, <i>An American Dictionary of the</i><br><i>English Language</i> (1865 ed.) .....   | 10 |
| Oliver Wendell Holmes, <i>The Theory of Legal</i><br><i>Interpretation</i> , 12 Harv. L. Rev. 417 (1899).....  | 6  |
| <i>The American Heritage Dictionary of the English</i><br><i>Language</i> (5 <sup>th</sup> ed. 2022) .....   | 10 |
| William Baude & Michael Stokes Paulsen, <i>The</i><br><i>Sweep and Force of Section Three</i> , 172 U. Pa. L.<br>Rev. (forthcoming 2024), available at:<br><a href="https://ssrn.com/abstract=4532751">https://ssrn.com/abstract=4532751</a> ..... | 19 |

**Constitutional Provisions**

U.S. Const. amend. XII ..... 13, 14, 20  
U.S. Const. amend. XIV, § 3..... 4, 12  
U.S. Const. amend. XX..... 13, 20  
U.S. Const. art VI..... 13  
U.S. Const. art. II, § 1 ..... 5, 12, 14

## INTEREST OF *AMICI CURIAE*<sup>1</sup>

The San Francisco Taxpayers Association is a 501(c)(4) nonprofit organized under the laws of the State of California, the membership of which includes taxpayers and voters from both major political parties – Republican and Democratic – as well as Independent taxpaying voters.

The Honorable Pete McCloskey is a former Republican Congressman who represented California's 14<sup>th</sup> congressional district for over 15 years, and he is currently a member of the California College of Presidential Electors. He served in the Korean War, where he was awarded the Navy Cross and the Silver Star. He was the first Congressman to call publicly for the impeachment of President Richard Nixon after the Watergate scandal.

The Honorable Quentin L. Kopp is an American attorney, politician, and jurist. He served as a judge on the San Mateo County Superior Court and as an Independent senator in the California State Senate for twelve years. He also served as an Ethics Commissioner and on the Board of Supervisors for the City and County of San Francisco. Prior to his political career, he was an officer in the United

---

<sup>1</sup> No counsel for a party in this case participated in the preparation of this brief, and no funds were paid by any party in this case or their counsel to *amici curiae* or counsel for *amici curiae* to fund the preparation or submission of this brief. This matter is being handled *pro bono publico* by counsel for *amici curiae*.

States Air Force Judge Advocate Corps. He is presently the Chief Executive Officer of the San Francisco Taxpayers Association.

The Court's decision in the instant matter will necessarily affect the choices for president of voters in California's upcoming Republican presidential primary, and it stands to affect the choices for president of all voters in the general election, including *amici curiae*.

California taxpayers, including *amici curiae*, fund both the presidential primary and the general election in California and, thus, have an interest in the elections being conducted in compliance with the Constitution in the first instance.

## SUMMARY OF ARGUMENT

Section Three of the Fourteenth Amendment to the United States Constitution sets forth three alternate bases for a person who has previously taken an oath to support the Constitution to be disqualified from holding the Office of President. Section Three bars those who have 1) engaged in insurrection against the Constitution of the United States, 2) engaged in rebellion against the Constitution, or 3) given aid or comfort to the enemies of the Constitution. The Colorado Supreme Court held that former President Donald J. Trump is disqualified from holding the Office of President on the basis that he engaged in insurrection.

*Amici curiae* contend *President Trump is also disqualified because he engaged in rebellion against the Constitution*, by knowingly disregarding the presidential oath of office, which is the only oath explicitly set forth in full in the Constitution, and by knowingly obstructing the peaceful transfer of power as provided for under the Twelfth and Twentieth Amendments. Accordingly, this Court should affirm the Colorado Supreme Court's holding.

