


No. 23-719

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IN THE  
*Supreme Court of the United States*

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DONALD J. TRUMP,

*Petitioner,*

—v.—

NORMA ANDERSON, ET AL.,

*Respondents.*

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ON WRIT OF CERTIORARI TO THE SUPREME COURT OF COLORADO

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**BRIEF FOR *AMICUS CURIAE* COMMON  
CAUSE IN SUPPORT OF RESPONDENTS**

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

*Amicus Curiae* Common Cause is a nonpartisan, grassroots organization dedicated to fair elections, due process, and ensuring that government at all levels is more democratic, open, and responsive to the interests of the people. Founded by John Gardner in 1970 as a “citizens lobby,” Common Cause has over 1.5 million members nationwide and local organizations in 36 states. Common Cause has long supported efforts to protect the integrity of elections from partisan attack or manipulation and to ensure stable governing processes rooted in a deep respect for the rule of law over the rule of individuals.

As the partisan political climate—and associated threats of violence—in this country have intensified, Common Cause has redoubled its own efforts to defend the processes and institutions that are the *sine qua non* of any democracy: free and fair elections, peaceful transitions of power between executive administrations, and an independent judiciary that resolves controversies in an impartial manner. Common Cause firmly believes that there can be no meaningful hope for democracy in the absence of any one of these things.

Common Cause has a particularly acute interest in the safety and well-being of election workers (including some of its own members), election administrators, and judicial personnel in the upcoming presidential primaries and 2024 general election. Without election

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<sup>1</sup> No party’s counsel authored this brief in whole or in part. No party, no party’s counsel, nor any person other than Common Cause, its members, and/or its counsel, contributed money for the preparation or submission of this brief.

workers, there can be no elections. If a culture of violent threats and intimidation against these public servants is left to fester, they will be forced to leave their posts, and this country’s electoral infrastructure will begin to crumble at a rapid pace and with predictably disastrous results.

*Amicus* has a strong interest in seeing the Colorado Supreme Court’s ruling upheld here. This case is a moment of truth for American democracy. Petitioner’s role in the January 6, 2021, insurrection—and his open and ongoing support, even today, for the insurrectionists and their cause—poses the greatest danger to our free democratic system since the Civil War. If Section 3 of the Fourteenth Amendment (“Section 3”) is not enforced in this case, there is a genuine risk that our system of government will not survive.

### SUMMARY OF ARGUMENT

Among all the arguments against enforcing Section 3 in this case, perhaps the most misguided is that enforcement would be “undemocratic” and that the right answer is to “let the voters decide.” Our democracy is not a chaotic free-for-all in which anyone can be elected. The voters are entitled to decide within the framework of the applicable rules. If the desire of a majority of the electorate were all that mattered, five presidential elections in our history would have had different outcomes—from the popular vote “victory” of Andrew Jackson over John Quincy Adams to that of Hillary Clinton over Donald Trump.

Nonetheless, Petitioner argues that Section 3 is “antidemocratic” and that affirming the Colorado Supreme Court’s decision would “disenfranchise tens of

millions of Americans.” Pet. Br. at 1–2. It is ironic indeed for Petitioner to complain of disenfranchisement, when the very reason for this proceeding is that Petitioner himself supported—and continues to support—a violent effort to override the will of the clear majority of Americans nationwide, and in States with a clear majority of electoral votes, who voted against him in 2020. The argument that enforcing Section 3 would be “undemocratic” distorts our Constitution and badly misunderstands our system of government.

In this country, democracy has never meant unchecked majority rule. The Framers of the Constitution wrote and spoke at length about the danger to democracies posed by majorities who, inflamed by the passions of the day, might “occasion dangerous innovations in the government.” Federalist No. 78 (Hamilton). To ensure the long-term safety of their democratic experiment, the system the Framers of the Constitution designed places numerous checks on majority rule, including qualifications for the Presidency. Enforcing these checks is the solemn duty of this Court. Although Section 3 was added to the Constitution eighty years later, it is cut from the same cloth, and the Court is just as duty-bound to enforce it. The fact that many voters—perhaps even a majority—may desire a particular outcome has never been reason to disregard the Constitution.

