No. 23-939

In the Supreme Court of the United States

DONALD J. TRUMP,
Petitioner,

v.

UNITED STATES,
Respondent.

On Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

Brief of *Amici Curiae* Gavin M. Wax, New York Young Republican Club Inc., National Constitutional Law Union Inc., and Paul Ingrassia in Support of Petitioner

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INTEREST OF *AMICI CURIAE*[1]

Gavin M. Wax is a New York-based political commentator and columnist. He is the seventy-sixth President of the New York Young Republican Club and the Executive Director of the National Constitutional Law Union. **New York Young Republican Club Inc.**, established in 1911 and incorporated in 1912, is America's oldest and largest Young Republican Club. Its mission, as set forth in the Club's statement of purpose, includes to "encourage public attention to and efficiently criticize the conduct of government." **National Constitutional Law Union Inc.** is a non-profit social welfare organization. Its mission is to preserve and protect the United States Constitution and the American way of life by providing legal support and funding to individuals whose constitutional rights, civil liberties, and similar rights are being violated or in jeopardy. **Paul Ingrassia** is a New York-based political commentator, a member of the Board of Advisors for the New York Young Republican Club, and the Director of Communications for the National Constitutional Law Union. *Amici curiae* have an intense interest in a strong Presidency where each elected President is free to carry out the official duties of the Office without paralyzing fear of retribution (up to and including criminal prosecution) from political rivals upon the President's return to private life.

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[1] No counsel for any party authored any part of the brief. Only amici curiae funded its preparation and submission.

SUMMARY OF ARGUMENT

On January 11, 2021, the U.S. House of Representatives impeached Petitioner, President Donald J. Trump ("President Trump") by an article of impeachment for "incitement of insurrection" as to his alleged conduct in the aftermath of the 2020 presidential election. *See* H. Res. 24, 117th Cong. (2021). This conduct, allegedly undertaken to change the outcome of the election, occurred between November 2020 and early January 2021, before President Trump left office on January 20, 2021. Ultimately, the U.S. Senate acquitted President Trump on February 13, 2021. Notwithstanding this acquittal, on August 1, 2023, Special Counsel Jack Smith indicted President Trump on four counts relating to much of the same conduct that was the subject of the article of impeachment.

As articulated by Alexander Hamilton in the Federalist Papers, the Founders never intended that a President impeached and acquitted by the U.S. Senate should subsequently face criminal prosecution for the same or similar conduct. They were keenly aware of the danger to the Presidency posed by politically motivated prosecutions. Accordingly, the Founders included in the Constitution a crucial check against criminal prosecution of a President for his official acts: the Impeachment Judgment Clause. U.S. CONST. art I, § 3, cl. 7.

The Clause refers only to "the party convicted," not "the party, whether convicted or acquitted." Thus, the often-used canon of construction, *expressio unius est exclusio alterius*, "the expression of one is the exclusion of others," lends ample support to the conclusion that a President acquitted by the Senate is not subject to subsequent criminal prosecution arising out of the same or similar conduct.

Accordingly, this Court should adhere to this narrow—and proper—view of presidential criminal liability. Otherwise, the Impeachment Judgment Clause will be stripped of its original, objective meaning, which excluded prosecution in instances where the President or other party was acquitted by the Senate following impeachment. Applying the canon *expressio unius est exclusio alterius*, the Special Counsel's partisan prosecution of President Trump should be halted before it causes lasting damage to our Republic.

ARGUMENT

I. The Impeachment Judgment Clause Was Intended by the Founders as a Bulwark Against Politically Motivated Prosecutions

The Impeachment Judgment Clause provides that "Judgment in Cases of Impeachment shall not extend further than to removal from Office, and disqualification to hold and enjoy any Office of honor, Trust or Profit under the United States: but the Party convicted shall nevertheless be liable and subject to Indictment, Trial, Judgment and Punishment, according to Law." U.S. CONST. art I, § 3, cl. 7.

The Impeachment Judgment Clause states "the party convicted," not "the party, whether convicted or acquitted." A plain reading of the Clause demonstrates that criminal prosecution of a President is *only* authorized after impeachment by the House *and* conviction by the Senate via two-thirds majority vote. Indeed, the exclusion of parties acquitted by the Senate strongly implies that they, unlike convicted parties, should not be subject to criminal prosecution arising out of the same or similar conduct.