## ARGUMENT

The Colorado Supreme Court focused on whether an insurrection took place on January 6<sup>th</sup> and whether President Trump engaged in that event, thus disqualifying him from office under Section Three of the Fourteenth Amendment to the Constitution.<sup>3</sup> *Amici curiae* posit that, however the

---

<sup>3</sup> “No person shall be a Senator or Representative in Congress, or elector of President and Vice-President, or hold any office,

events of January 6<sup>th</sup> may be described, the President should be disqualified from office because he engaged in rebellion against the Constitution of the United States.<sup>4</sup>

**I. The Constitution Sets forth Unique Responsibilities for the President Under his Oath of Office.**

One fundamental precept the Framers of the Constitution necessarily agreed upon was that the president should not be permitted to become a king, like George III, whose tyranny was fresh in the nation’s memory. Declaration of Independence (U.S.

---

civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.” U.S. Const. amend. XIV, § 3.

<sup>4</sup> The question presented asks generally whether the Colorado Supreme Court erred in excluding President Trump from the 2024 presidential primary ballot, and it is within this Court’s discretion to consider whether he is barred on grounds alternative to those articulated by the Colorado Supreme Court or appellee. *See Dahda v. United States*, 138 S. Ct. 1491, 1498 (2018) (this Court “may ‘affir[m]’ a lower court judgment ‘on any ground permitted by the law and the record’”) (quoting *Murr v. Wisconsin*, 137 S. Ct. 1933, 1949 (2017)); *Davis v. United States*, 512 U.S. 452, 464 (1994) (Scalia, J., concurring) (“[T]he refusal to consider arguments not raised is a sound prudential practice, rather than a statutory or constitutional mandate, and there are times when prudence dictates the contrary.”).

1776) (“The history of the present King of Great Britain is a history of repeated injuries and usurpations, all having in direct object the establishment of an absolute Tyranny over these States.”); *see also* 2 The Records of the Federal Constitution 35 (Max Farrand, ed. 1911) (July 17, 1787 discussion regarding threat of "hereditary monarchy" in determining limits on president's term of office).

To protect the country from this possibility, the Framers adopted procedures for the peaceful transition of power in Article II (later revised by the Twelfth and Twentieth Amendments) and, critically, a special qualification for the president and the president alone. Not only did he have to be born in the United States and 35 or older in age, he had to swear a special oath:

"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.

This oath, which carries broader responsibilities than the oath required of other officers under the Constitution, thus not only requires the president to comply with the Constitution's procedures for transition of power; it specifically requires him to preserve and protect that process and defend against any attacks on the same.

As outlined in detail below, by his conduct and knowingly violating that oath, President Trump

engaged in “rebellion” against the Constitution as that term is ordinarily understood.

## II. A Textualist Interpretation of the Constitution Starts with its Ordinary Meaning.

This Court observed in *District of Columbia v. Heller* that, “in interpreting [the Constitution], we are guided by the principle that ‘[t]he Constitution was written to be understood by the voters; its words and phrases were used in their normal and ordinary as distinguished from technical meaning.’” 554 U.S. 570, 576 (2008) (quoting *United States v. Sprague*, 282 U.S. 716, 731 (1931) and citing *Gibbons v. Ogden*, 9 Wheat. 1, 188 (1824)). See also Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation Of Legal Texts* 228 (2012) (“[T]he meaning of the definition is almost always closely related to the ordinary meaning of the word being defined.”); Amy Coney Barrett, *Congressional Insiders and Outsiders*, 84 U. Chi. L. Rev. 2193, 2195 (2017) (“[Textualists] view themselves as agents of the people rather than of Congress and as faithful to the law rather than to the lawgiver. . . . Textualists consider themselves bound to adhere to the most natural meaning of the words at issue because that is the way their principal—the people—would understand them.”); Oliver Wendell Holmes, *The Theory of Legal Interpretation*, 12 Harv. L. Rev. 417, 417 (1899) (“[W]e ask, not what this man meant, but what those words would mean in the mouth of a normal speaker of English . . .”).