Importantly, this case lies at the intersection of two of the threats to democracy that the Founding Fathers most feared: violent insurrection and executive tyranny. They noted repeatedly that insurrection is fundamentally corrosive to democracies—a “mortal disease[] under which popular governments have

everywhere perished.” Federalist No. 10 (Hamilton). They likewise foresaw that the “securit[y] [of] republican government” depended on checking “the ambition of powerful individuals . . . who may acquire credit and influence enough . . . to become the despots of the people.” Federalist No. 85 (Hamilton). In an uncanny prophesy of Petitioner’s efforts to stay in office in 2020, Thomas Jefferson warned that an incumbent president defeated in a close re-election campaign might “pretend false votes [and] foul play” in an effort to illegitimately “hold possession of the reins of government.” Letter from Jefferson to Madison, December 20, 1787.

A demagogue who supports violent insurrection to perpetuate himself in office is precisely what our Founders warned us about. To ignore such a threat out of respect for “democracy” is to turn the Constitution they drafted on its head.

Petitioner’s particular brand of insurrection is a far greater threat to democratic principles than the small-scale tax revolts that the Framers had immediately in mind at the Constitutional Convention. The January 6 insurrection, which Petitioner incited and supported, was aimed at the heart of our democratic order: our system of free and fair elections and the peaceful transition of power. And far from pledging to change his ways, Petitioner has continually added fuel to the same flames he stoked on January 6. He has celebrated the insurrectionists who violently attacked the Capitol as heroes and promised to pardon them, thereby engendering further violence. Indeed, in multiple respects, Petitioner has promised even greater lawlessness if he is restored to power. The effects of

Petitioner’s ongoing incitement have been severe and predictable, including an unprecedented rise in attacks and death threats against election workers, judges, and other public servants.

In short, enforcing Section 3 in this case would *protect* our democratic system, not disrespect it. In the words of Rabbi Hillel: “If not now, when?”

## ARGUMENT

### I. OUR DEMOCRACY REQUIRES ENFORCEMENT OF THE CONSTITUTION, EVEN WHEN INCONSISTENT WITH MAJORITY WILL.

“Although in political democracy the rule of the majority is necessary, the American system of democracy is based upon the recognition of the imperative necessity of limitations upon the will of the majority.” *Lathrop v. Donohue*, 367 U.S. 820, 883, 81 S. Ct. 1826, 1859 (1961) (Douglas, J., dissenting). “Because of the Framers’ concerns about placing unchecked power in political majorities,” our Constitution features numerous “check[s] on majority rule to promote the common good.” *Evenwel v. Abbott*, 578 U.S. 54, 84 (2016) (Thomas, J., concurring); *see also* Federalist No. 10 (Madison) (noting that checks on the will of the majority are necessary to protect “the public good” while still preserving “the spirit and form of popular government”). The system of checks and balances created by the Founders is vital to the preservation of our constitutional order.

The Constitution’s checks on the will of the majority take various forms. As relevant here, the

Constitution restricts whom voters may elect to the Presidency. To protect against undue foreign influence in domestic affairs, the Constitution requires the President to be a “natural born citizen” who has resided within the country for 14 years. *See* U.S. Const. Art. II, cl. 5. To ensure sufficient maturity and experience, the Constitution requires the President to be at least 35 years of age. *See id.* To protect against favoritism toward particular States, the Constitution prohibits electors from voting for a president and vice president who are both from the elector’s own state. U.S. Const., Amend. XII. To prevent the Presidency from becoming a popularly elected monarchy, the nation later added the requirement that “[n]o person shall be elected to the office of the President more than twice.” U.S. Const. Amend. XXII. And to protect the Nation from a potential despot who has taken an oath to support the Constitution and then engaged in, or supported, an insurrection against the Constitution, Section 3 bars any such persons from the Presidency.