This exclusion was by design of the Founders, which Hamilton eloquently expressed in the Federalist Papers. Hamilton first wrote: "*After* having been sentenced to a perpetual ostracism from the esteem and confidence, and honors and emoluments of his country, he will still be liable to prosecution and punishment in the ordinary course of law." THE

FEDERALIST NO. 65 (Alexander Hamilton) (emphasis added). Hamilton expanded upon this theme: "The President of the United States would be liable to be impeached, tried, and upon conviction of treason, bribery, or other high crimes or misdemeanors, removed from office; and would *afterwards* be liable to prosecution and punishment in the ordinary course of the law." THE FEDERALIST NO. 69 (Alexander Hamilton) (emphasis added). Finally, writing a third time on the subject, Hamilton elaborated: "The punishment which may be the *consequence of conviction* upon impeachment, is not to terminate the chastisement of the offender." THE FEDERALIST NO. 65 (Alexander Hamilton) (emphasis added). The President is "at all times liable to impeachment, trial, dismission from office, incapacity to serve in any other, and to forfeiture of life and estate by *subsequent prosecution* in the common course of law." THE FEDERALIST NO. 77 (Alexander Hamilton) (emphasis added).

The Founders likely had a principled basis for the wording of the Impeachment Judgment Clause—the guarantee against double jeopardy. See U.S. CONST. amend. V ("[N]or shall any person be subject for the same offence to be twice put in jeopardy of life or limb"). "The fundamental nature of the guarantee against double jeopardy can hardly be doubted." *Benton v. Maryland*, 395 U.S. 784, 795 (1969). This guarantee was brought into American jurisprudence through Blackstone, who had codified the doctrine in his Commentaries: "'The plea of autrefoits acquit, or a

former acquittal,' he wrote, 'is grounded on this universal maxim of the common law of England, that no man is to be brought into jeopardy of his life more than once for the same offence.'" *Id.* This principle is a bedrock of American criminal justice. "In accordance with this philosophy it has long been settled under the Fifth Amendment that a verdict of acquittal is final, ending a defendant's jeopardy, and even when 'not followed by any judgment, is a bar to a subsequent prosecution for the same offence.'" *Green v. United States*, 355 U.S. 184, 188 (1957) (quoting *United States v. Ball*, 163 U.S. 662, 671 (1896)).

II. Application of the Canon *Expressio Unius Est Exclusio Alterius* Demonstrates that Acquittal in the Senate Precludes Subsequent Criminal Prosecution Arising Out of the Same or Similar Conduct

Expressio unius est exclusio alterius means "the expression of one is the exclusion of others." *United States v. Wells Fargo Bank*, 485 U.S. 351, 357 (1988). Going back over 150 years, this Court has often applied the *expressio unius est exclusio alterius* canon in the context of statutory construction. *See, e.g.*, *Leatherman v. Tarrant County Narcotics Intelligence & Coordination Unit*, 507 U.S. 163, 168 (1993); *Tennessee Valley Authority v. Hill*, 437 U.S. 153, 187 (1978); *National R.R. Passenger Corp. v. National Ass'n of R.R. Passengers*, 414 U.S. 453, 457 (1974); *City of Walla Walla v. Walla Walla Water Co.*, 172 U.S. 1, 22 (1898); *Arthur v. Cumming*, 91 U.S. 362, 364

(1875); *Sturges v. Collector*, 79 U.S. 19, 27 (1870); *Custis v. United States*, 511 U.S. 485, 501 (1994) (Souter, J., dissenting). The canon has also been applied to analyses of constitutional provisions. *See, e.g.*, *U.S. Term Limits, Inc. v. Thornton*, 514 U.S. 779, 793 n.9 (1995) (qualifications for Representatives specified in the Qualifications Clause are exclusive).