In employing this textualist approach to interpretation, the Court has relied on dictionaries,

with increasing frequency in recent times, to determine the ordinary meaning of words. *See, e.g., MCI Telecommunications Corp. v. American Tel. & Tel. Co.*, 512 U.S. 218, 225–26 (1994) (Scalia, J.) (citing three English language dictionaries and *Black’s Law Dictionary*). *See also Taniguchi v. Kan Pacific Saipan, Ltd.*, 566 U.S. 560, 566-67 (2012) (Alito, J.) (citing ten dictionaries); *Board of Trustees of the Leland Stanford Junior Univ. v. Roche Molecular Systems, Inc.*, 563 U.S. 776, 788-89 (2011) (Roberts, C. J.) (citing five dictionaries); Kevin Tobia, Brian G. Slocum, & Victoria Nourse, *Ordinary Meaning and Ordinary People*, 171 U. Pa. L. Rev. 365, 373 & n.32, Appendix (2023) (analysis of more than 500 opinions citing legal dictionaries and ordinary dictionaries).

Ultimately, as Justice Kavanaugh succinctly put it, “[t]he ordinary meaning that counts is the ordinary public meaning at the time of enactment . . . .” *Bostock v. Clayton Cnty.*, 140 S. Ct. 1731, 1825 (2020) (Kavanaugh, J., dissenting).

### **III. The Definition of “Rebellion” Includes Open Resistance to, or Defiance of, Lawful Authority.**

Noah Webster’s *magnum opus* of American English was published in 1828. Noah Webster, *An American Dictionary of the English Language* (1828). It defined “rebellion” to include “[o]pen resistance to lawful authority.”<sup>5</sup> Webster’s definition also

---

<sup>5</sup> The full definition of “rebellion” in Webster’s 1828 dictionary reads as follows:

explained how an insurrection is different from a rebellion. An insurrection is described as “a rising in opposition to a particular act or law,” and can, but does not necessarily, involve a broader challenge to governmental authority. *Id.* A rebellion, by contrast, is defined as “open resistance to lawful authority” that poses such a threat. Rebellion is not just aimed at a particular law or act, but more fundamentally implicates a “revolt, or an attempt to overthrow the government, to establish a different one . . . .” *Id.*<sup>6</sup>

---

1. An open and avowed renunciation of the authority of the government to which one owes allegiance; or the taking of arms traitorously to resist the authority of lawful government; revolt. *rebellion* differs from insurrection and from mutiny. Insurrection may be a rising in opposition to a particular act or law, without a design to renounce wholly all subjection to the government. Insurrection may be, but is not necessarily, *rebellion*. Mutiny is an insurrection of soldiers or seamen against the authority of their officers. No sooner is the standard of *rebellion* displayed, than men of desperate principles resort to it.

2. Open resistance to lawful authority. Commission of *rebellion*; in law, a commission awarded against a person who treats the king's authority with contempt, in not obeying his proclamation according to his allegiance, and refusing to attend his sovereign when required; in which case, four commissioners are ordered to attach him wherever he may be found.

*Id.*

<sup>6</sup> The definition of “insurrection” in Webster’s dictionary similarly discusses the relationship between “rebellion” and “insurrection.”

INSURRECTION . . . A rising against civil or political authority; the open and active opposition of a number of

Another popular dictionary published in the United States in 1848 provided a shorter definition of the term “rebellion” but still defined it to include “[o]pen resistance to lawful authority” and highlighted the same notion that insurrection could be limited to opposition to an act or law while rebellion involved a threat to the governing authority itself. John Boag, *A Popular and Complete English Dictionary* 727 (1848).<sup>7</sup>

A subsequent version of Webster’s dictionary, first published in 1864, broadly defined “rebellion” to include, *inter alia*, “the act of rebelling” or “[o]pen

---

persons to the execution of a law in a city or state. It is equivalent to sedition, except that sedition expresses a less extensive rising of citizens. It differs from rebellion, for the latter expresses a revolt, or an attempt to overthrow the government, to establish a different one, or to place the country under another jurisdiction.