These provisions all restrict the range of choices that a majority of the electorate can make. For example, if Americans overwhelmingly wanted to reelect former President Bush or Obama to a third term, the 22<sup>nd</sup> Amendment would deny them that choice. Likewise, popular though they may have been, Arnold Schwarzenegger and Henry Kissinger were both barred at all times by Art. II, cl. 5, from seeking the highest office in the land. And, of course, thanks to Section 3, so were Jefferson Davis and Robert E. Lee. But such restrictions on the will of the majority are an intentional part of the constitutional structure. While they limit the choices of legislators and voters, they protect our system of representative democracy

against threats far graver than the occasional frustration of a majority's desires. That is the very point of our constitutional order, not a subversion of it.

To be sure, not all of the Founders' checks and balances have stood the test of time unchallenged. The election of Senators by state legislatures was replaced by popular election through the 17<sup>th</sup> Amendment. The Electoral College, which gives disproportionate power to smaller states, is regularly criticized, including by Common Cause, which favors the National Popular Vote<sup>2</sup> to allow the President to be elected by a simple majority of eligible voters. But whatever one's opinion may be, all parts of the Constitution, so long as they are in effect, deserve respect and enforcement. The checks on popular will were carefully considered and endorsed by the Founders, who knew they were not creating a pure Athenian democracy, but rather a democracy in a republic. The question posed now is the one that Benjamin Franklin framed then. When asked what kind of government the Constitutional Convention had created, he famously responded, "A republic, if you can keep it."<sup>3</sup>

Keeping our republic requires that government in general, and elections in particular, be conducted in accord with the rules set forth in the Constitution, whatever the majority may think of those rules at any particular time. The majority whose will is thus

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<sup>2</sup> [National Popular Vote](https://www.nationalpopularvote.com/written-explanation), Agreement Among the States to Elect the President by National Popular Vote, <https://www.nationalpopularvote.com/written-explanation> (accessed January 22, 2004).

<sup>3</sup> NEIL GORSUCH, A REPUBLIC, IF YOU CAN KEEP IT 8 (2019).



checked may feel disappointed or outraged. They may even threaten violence. But that is no reason for the courts to shirk from enforcement of the Constitution. Our Founders rightly rejected the notion that “when-ever a momentary inclination happens to lay hold of a majority of [the people], incompatible with the provisions in the existing Constitution,” the majority will would make “justifiable [the] violation of those provisions.” Federalist No. 78 (Hamilton). To the contrary, the Founders recognized that judicial action would be necessary “to guard the Constitution . . . from the effects of those ill humors, which the arts of designing men . . . sometimes disseminate among the people,” lest a temporary majority “occasion dangerous innovations in the government.” *Id.* It may “require an uncommon portion of fortitude in the judges to do their duty” where the Constitution’s requirements are at odds with “the major voice of the community.” *Id.* But it is the Court’s duty all the same: the Constitution “can hardly be infringed simply because a majority of the people choose that it be.” *Lucas v. Forty-Fourth Gen. Assembly*, 377 U.S. 713, 736-37 (1964).

## **II. THE FRAMERS WERE ESPECIALLY CONCERNED WITH THE DANGER TO DEMOCRACY POSED BY VIOLENT INSURRECTION AND EXECUTIVE DESPOTISM.**

The Framers were acutely attuned to the existential threat to our democratic system posed by violent insurrection. As Alexander Hamilton vividly stated:

A FIRM Union will be of the utmost moment to the peace and liberty of the States, as a barrier against domestic faction and

insurrection. It is impossible to read the history of the petty republics of Greece and Italy without feeling sensations of horror and disgust at the distractions with which they were continually agitated, and at the rapid succession of revolutions by which they were kept in a state of perpetual vibration between the extremes of tyranny and anarchy.

Federalist No. 9. Hamilton observed that “[a]n insurrection, whatever may be its immediate cause, eventually endangers all government.” Federalist No. 28. Madison, too, emphasized the need to “control the violence of faction,” noting that violent insurrections are “mortal diseases under which popular governments have everywhere perished.” Federalist No. 10.