In *Thornton*, this Court held that the power granted to each House of Congress to judge the "Qualifications of its own Members," U.S. CONST. art. I, § 5, cl. 1, does not include the power to "alter or add to the qualifications in the Constitution," and that these qualifications were "fixed" insofar as Congress may not supplement them. 514 U.S. at 796 (reaffirming *Powell v. McCormack*, 395 U.S. 486, 540 (1969)). This Court applied the canon, noting "John Dickinson of Delaware observed that the enumeration of a few qualifications 'would by implication tie up the hands of the Legislature from supplying omissions.'" *Thornton*, 514 U.S. at 793 n.9. As demonstrated by Dickinson's comment, "the Framers were well aware of the *expressio unius* argument that would result from their wording of the Qualifications Clauses; they adopted that wording nonetheless." *Id.*

When applied to constitutional provisions (such as the Impeachment Judgment Clause) the canon is of even greater strength because, as this Court has held, constitutional provisions are more likely to be drawn with particular attention to detail. *Township of Pine Grove v. Talcott*, 86 U.S. 666, 674-75 (1873) ("The case as to the [Michigan] constitution is a proper one for

the application of the maxim, '*Expressio unius est exclusio alterius*. The instrument is drawn with ability, care, and fulness of details."). This Court, analyzing a provision of the Michigan constitution relating to municipal aid, noted: "If those who framed it had intended to forbid the granting of such aid by the municipal corporations of the State, as well as by the State itself, it cannot be that they would not have explicitly said so. It is not to be supposed that such a gap was left in their work from oversight or inadvertence." *Talcott*, 86 U.S. at 674.

Comparison of the Impeachment Judgment Clause to equivalent clauses in state constitutions is also instructive. Forty-five state constitutions provide mechanisms for impeachment; all authorize subsequent criminal prosecution. Thirty *expressly* provide that the party impeached is liable to criminal prosecution irrespective of the outcome of the impeachment trial.[2] California's Constitution, for example, contains the language, "but the person

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[2] *See* ALA. CONST. art. 7, § 176; ALASKA CONST. art. 2, § 20; ARIZ. CONST. art. 7, pt. 2, § 2; ARK. CONST. art. 15, § 1; CAL. CONST. art. IV, § 18; COLO. CONST. art. XIII, § 2; FLA. CONST. art. III, § 17; GA. CONST. art. 3, § 7, par. 3; IDAHO CONST. art. V, § 3; ILL. CONST. art. IV, § 14; IOWA CONST. art. III, § 20; LA. CONST. art. X, § 24; ME. CONST. art. III, § 7; MO. CONST. art. VII, § 3; MONT. CONST. art. V, § 13; NEV. CONST. art. 7, § 2; N.M. CONST. art. IV, § 36; N.Y. CONST. art. VI, § 24; N.C. CONST. art. IV, § 4; N.D. CONST. art. XI, § 10; OKL. CONST. art. VIII, § 5; PENN. CONST. art. VI, § 6; S.C. CONST. art. XV, § 3; S.D. CONST. art. XVI, § 3; TENN. CONST. art. V, § 4; UTAH CONST. art. VI, § 19; WASH. CONST. art. V, § 2; W.VA. CONST. art. IV, § 9; WISC. CONST. art. VII, § 1; WYO. CONST. § 18.

convicted or acquitted remains subject to criminal punishment according to law," CAL CONST. art IV, § 18, and Florida's Constitution provides "conviction or acquittal shall not affect the civil or criminal responsibility of the officer." FLA CONST. art III, § 17. *However*, fifteen of these state clauses follow the wording of the Impeachment Judgment Clause, "the party convicted."[3] Connecticut's Constitution, for example, provides: "The *party convicted*, shall, nevertheless, be liable and subject to indictment, trial and punishment according to law." CONN. CONST. art IX, § 3. Texas's Constitution provides: "A *party convicted* on impeachment shall also be subject to indictment trial and punishment according to law." TEX. CONST. art XV, § 4.

The Impeachment Judgment Clause, like the aforementioned fifteen state clauses, states "the party convicted," not "the party, whether convicted or acquitted." This drafting choice—to omit mention of parties acquitted by the Senate—demonstrates that such parties, including an acquitted President, are not subject to subsequent criminal prosecution for the same or similar conduct. In contrast, a convicted

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[3] *See* CONN. CONST. art. 9, § 3; DEL. CONST. art. 6, § 2; HAW. CONST. art. III, § 19; KY. CONST. § 68; MASS. CONST. ch. I, § 2, art. 8; MICH. CONST. art. 11, § 7, par. 4; MINN. CONST. art. 8, § 2; MISS. CONST. § 51; N.H. CONST. art. 39; N.J. CONST. art. 7, § 3, par. 3; R.I. CONST. art. XI, § 3; TEX. CONST. art. 15, § 4; VT. CONST. § 58; VA. CONST. art IV, § 17; W.VA. CONST. art. IV, § 9.

President would be subject to criminal prosecution arising out of the same or similar conduct.