*Id.*

<sup>7</sup> The full definition of “rebellion” in Boag’s dictionary reads as follows:

An open and avowed renunciation of the authority of the government to which one owes allegiance; or the taking of arms traitorously to resist the authority of lawful government; revolt. – *Rebellion* differs from *insurrection* and from *mutiny*. *Insurrection* may be a rising in opposition to a particular act or law, without a design to renounce wholly all subjection to the government. – *Insurrection* may be, but is not necessarily, *rebellion*. *Mutiny* is an insurrection of soldiers or seamen against the authority of their officers. Open resistance to lawful authority.

*Id.*

resistance to, or defiance of, lawful authority,” and it included “insurrection” and “revolt” as synonyms of “rebellion.” Noah Webster, *An American Dictionary of the English Language* 1094 (1865 ed.).<sup>8</sup>

Modern dictionaries define “rebellion” to include the same notion of open defiance of, or opposition to, lawful authority. *See, e.g., The American Heritage Dictionary of the English Language* (5<sup>th</sup> ed. 2022) (“[d]efiance toward an authority or established convention”); Merriam-Webster, *Merriam-Webster.com Dictionary*, <https://www.merriam-webster.com/dictionary/rebellion> (“opposition to one in authority or dominance”).

All the foregoing definitions are consistent in recognizing that rebellion, while requiring resistance or defiance or opposition to lawful authority, does not specifically require the use of arms or force or an

---

<sup>8</sup> The full definition of “rebellion” in *An American Dictionary of the English Language*, as revised in 1864, read as follows:

1. The act of rebelling; open and avowed renunciation of the authority of the government to which one owes allegiance; the taking of arms traitorously to resist the authority of lawful government; revolt; insurrection. No sooner is the standard of *rebellion* displayed than men of desperate principles resort to it. *Ames*.
2. Open resistance to, or defiance of, lawful authority. Commission of rebellion (*Eng. Law*), a process of contempt issued on the nonappearance of a defendant, - now abolished. *Wharton, Burrill*.  
*Syn. – Insurrection; sedition; revolt; mutiny; resistance; contumacy. See Insurrection.*

*Id.*

assembly of persons to be considered rebellion. *See also* Abraham Lincoln, *Message to Congress in Special Session* (July 4, 1861), IV CWL 421, 427-428, 432-437 (describing the “ingenious sophism” engaged in for decades by those seeking to secede from the Union as “rebellion thus sugar-coated . . . until at length they [] brought many good men to a willingness to take up arms against the government”).

In sum, the most complete ordinary definition of “rebellion” is “open resistance to, or defiance of, lawful authority,” not necessarily involving armed conflict, where such resistance is not just aimed at a particular act or law but is aimed at the lawful governing authority such as the Constitution itself.<sup>9</sup>

**IV. Section Three Applies to Engaging in Rebellion Against the U.S. Constitution, including the President’s Oath of Office, the Twelfth Amendment, and the Twentieth Amendment.**

Section Three makes clear that the lawful authority against which rebellion is prohibited is not

---

<sup>9</sup> Though, as noted above, textualism favors the use of “ordinary” meanings, the definition of rebellion included in the first American law dictionary in use during the relevant period similarly covered conduct that amounted to open resistance to lawful authority, not necessarily involving arms. John Bouvier, *A Law Dictionary* (6<sup>th</sup> ed. 1856) (“Rebellion, crim law. The taking up arms traitorously against the government and in another, and perhaps a more correct sense, rebellion signifies the forcible opposition and resistance to the laws and process lawfully issued . . .”).

any specific governing body; it is the U.S. Constitution itself. Section Three disqualifies any person who “having previously taken an oath . . . to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same.” U.S. Const. amend. XIV, § 3. As the trial court held below, the term “same” in this context is reasonably understood to refer to the Constitution of the United States, for the oath taken by relevant government officials is to the Constitution. Co.Dist.Ct. at ¶ 231.<sup>10</sup>

Of specific relevance to the events surrounding January 6<sup>th</sup> are the provisions in the Constitution governing the president’s oath of office and the peaceful transition of power from one president to the next.