The Framers were equally worried about a popularly elected leader transforming into a democratically unaccountable tyrant. “[T]he Framers were steeped in English history; the shades of despotic kings and conniving ministers marched before them.” Raoul Berger, *Impeachment: The Constitutional Problems* 4 (1974).

Hamilton stressed this fear repeatedly. He warned that, “of those men who have overturned the liberties of republics, the greatest number have begun their careers by paying an obsequious court to the people, commencing Demagogues, and ending Tyrants.” Federalist No. 1. He urged the new nation to “guard against” the “despotism of a victorious demagogue.” Federalist No. 85. As he put it:

When a man unprincipled in private life[,] desperate in his fortune, bold in his temper . . . known to have scoffed in private at the

principles of liberty — when such a man is seen to mount the hobby horse of popularity — to join in the cry of danger to liberty — to take every opportunity of embarrassing the General Government & bringing it under suspicion — to flatter and fall in with all the non sense [sic] of the zealots of the day — It may justly be suspected that his object is to throw things into confusion that he may ride the storm and direct the whirlwind.

Alexander Hamilton, “Objections and Answers respecting the Administration of the Government.”

Jefferson, in language that is eerily prescient, saw the danger of an elected President refusing to give up his office based on false claims of fraud. ***“If once elected, and at a second or third election outvoted by one or two votes,”*** he wrote, ***such an individual might “pretend false votes, foul play, hold possession of the reins of government, [and] be supported by the states voting for him,” thereby becoming “an officer for life.”*** Letter from Jefferson to Madison, December 20, 1787 (emphasis added). “Reflect on all the instances in history antient [sic] and modern, of elective monarchies,” Jefferson urged, “and say if they do not give foundation for my fears.” *Id.* The Framers knew that the “securit[y] [of] republican government” depended on checking “the ambition of powerful individuals . . . who may acquire credit and influence enough . . . to become the despots of the people.” Federalist No. 85 (Hamilton). The system of checks and balances built into the Constitution was thus precisely designed to protect against the risk of popular insurrection and executive tyranny. That is,

in part, how the Federalist Papers persuaded the people to ratify the new Constitution.

Of course, the Framers did not live to see Section 3 enacted following the Civil War. The Reconstruction Congress took that step because the bitter experience of history showed that the Constitution's existing checks and balances were insufficient to deter insurrection. In doing so, the Framers of the Fourteenth Amendment were not merely engaged in an *ad hoc* effort to disempower Confederate politicians or those who would engage in full-scale civil war, as some have argued. Rather, they were acting in full accord with our well-settled constitutional tradition of fashioning appropriate safeguards for republican democracy to function properly on an ongoing and permanent basis. Indeed, the Founding Fathers' words show why enforcement of Section 3 is critical here. This case presents two of the threats to democracy that they feared most: violent insurrection and executive tyranny. Refusing to enforce the Constitution is always illegitimate, but it would be especially dangerous to defer to popular passions here, passions thrown into confusion by a person intent on disrupting the lawful democratic process.

### **III. PETITIONER POSES AN EXISTENTIAL THREAT TO OUR DEMOCRATIC ORDER**

Common Cause agrees with the Colorado Supreme Court that, in connection with the events of January 6, 2021, Petitioner “engaged in insurrection or rebellion against [the United States], or g[ave] aid or comfort to the enemies thereof.” Common Cause leaves the defense of that factual finding to Respondent and other *amici* (although it is notable that Petitioner does not

dispute that the January 6, 2021, uprising that he organized and headlined was an “insurrection” under the meaning of Section 3). Instead, we make two interrelated points about why Petitioner’s particular brand of insurrection poses an especially severe threat to democratic principles.

First, unlike certain other “insurrections” in American history, the January 6 insurrection was directed squarely at the democratic process itself.