III. Application of the Canon *Expressio Unius Est Exclusio Alterius* to the Impeachment Judgment Clause is Consistent with Hamilton's Overall Conception of an "Energetic" Executive

There is no doubt that faithful adherence to the Founders' original understanding of the Impeachment Judgment Clause demands that the Clause be read in light of the canon *expressio unius est exclusio alterius*. In the Federalist Papers, Hamilton famously expounded upon the theory of "an energetic Executive." THE FEDERALIST NO. 70 (Alexander Hamilton) (emphasis added). An "energetic" or "vigorous" Executive was, according to Hamilton, defined by "first, unity; secondly, duration; thirdly, an adequate provision for its support; fourthly, competent powers." *Id.* For Hamilton, "energy in the executive" was a necessary condition "of good government" and the "security of liberty." *Id.* Thus, for the Executive Branch to fully carry out its duties and, in doing so, best preserve republican government, the President must have the ability to operate with broad discretion—a discretion that necessarily requires sweeping, even absolute, immunity. Anything short of that would risk depriving the Executive of its "energy," thus altering its fundamental character—and, more insidiously, uprooting an essential building block of republican government. "Feeble" executives are tantamount to "government ill executed," which

invariably leads to "bad government" in general. *Id.* This is why the Constitution expressly vests "executive Power" "in a President of the United States." U.S. CONST. art II, § 1. (emphasis added).

However, where the President is unduly constrained in ways that prevent the execution of his constitutional prerogative as detailed in the Federalist Papers, and prescribed in the Constitution expressly, the risk of "bad government" –i.e., tyranny—becomes much greater. THE FEDERALIST NO. 51 (Alexander Hamilton). Speaking separately on this view of an "energetic" Presidency, Gouverneur Morris supported Hamilton's view of a strong President, which, perhaps counterintuitively, would stave off the prospect of despotism and enable republican government to flourish because of the President's unique relationship to the people: "[the Executive magistrate is the] guardian of the people, even of the lower classes, against legislative tyranny; against the great and the wealthy, who, in the course of things will necessarily compose the legislative body." James Madison, 2 James Madison's Notes of the Constitutional Convention 51 (Max Ferrand ed., Yale University Press 1911) (1787).

To avoid the problems that could well afflict a "bad government" beset by a "feeble Executive," Hamilton elaborated a theory of *expansive* presidential power which necessarily entails broad presidential immunity. Chief among Hamilton's concerns was avoidance of the dangers of political prosecutions based on "those offenses which proceed from the

misconduct of public men" that "are of a nature which may with peculiar propriety be denominated POLITICAL." THE FEDERALIST NO. 65 (Alexander Hamilton) (capitalization in original).

Evidence of Hamilton's worry about political prosecutions is found both directly and implicitly throughout the Federalist Papers, in addition to the text of the Constitution itself. For example, in FEDERALIST NO. 69, Hamilton elaborated at length on the subject of presidential pardons and impeachment. *Id.* He wrote that "the power of the President, in respect to pardons, would extend to all cases, EXCEPT THOSE OF IMPEACHMENT." THE FEDERALIST NO. 69 (Alexander Hamilton) (capitalization in original). Here, the application of the canon *expressio unius est exclusio alterius* to the Impeachment Judgment Clause arguably finds its greatest support: Hamilton directly envisioned a virtually unlimited view of immunity, stating "[the President] may even pardon treason." *Id.*

The only limit on this expansive conception of presidential immunity, per Hamilton, is in cases "of impeachment and conviction," wherein prosecution "in the ordinary course of law, could shelter no offender, in any degree…". *Id.* (emphasis added). In other words, Hamilton asserted that Presidents should enjoy broad immunity under normal circumstances, save those cases in which a President has already been prosecuted through the ordinary constitutional remedy: namely, "impeachment and conviction." *Id.* (emphasis added). Short of that constitutional remedy,

which is a two-part conjunctive phrase requiring *both* impeachment *and* conviction, the President cannot be prosecuted for acts committed while in office.