As noted *supra*, the president’s oath of office is of critical relevance because it is the only oath of office explicitly set forth in full in the Constitution and it calls for him “to preserve, protect and defend the Constitution.” U.S. Const. art II, § 1. *See* 2 J. Story *Commentaries* § 1488 at 325-26 (Little, Brown, 5<sup>th</sup> ed., 1891) (“It is a suitable pledge of his fidelity and responsibility to his country; and creates upon his conscience a deep sense of duty, by an appeal, at once in the presence of God and man, to the most sacred

---

<sup>10</sup> Petitioner may argue that application of the ordinary meaning of rebellion proposed herein is overbroad, but Section Three does not disqualify those who have engaged in rebellion in the abstract; it disqualifies those who have engaged in rebellion *against the Constitution*. Section Three’s reference to rebellion thus addresses only a narrow band of conduct most threatening to our constitutional republic.

and solemn sanctions which can operate upon the human mind.”).

The president thus stands in a different position than other officers and elected officials. By virtue of his oath of office in Article II, the president has additional affirmative obligations that the Constitution does not impose on any person other than the president.<sup>11</sup>

The Twelfth Amendment provides that “[t]he Electors shall meet in their respective states and vote by ballot for President and Vice-President,” then “sign and certify, and transmit” those votes “to the President of the Senate.” U.S. Const. amend. XII. The Twelfth Amendment further specifies that the president of the Senate (designated as the vice-president in Article I, Section Three) “shall, in the presence of the Senate and House of Representatives, open all the certificates and the votes shall then be counted,” with the candidate receiving a majority of votes then becoming president. *See also* U.S. Const. amend. XX (setting forth January 20<sup>th</sup> as the date on which the president’s term ends and successor’s begins).

Reading these provisions together, Section Three thus disqualifies a president from running for a second term of office if he has engaged in rebellion,

---

<sup>11</sup> Indeed, the specific oath taken by senators and representatives is not even explicitly stated in the Constitution. Article VI simply states generally that federal legislators, along with state legislators and state and federal executive and judicial officers, need only provide an oath or affirmation “to support” the Constitution. U.S. Const. art VI.

while in office, against the peaceful transition of power provided for in the Twelfth and Twentieth Amendments. Such actions are also a rebellion against his sworn duty under Article II “to preserve, protect and defend the Constitution of the United States” to the “best of [his] ability.”

As noted *supra*, an act of rebellion can take various forms: it can be armed or not, and it can involve many individuals or just one. But at its heart, the threat posed by rebellion is the overthrow or replacement of the lawful authority against which the rebellion is aimed. In this context, the threat posed by a president attempting to obstruct the transfer of power under the Twelfth and Twentieth Amendments, and thus consciously refusing to act to the best of his ability “to preserve, protect and defend the Constitution” as required by Article II, poses a far greater threat than most any action, armed or not, by any other government official of lesser power and authority. Indeed, it is hard to contemplate any conduct by an individual more inimical to the survival of the Constitution than the Commander in Chief of the United States willfully abandoning his oath of office, fraudulently fighting against the peaceful transfer of power, and inciting violence against the Capitol to accomplish his goals.

**V. Relevant Legislative History Further Supports Applying the Ordinary Meaning of the Term “Rebellion.”**

The legislative history of Section Three and interpretation of similar wording in the Reconstruction Acts further support interpreting the term “rebellion” to refer to resistance, not necessarily

armed, to the lawful authority of the Constitution, including an officer's Constitutional oath of office.

During the same period when Section Three was adopted, then Attorney General Stanbery, speaking of similar wording in the Reconstruction Acts, opined that a person “may have engaged in rebellion without having actually levied war or taken arms.” Henry Stanbery, *The Reconstruction Acts*, 12 Op. Att’y Gen. 141, 161 (May 24, 1867). “All those who, in legislative or other official capacity, were engaged in the furtherance of the common unlawful purpose, or persons who, in their individual capacity, have done any overt act for the purpose of promoting the rebellion, may well be said, in the meaning of this law, to have engaged in rebellion.” *Id.* at 161-62.