When the Framers wrote (in the Federalist Papers and elsewhere) about the democracy-destroying effects of insurrection, they surely had in mind Shays’ Rebellion, which took place in Massachusetts in 1786 and 1787, on the eve of the Constitutional Convention. Shays’ Rebellion was an uprising of rural residents in response to the state’s increased efforts to collect taxes. The rebels marched on a federal armory in an unsuccessful attempt to commandeer weapons. The rebellion was ultimately put down; two ringleaders were hanged, and some four thousand rebels signed confessions acknowledging their wrongdoing in exchange for amnesty.<sup>4</sup> Mere months after Shays’ Rebellion ended, Hamilton wrote that “[a]n insurrection, whatever may be its immediate cause, eventually endangers all government.” Federalist No. 28.

The threat posed by Petitioner’s insurrection was orders of magnitude greater and more central to the functioning of our democratic republic. At Petitioner’s urging, his supporters marched not on a rural armory,

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<sup>4</sup> Paul M. Thompson, *The Reaction to Shays’ Rebellion*, 4 MASS. LEGAL HIST. 37, 48 (1998).

but on the United States Congress itself, while it was in the process of certifying the results of the 2020 election. The marchers' goal was not to seize weapons, but to commit violence against democratically elected representatives and thereby halt the lawful transition of power and override the will of more than 80 million voters and of States representing a majority of Electoral College votes. And the person urging on the rioters was not an obscure farmer like Daniel Shays, but the sitting President, who had sworn a solemn oath to "support and defend the Constitution of the United States." Art. II, Section 1, cl. 8.

In short, the insurrection that Petitioner encouraged directly attacked the most fundamental precept of American government, and came perilously close to succeeding. Our Founding Fathers counted attempts to interfere with the results of democratic elections among their chief grievances against King George III. *See* Declaration of Independence ("He has dissolved Representative Houses repeatedly, for opposing with manly firmness his invasions on the rights of the people."). If this is not a proper scenario to invoke Section 3, then it is hard to conceive of any scenario that would be.

Second, unlike Shays' insurgents, who signed confessions in exchange for amnesty, Petitioner is utterly unrepentant about his actions, regularly provides aid and comfort to those who directly participated in January 6 violence, and openly threatens to foment another insurrection if necessary—and indeed, to do worse.

To this day, Petitioner has steadfastly refused to acknowledge the legitimacy of the 2020 election or the

subsequent transfer of power to a new administration. He has continued to promote a litany of false claims regarding the 2020 election, maintaining—without a shred of credible evidence—that the election was fraudulent and that Petitioner was in fact the rightful winner.<sup>5</sup> He has promised that, if reelected, he will “root out” the “radical left thugs that live like vermin within the confines of our country that lie and steal and cheat on elections.”<sup>6</sup> Notwithstanding his argument to this Court that he did not “engage” in the January 6 insurrection, Petitioner has described his criminal indictment for participating in the events of January 6 as a “badge of honor.”<sup>7</sup> At his rallies, he lionizes those convicted and imprisoned for storming the Capitol as “patriots” and “hostages.”<sup>8</sup> To drive the point

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<sup>5</sup> Robert Yoon, *Trump’s Drumbeat of Lies About the 2020 Election Keeps Getting Louder. Here are the Facts.*, ASSOCIATED PRESS, (Aug. 27, 2023), <https://apnews.com/article/trump-2020-election-lies-debunked-4fc26546b07962fdbf9d66e739fbb50d>.

<sup>6</sup> Marianna LeVine, *Trump Calls Political Enemies ‘Vermin,’ Echoing Dictators Hitler, Mussolini*, WASH. POST., (Nov. 12, 2023), <https://www.washingtonpost.com/politics/2023/11/12/trump-rally-vermin-political-opponents/>.

<sup>7</sup> Aila Slisco, *Trump Describes His Indictments as a ‘Badge of Honor’*, NEWSWEEK, (Aug. 4, 2023), <https://www.newsweek.com/trump-describes-his-indictments-badge-honor-1817690>.