For Hamilton, the reasons for this were obvious; first and foremost was the serious double jeopardy concern—a risk that is particularly acute for the presidency, an inherently "political" office whereby the officeholder exposes himself to all kinds of criticism and public scrutiny, whether justified or not. THE FEDERALIST NO. 65 (Alexander Hamilton). Indeed, it was because of Hamilton's concerns about double jeopardy that he took great pains to spell out why the Senate, and not the Supreme Court, was a superior tribunal for presiding over impeachment proceedings. *Id.* In his analysis, Hamilton arrived at the conclusion that whatever advantages the Supreme Court, or some kind of union between the Court and the Senate, might otherwise have had in presiding over impeachments, those benefits would be substantially outweighed "by the signal disadvantage … arising from the agency of the same judges in the double prosecution to which the offender would be liable…". *Id.*

Thus, in having exhausted all other possible avenues, Hamilton settled on the only remedy that the Constitution provides for redressing civil and criminal offenses committed by a President while in office: impeachment and conviction. *Id.*; *see also* Whether a Former President May Be Indicted and Tried for the Same Offense for Which He Was Impeached by the House and Acquitted by the Senate, 24 Op. O.L.C. 110,

112 n.2 (2000) ("Even if one took the view that the Impeachment Judgment Clause's reference to "the party convicted" implied that acquitted parties could not be criminally prosecuted, that implication would naturally extend only to individuals who had been impeached by the House and acquitted by the Senate"); *Helvering v. Mitchell*, 303 U.S. 391, 399 (1938) ("the Double Jeopardy Clause prohibits merely punishing twice, or attempting a second time to punish criminally, for the same offense").

Arguably the most important criterion to bring about Hamilton's intent for broad presidential immunity was avoidance of double jeopardy. In accordance with Hamilton's view, double jeopardy can only be avoided through application of the canon *expressio unius est exclusio alterius* to the Impeachment Judgment Clause. To go beyond the Constitution's textual prerogative runs the grave risk of undermining the Presidency's fundamental design, per Hamilton's vision, by opening the floodgates for political prosecutions of an office whose nature makes it inherently susceptible for such abuses. Thus, the only way to avoid going down the rabbit hole of endless politically motivated retribution against former Presidents is to interpret the Constitution by application of *expressio unius est exclusio alterius*, which really is what commonsense would demand. The alternative view would deprive the Executive of the energy Hamilton ordered for it – and reduce the President to a mere figurehead, ironically not unlike the British King today.

IV. An Expansive Construction of Presidential Power Following Application of the Canon *Expressio Unius Est Exclusio Alterius* Finds Support in *Marbury v. Madison*

Support for the application of *expressio unius est exclusio alterius* to the Impeachment Judgment Clause is found not only in Hamilton's exposition from the Federalist Papers, or even provisions of the Constitution itself. But in case law also, there is ample support, most notably in *Marbury v. Madison*, 5 U.S. 137 (1803).

In *Marbury*, the Court held that certain acts of Executive Branch officials or agents, carrying out duties that are subordinate to the President, "can never be examinable by the Courts." *Id.* at 166. In weighing important questions of presidential immunity, many courts improperly distinguish between arbitrary "categories" of presidential power. This is an improper framework that radically departs from Hamilton's expansive view. This departure from Hamilton categorizes acts as either dubious "official acts" or "unofficial acts", drawing a practically meaningless—and erroneous—distinction for analyzing issues of presidential immunity. *Nixon v. Fitzgerald*, 457 U.S. 731 (1982).

In sharp contrast, the Court in *Marbury* mitigated ambiguities in the law by elegantly holding that Executive acts left to the discretion of Executive agents can only be "politically examinable"—a simpler

and much more straightforward application of the law that comports with the letter and spirit of Hamilton's intended design. *Marbury*, 5 U.S. at 166. The approach taken by the Court in *Marbury* was consistent with Hamilton's original conception of presidential power, one whose implications further support the application of *expressio unius est exclusio alterius* to the Impeachment Judgment Clause. In *Marbury*, the Court granted sweeping immunity to "official acts," a rule that applies as much to Presidents as presidential subordinates. *Id.* For "non-official" acts that fell outside the scope of *Marbury*'s holding—what today approximates as acts falling within "the outer perimeter" of official presidential duties—acts that *Marbury* classified as "political" by nature, the Court held that such acts can only be "politically examinable." *Marbury*, 5 U.S. at 166; *see also Nixon v. Fitzgerald*, 457 U.S. at 755; *United States v. Trump*, 91 F.4th 1173, 1188 (D.C. Cir. 2024). This places *Marbury* in lockstep with Hamilton, who described in FEDERALIST NO. 70 how a unitary Executive might only be scrutinized for non-official misconduct by resort to political mechanisms. THE FEDERALIST NO. 70 (Alexander Hamilton).