During debate over the adoption of the Fourteenth Amendment, Senator Thomas Hendricks of Indiana, while opposed to the Amendment more generally, broadly summarized Section Three to mean “[T]he idea upon which this section rests . . . [is] that men who held office, and upon assuming the office took the oath prescribed by the Constitution, became obligated by that oath to stand by the Constitution and the oath, and that going into the rebellion was not only a breach of their allegiance, but a breach of their oath . . . and that persons who have violated the oath to support the Constitution of the United States ought not to be allowed to hold any office.” Cong. Globe, 39<sup>th</sup> Cong., 1<sup>st</sup> Sess. 2898 (1866).<sup>12</sup>

---

<sup>12</sup> See also *United States v. Powell*, 27 F. Cas. 605, 607 (C.C.D.N.C. 1871) (summarizing the purpose of Section Three

The combined import of this legislative history is consistent with the plain meaning of the term “rebellion,” for it is impossible to imagine that legislators in office at the time Section Three was adopted, in the shadow of the Great War Between the States, would have countenanced a president who fraudulently obstructed the peaceful transition of power and knowingly disregarded his sworn duty to preserve, protect and defend a Constitution that hundreds of thousands of Americans had just laid down their lives to defend. *See* Cong. Globe, 39<sup>th</sup> Cong., 1st Sess. 2093 (1866) (Maryland Congressman John L. Thomas, speaking on reconstruction) (“We have barely emerged from one of the greatest and most bloody conflicts known to the annals of history. Millions of treasure has been spent, hundreds of thousands of lives have been sacrificed, and whole States have been desolated by the ravages of war to put down the treason and to maintain and uphold the Constitution . . . I cannot close my eyes to the fact that the very men who brought on this war of rebellion, and who strove through blood and persecution to overthrow this Republic, are striving today to get back into the place they ignominiously deserted, and are endeavoring once more to control the Government they impiously tried to subvert.”).<sup>13</sup>

---

as follows: “[T]hose who had been once trusted to support the power of the United States, and proved false to the trust reposed, ought not, as a class, to be entrusted with power again until congress saw fit to relieve them from disability.”).

<sup>13</sup> The Constitution contains other references to the word “rebellion” but the term is not directly defined in those provisions. Section Two of the Fourteenth Amendment, dealing with apportionment of representatives, references “rebellion, or

## VI. “Engaged In” Includes Passive Conduct When There is a Duty to Act.

The Colorado Supreme Court concluded “that ‘engaged in’ requires ‘an overt and voluntary act, done with the intent of aiding or furthering the common unlawful purpose.’” Co.Sup.Ct. ¶ 194 (quoting district court). It further noted, though, that it might also include passive conduct if there existed an *affirmative duty to act*. *Id.* at ¶ 195 (“[W]e do not read ‘engaged in’ so broadly as to subsume mere silence in the face of insurrection or mere acquiescence therein, *at least absent an affirmative duty to act.*”) (emphasis added). The Colorado Supreme Court did not, however, examine whether President Trump had an “affirmative duty to act.” It simply proceeded to analyze “whether the record supported the district court’s finding that President Trump engaged in the January 6 insurrection by acting overtly and voluntarily with the intent of aiding or furthering the insurrectionists’ common unlawful purpose.” *Id.* at ¶ 196.

As noted *supra*, President Trump did in fact have an affirmative duty pursuant to his oath of office to preserve, protect and defend the Constitution. Thus, under the Colorado Supreme Court’s reasoning, even silence, inaction, or acquiescence by the president could constitute “engaging in” rebellion. Indeed, that result is also consonant with related law on treason in the relevant period. *In re Charge to Grand Jury-*

---

other crime,” but the fact that rebellion is a crime does not mean it is not also separately a basis for disqualification. *See Co.Sup.Ct.* at 60.