<sup>8</sup> Jake Traylor, *Trump calls people charged and convicted for Jan. 6 riots ‘hostages’*, NBC NEWS, (Nov. 3, 2023), <https://www.nbcnews.com/meet-the->

home, Petitioner began the first rally of his 2024 Presidential election campaign with a recording of convicted and imprisoned January 6 rioters singing the national anthem, “interlaced with [his own] voice saying the pledge of allegiance”—a recording he calls “‘Justice for All,’ by Donald J. Trump and the J6 Prison Choir.”<sup>9</sup> Petitioner has promised that, if reelected, “he will pardon a ‘large portion’” of these insurrectionists—complete with “an apology.”<sup>10</sup> And he has continued to use violent and dangerous rhetoric, telling his supporters that he is their “warrior” and their “retribution.”<sup>11</sup>

Even more threateningly, Petitioner has repeatedly promised to reprise and increase his lawless activities on a going-forward basis. Petitioner has refused to commit himself to honoring the results of the

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[press/meetthepressblog/trump-calls-people-charged-convicted-jan-6-riots-hostages-rcna123617](https://www.press.miamiherald.com/story/news/politics/elections/2024/05/10/trump-calls-people-charged-convicted-jan-6-riots-hostages-rcna123617).

<sup>9</sup> Id.

<sup>10</sup> Amanda Terkel, *Trump says he would pardon a ‘large portion’ of Jan. 6 rioters*, NBC NEWS, (May 10, 2023), <https://www.nbcnews.com/politics/donald-trump/trump-says-pardon-large-portion-jan-6-rioters-rcna83873>; NPR, *The Trump campaign embraces Jan. 6 rioters with money and pardon promises*, (Jan. 4, 2024), <https://www.npr.org/transcripts/1218672628>.

<sup>11</sup> Isabella Murray, Soo Rin Kim, Adam Carlson, *Trump, who told supporters ‘I am your retribution,’ now says, ‘I’m being indicted for you’*, ABC NEWS, (June 26, 2023), <https://abcnews.go.com/Politics/trump-told-supporters-retribution-now-im-indicted/story?id=100386551>.



upcoming 2024 presidential election.<sup>12</sup> He has argued that his own baseless allegations of voter fraud “allow for the termination of all rules, regulations, and articles, even those found in the Constitution.”<sup>13</sup> If reelected, he has vowed to govern as a “dictator” on day one.<sup>14</sup> He has threatened to use the Justice Department to target his political enemies.<sup>15</sup> He has claimed “TOTAL IMMUNITY” for all his Presidential acts, even those that “CROSS THE LINE.”<sup>16</sup> Indeed, in his view, he can use the power of the presidency to assassinate his political opponents free of the risk of

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<sup>12</sup> Jared Gans, *Trump Won't Commit to Accepting 2024 Election Results*, THE HILL, (May 10, 2023), <https://thehill.com/homenews/campaign/3998962-trump-wont-commit-to-accepting-2024-election-results/>. “If I think it’s an honest election,” Mr. Trump says – having plainly demonstrated his inability to grasp the possibility that he might lose an honest election.

<sup>13</sup> @realDonaldTrump, Truth Social post, 4:40am, December 4, 2022.

<sup>14</sup> Jill Colvin & Bill Barrow, *Trump’s vow to only be a dictator on ‘day one’ follows growing worry over his authoritarian rhetoric*, ASSOCIATED PRESS, (Dec. 7, 2023), <https://apnews.com/article/trump-hannity-dictator-authoritarian-presidential-election-f27e7e9d7c13fabbe3ae7dd7f1235c72>.

<sup>15</sup> Sam Levine, *Trump suggests he would use FBI to go after political rivals if elected in 2024*, THE GUARDIAN, (Nov. 10, 2023), <https://www.theguardian.com/us-news/2023/nov/10/trump-fbi-rivals-2024-election>.