Oddly enough, even further support for broad immunity may be found in the decision of the court below, the United States Court of Appeals for the District of Columbia Circuit. On the one hand, the court below held that "The President, of course, also has a duty under the Take Care Clause to faithfully enforce the laws," which includes "following the legal

procedures for determining election results." *United States v. Trump*, 91 F.4th at 1198. However, the D.C. Circuit also stated that overseeing election procedures falls outside the scope of a President's official duties because such acts are "not official" and thus "can form the basis for civil liability" because they receive no immunity under *Marbury* or *Nixon*. *Id.* To further complicate matters, however: while on the one hand the Court seems to concede that the President has an official duty to "take care that the laws be faithfully executed," it also says that should a President adhere to that prerogative, he might be opening himself to civil liability. *Id.*

Moreover, the D.C. Circuit complicated matters further still by attempting to parse another tenuous distinction between "office-seekers" versus "office-holders," wherein the latter gets some kind of immunity that the former does not. *Id.* What makes this distinction untenable is the fact that President Trump, at the time the facts giving rise to the Special Counsel's prosecution took place, qualified as both an "office-seeker" and "office-holder," in various capacities, under the D.C. Circuit's own definitions.

Complicating matters *even further* is the fact that the impeachment proceeding, implicating questions of civil—and indeed, potentially criminal liability under statute—out of which this prosecution arose, entirely took place after President Trump left office. Because President Trump was impeached and acquitted *subsequent* to his term as President, the actions for which he was acquitted must logically have fallen

within the so-called "outer perimeter" of his official duties in order for the acquittal to have any bearing over a relevant issue of law. But if such actions were classified as purely "official" (assuming the Court's categorizations have merit), they would have been immune from liability on the nature of their classification. Therefore, there would have been no reason to subject President Trump to an impeachment proceeding after he left Office, because the underlying action would by then have been moot.

The fact that President Trump was acquitted, however, in a post-presidential impeachment proceeding, would strongly support the view that any misconduct committed in the course of Donald Trump's presidency, whether "official" or within the "outer perimeter" of his official duties, had been completely redressed under the Constitution. Moreover, because President Trump was acquitted by the Congress, pursuant to art II, § 4, 167 Cong. Rec. S733 (daily ed. Feb. 13, 2021), it foreclosed a subsequent criminal prosecution. This crucial fact, hence, favors application of the canon *expressio unius est exclusio alterius* to the Impeachment Judgment Clause, particularly as it applies to President Trump, for not doing so would run into the grave risk of exposing a former President to double jeopardy.

President Trump was *acquitted* by the Senate. There is no debate as to this all-important fact, which the D.C. Circuit stated clearly and unambiguously. *Trump*, 91 F.4th at 1182 ("Because two-thirds of the Senate did not vote for conviction, [President Trump]

was acquitted on the article of impeachment."). Yet, he stands indicted by the Special Counsel who represents the same sovereign that voted to acquit President Trump in the impeachment proceedings. This appears to be the epitome of a politically motivated prosecution, precisely what Hamilton and other luminaries of the Founding Era sought to prevent by including the Impeachment Judgment Clause in the Constitution. The Special Counsel was appointed by Attorney General Merrick Garland, who serves at the pleasure of current President and presumptive Democratic nominee Joe Biden, currently in the thick of an extremely difficult 2024 reelection campaign against President Trump, the presumptive Republican nominee.

Many of President Trump's most ardent political opponents welcome the Special Counsel's prosecution and hope that the prosecution will derail President Trump's 2024 campaign. They believe that the end justifies the means. But someday, perhaps soon, a former Democratic President may become the target of prosecution brought by a Republican President's Attorney General or Special Counsel. This unseemly weaponization of the federal criminal justice system will then become a normalized part of the American political tradition, to the lasting detriment of our Republic. And, as the Founders recognized, the proper functioning of the Republic depends in large part on a decisive and strong Executive who can discharge his presidential duties secure in the knowledge that he will not face retributive prosecution after leaving

office. A paralyzed President is a weak President. And a weak President presides over a weak country.

CONCLUSION

This Court should apply the canon *expressio unius est exclusio alterius*, "the expression of one is the exclusion of others," to give the Impeachment Judgment Clause its proper, original meaning as the Founders intended.

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