*Treason*, 30 F. Cas. 1047, 1048 (C.C.E.D. Pa. 1851) (“[I]t is not necessary to prove that the individual accused, was a direct, personal actor in the violence. If he was present, directing, aiding, abetting, counselling, or countenancing it, he is in law guilty of the forcible act.”); *see also* Abraham Lincoln, *To Erastus Corning and Others* (June 12, 1863), VI CWL 260, 264 (“[A] man who stands by and says nothing, when the peril of his government is discussed, can not be misunderstood. If not hindered, he is sure to help the enemy. Much more, if he talks ambiguously – talks for his country with ‘buts’ and ‘ifs’ and ‘ands.’”) (discussing habeas corpus).

## **VII. President Trump’s Conduct Constituted Engaging in Rebellion.**

The same evidence cited by the Colorado Supreme Court in support of its holding on “insurrection” unequivocally also demonstrates that President Trump knowingly and openly rebelled against the Constitution.

The details of President Trump’s conduct are described in the decision below. Briefly here, that conduct included the following:

- Laying plans in advance to claim the election was stolen. Co.Sup.Ct. at ¶ 197.
- Falsely characterizing the election as fraudulent and directly exerting pressure on state officials to overturn the election results. *Id.* at ¶¶ 198-199.
- Inciting his followers to gather near the Capitol, exhorting them to march on the Capitol and fight to prevent the certification of

the 2020 election and the peaceful transition of power. *Id.* at ¶¶ 200-207, 210-215, 218.

- Calling for Vice President Pence to refuse to perform his Constitutional duty to count the votes and calling senators to try and persuade them to prevent the count of electoral votes. *Id.* at ¶¶ 210-211.
- Making no efforts to stop the violence at the Capitol for an extended period of time after it began, despite knowledge of the same, and failing to tell his supporters to disperse for several hours, despite pleas that he do so. *Id.* at ¶¶ 215-216, 218-.

As one set of commentators summarized these actions:

It would not be going too far to say that Trump, having previously sworn a constitutionally required oath to preserve, protect, and defend the Constitution of the United States knowingly attempted to execute what, had it succeeded, would have amounted to a political *coup d'état* against the Constitution and its system of elections and overturn the results of the constitutional process, in order to maintain himself in office as president contrary to law.

William Baude & Michael Stokes Paulsen, *The Sweep and Force of Section Three*, 172 U. Pa. L. Rev. (forthcoming 2024) (manuscript at 51–52), available at: <https://ssrn.com/abstract=4532751>.

Applying the ordinary meaning of “rebellion” – “open resistance to, or defiance of, lawful authority”

– President Trump is thus disqualified under Section Three. By both his affirmative conduct – a cocktail of deceit, intimidation and force – and his inaction in the face of a duty to act, he engaged in rebellion against the Constitution, including the Twelfth Amendment, the Twentieth Amendment and his unique duties under Article II to act to the best of his ability to preserve, protect and defend the Constitution.

**VIII. Excluding a Disqualified Candidate from the Ballot is Not Anti-Democratic.**

Professed concerns about Section Three being anti-democratic miss the point. Just as a popular candidate can be barred from office if too young, not a natural-born citizen of the United States, or having already served two terms as president, so can a candidate be disqualified for violating a previous oath and engaging in insurrection or rebellion against the Constitution. At no point is the right to vote lost; the Constitution just reasonably limits the right to vote in each instance to qualified candidates.

In the end, notwithstanding the vicissitudes of public sentiment, “[n]o man in this country is so high that he is above the law.” *United States v. Lee*, 106 U.S. 196, 220 (1882). “All the officers of the government, from the highest to the lowest, are creatures of the law and are bound to obey it. It is the only supreme power in our system of government, and every man who by accepting office participates in its functions is only the more strongly bound to submit to that supremacy . . .” *Id.*

**CONCLUSION**

Based on the foregoing, the Court should affirm the holding of the Colorado Supreme Court excluding President Trump from the presidential primary ballot.

Respectfully Submitted,

PAUL D. SCOTT

*Counsel of Record*

LANI ANNE REMICK

LAW OFFICES OF PAUL D. SCOTT, P.C.

640 WASHINGTON STREET

SAN FRANCISCO, CA 94111

(415) 981-1212

pdscott@lopds.com

*COUNSEL FOR AMICI CURIAE*

Dated: January 31, 2024