<sup>16</sup> Greg Sargent, *Trump’s Angry Rant About His Legal Mess Reveals an Ugly MAGA Truth*, THE NEW REPUBLIC, (Jan. 19, 2024), <https://newrepublic.com/article/178252/trump-truth-social-rant-ugly-maga-truth>.

prosecution unless he is first impeached by a majority of the House of Representatives and then convicted by a two-thirds vote of the Senate for that offense.<sup>17</sup>

Petitioner’s reckless words have already raised the specter of violence. A recent survey found that 41% of Americans with a favorable view of Petitioner agreed with the statement that “[b]ecause things have gotten so far off track, true American patriots may have to resort to violence in order to save our country.”<sup>18</sup> Spurred on by Petitioner’s incitement, some of his supporters have committed acts of intimidation against election workers, administrators, and judges at every level of government. The Justice Department recently noted “an ‘unprecedented rise’ in threats to public officials” linked, at least in part, to Petitioner’s actions.<sup>19</sup>

In 2022, a nationwide survey of local elections officials showed that nearly one in four experienced threats of violence, harassment, or other instances of abuse linked to their work—and that as a result, the country faced “the loss of seasoned election

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<sup>17</sup> Adam Liptak, *Trump’s Boldest Argument Yet: Immunity From Prosecution for Assassinations*, N.Y. TIMES, (Jan. 10, 2024), <https://www.nytimes.com/2024/01/10/us/politics/trump-immunity-prosecution-assassination.html>.

<sup>18</sup> Sargent, *supra* note 16.

<sup>19</sup> Kelly Garrity, *Threats to Public Officials Soaring, Deputy Attorney General Says*, POLITICO, (Dec. 24, 2023), <https://www.politico.com/news/2023/12/24/death-threats-public-officials-trump-00133167>.

administrators ahead of the 2024 general election.”<sup>20</sup> Threats of violence against election workers increased so sharply after the 2020 election that the Department of Justice was compelled to create a first-of-its-kind Election Threats Task Force.<sup>21</sup> An April 2021 survey showed that a third of responsive poll workers felt unsafe and nearly eighty percent of responsive poll workers desired government-provided security services to support them in their work.<sup>22</sup>

Within three weeks of the filing of the underlying action in this case—an action where she was the *respondent*—Colorado Secretary of State Jena Griswold received sixty-four death threats.<sup>23</sup> Colorado District Court Judge Sarah B. Wallace later entered a protective order in the underlying litigation out of safety

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<sup>20</sup> Saige Draeger, *As 2024 Campaigns Begin, States Confront Threats to Election Workers*, NATIONAL CONFERENCE OF STATE LEGISLATURES, (Apr. 26, 2023), <https://www.ncsl.org/state-legislatures-news/details/as-2024-campaigns-begin-states-confront-threats-to-election-workers>.

<sup>21</sup> <https://www.justice.gov/opa/blog/justice-department-launches-task-force-combat-threats-against-election-workers-0>.

<sup>22</sup> Brennan Center for Justice, *Election Officials Under Attack: How to Protect Administrators and Safeguard Democracy*, (June 16, 2021), [www.brennancenter.org/sites/default/files/2021-06/BCJ-129%20ElectionOfficials\\_v7.pdf](http://www.brennancenter.org/sites/default/files/2021-06/BCJ-129%20ElectionOfficials_v7.pdf).

<sup>23</sup> Tara Suter, *Colorado Secretary of State Received Death Threats: ‘I Will Not Be Intimidated’*, THE HILL, (Dec. 30, 2023), <https://thehill.com/homenews/state-watch/4382720-colorado-secretary-state-receives-death-threats>.

concerns for “the parties, for the lawyers, and frankly for [her]self and [her] staff.”<sup>24</sup> Justices of the Colorado Supreme Court received “a barrage of death threats” after ruling that Section 3 required Petitioner’s removal from the Colorado primary ballot.<sup>25</sup> Following her similar ruling in Maine, Secretary of State Shenna Bellows received death threats to her family and staff.<sup>26</sup> The Maine Judicial Branch subsequently received bomb threats.<sup>27</sup>

Judge Arthur Engoron—who is overseeing Petitioner’s civil fraud trial in New York—has had bomb

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<sup>24</sup> Nicholas Riccardi, *Judge Overseeing Case to Remove Trump from 2024 Ballot Issues Protective Order Amid Fear of Threats, Intimidation*, PBS, (Sep. 22, 2023), <https://www.pbs.org/newshour/politics/judge-overseeing-citcase-to-remove-trump-from-2024-ballot-issues-protective-order-amid-fear-of-threats-intimidation>.

<sup>25</sup> Lauren Aratani, *Colorado Supreme Court Justices Face Death Threats After Trump Ruling*, THE GUARDIAN, (Dec. 21, 2023), <https://www.theguardian.com/us-news/2023/dec/21/trump-colorado-supreme-court-justices-death-threats>.

<sup>26</sup> Damita Menezes, *Maine Secretary of State Says Home Swatted after Trump Decision*, NEWSNATION, (Dec. 31, 2023), <https://www.newsnationnow.com/politics/2024-election/maine-secretary-of-state-swatting-threats>.

<sup>27</sup> Barbara A. Cardone, *Maine Judicial Branch Responds to Bomb Threat*, ME. JUDICIAL BRANCH, (Jan. 4, 2024), <https://www.courts.maine.gov/news/article.html?id=12233776>.

threats made against his home.<sup>28</sup> He and his staff have been subjected to numerous death threats; his clerk has been “doxed” by Petitioner’s supporters and receives dozens of antisemitic communications a day.<sup>29</sup> Judge Tanya Chutkan—who oversees Petitioner’s election subversion case in the District of Columbia—has been “swatted” at her home<sup>30</sup> and subjected to death threats.<sup>31</sup>

In short, Petitioner’s ongoing support of the January 6 insurrection has caused—and continues to cause—severe harm to our democratic institutions. This harm to our democracy is far greater than that caused by the small-scale regional revolts that preoccupied the Founding Fathers and led them to enact

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<sup>28</sup> Dominic Rush & Lauren Aratani, *Bomb Squad Called to Trump Judge's House Hours Before End of Fraud Trial*, THE GUARDIAN, (Jan. 11, 2024), <https://www.theguardian.com/us-news/2024/jan/11/trump-judge-bomb-threat-new-york-trial>.

<sup>29</sup> Callum Jones, *Office of Judge Presiding over Trump's New York Trial Bombarded with Threats*, THE GUARDIAN, (Nov. 22, 2023), <https://www.theguardian.com/us-news/2023/nov/22/new-york-trump-trial-judge-arthur-engoron-clerk-death-threat>.

<sup>30</sup> Alan Feuer, *Apparent ‘Swatting’ Incidents Target Judge and Prosecutor in Trump Election Case*, N.Y. TIMES, (Jan. 8, 2024), <https://www.nytimes.com/2024/01/08/us/politics/judge-tanya-chutkan-swatting-trump.html>.

<sup>31</sup> Alan Feuer, *Texas Woman Charged with Threatening to Kill Judge in Trump Election Case*, N.Y. TIMES, (Aug. 16, 2023), <https://www.nytimes.com/2023/08/16/us/politics/woman-arrested-death-threat-judge-chutkan.html>.

safeguards against demagogues and despots. It is no exaggeration to say that the actions of Petitioner and those who threaten violence in his name pose the single greatest threat to our constitutional order since the Civil War. Enforcing Section 3 here does not harm democracy, but rather enhances it. If elections are not conducted in accord with the rules set forth in the Constitution, then what is their point? If this is not the time to enforce Section 3, when is?

### CONCLUSION

Our Founding Fathers foresaw—and feared—the very situation in which we now find ourselves. Our Constitution wisely restrains the power of inflamed majorities to protect the health and safety of our democratic system. To criticize those checks as “undemocratic” misunderstands our Constitution and our nation’s history. Indeed, the true threat to our democracy lies in *not* enforcing Section 3 against an unrepentant insurrectionist who openly promises tyranny and incites violence.

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