COLORADO SUPREME COURT 2 East 14th Avenue Denver, Colorado 80203	
Appeal Pursuant to § 1-1-113(3), C.R.S. **Original Proceeding:** District Court, City and County of Denver, Colorado Hon. Sarah B. Wallace Case No. 2023CV32577	
Petitioners-Appellees/Cross-Appellants: NORMA ANDERSON, MICHELLE PRIOLA, CLAUDINE CMARADA, KRISTA KAFER, KATHI WRIGHT, and CHRISTOPHER CASTILIAN v. **Respondent-Appellee:** JENA GRISWOLD, in her official capacity as Colorado Secretary of State, v. **Intervenor-Appellee:** COLORADO REPUBLICAN STATE CENTRAL COMMITTEE, an unincorporated association, **Intervenor-Appellant/Cross-Appellee:** DONALD J. TRUMP.	▲COURT USE ONLY▲ Supreme Court Case No: 2023SA300

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BRIEF OF AMICI CURIAE STATES OF INDIANA, WEST VIRGINIA, AND 17 OTHER STATES IN SUPPORT OF INTERVENORS COLORADO REPUBLICAN STATE CENTRAL COMMITTEE AND DONALD J. TRUMP

CERTIFICATE OF COMPLIANCE

In accordance with Colorado Appellate Rule ("C.A.R.") 28(a)(1), the undersigned hereby certifies that this amicus brief complies with all requirements of C.A.R. 28, C.A.R. 29, and C.A.R. 32. This brief was prepared using Microsoft Word and uses a proportionally spaced face (Century Schoolbook 14-Point). The total number of words, as measured by the word count of the word-processing system used to prepare the brief, is 4,710.

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INTEREST OF THE AMICI STATES

The States of Indiana, West Virginia, Alabama, Alaska, Iowa, Kentucky, Louisiana, Mississippi, Missouri, Montana, Nebraska, North Dakota, Oklahoma, South Carolina, South Dakota, Tennessee, Texas, Utah, and Wyoming submit this amicus brief in support of Intervenors Colorado Republican State Central Committee and Donald J. Trump.

Petitioners ask this Court to block the Forty-Fifth President of the United States from running for president again on a Colorado ballot. Claiming President Trump engaged in insurrection, they insist he is ineligible for reelection under Section 3 of the Fourteenth Amendment. Under their theory, each State decides whether that's so on its own.

But "in the context of a Presidential election, state-imposed restrictions implicate a uniquely important *national* interest." *Anderson v. Celebrezze*, 460 U.S. 780, 794–95 (1983) (emphasis added) (footnote omitted). No State is an electoral "island" because "the impact of the votes cast in each State is affected by the votes cast for the various candidates in other States." *Id.* at 795. When one State excludes a presidential candidate, votes for that candidate in other States lose value. And when many States exclude the candidate, his or her votes in other States may

have no value at all. The *Amici* States have a strong interest in protecting their electorates from this sort of dilution.

ARGUMENT

Petitioners raise a question that demands a single, national answer—whether the Fourteenth Amendment's Insurrection Clause bars former President Trump from seeking a second term. However one views his candidacy, everyone should be able to agree that our country needs a clear, uniform answer. Electoral chaos would ensue if a presidential candidate, whose eligibility is governed by a single set of constitutional requirements, is eligible to appear on some States' ballots but not others. Recognizing as much, the district court rejected petitioners' attempt to balkanize eligibility for President, holding that Section 3 of the Fourteenth Amendment applies only to federal officers, not Presidents.

But a more fundamental problem plagues petitioners' theory: Deciding whether the Insurrection Clause applies presents a nonjusticiable "political question[] … best left for resolution by the other branches of government, or 'to be fought out on the hustings and determined by the people at the polls.'" *Colo. Common Cause v. Bledsoe*,

810 P.2d 201, 205 (Colo. 1991) (quoting *People ex rel. Tate v. Prevost*, 134 P. 129, 133 (Colo. 1913)). At least two courts have already dismissed the very same sort of allegations against President Trump under the political-question doctrine. *See Trump v. Benson*, No. 23-000151-MZ, slip op. at 14–25 (Mich. Ct. Cl. Nov. 14, 2023), *available at* https://bit.ly/47tapLl; *Castro v. N.H. Sec'y of State*, No. 23-CV-416-JL, 2023 WL 7110390, at *9 (D.N.H. Oct. 27, 2023), *aff'd*, 2023 WL 8078010 (1st Cir. Nov. 21, 2023). This Court should, too.

The Fourteenth Amendment entrusts Insurrection Clause questions to Congress—not state officials or state courts. The Amendment vests Congress with "power to enforce" the Insurrection Clause "by appropriate legislation" and power to "remove [the] disability" it imposes. U.S. Const. amend. XIV, §§ 3, 5. That "textually demonstrable constitutional commitment of the issue to a coordinate political department" means that courts have no business second guessing Congress's decisions to enforce—or not to enforce—the Clause. *Nixon v. United States*, 506 U.S. 224, 228 (1993) (quoting *Baker v. Carr*, 369 U.S. 186, 217 (1962)). Instead, "courts must refrain from reviewing controversies concerning policy choices and value determinations that are constitutionally

committed for resolution to the legislative or executive branch." *Busse v. City of Golden*, 73 P.3d 660, 664 (Colo. 2003).

Other considerations—including a "lack of judicially discoverable and manageable standards" and an "unusual need for unquestioning adherence" to an issue's resolution—reinforce the conclusion that this case raises a "nonjusticiable" political question. *Nixon*, 506 U.S. at 228; *see Markwell v. Cooke*, 482 P.3d 422, 427 (Colo. 2021) (applying factors). For example, the term "insurrection" is hardly as well defined as the district court let on. And allowing each State and its courts to determine eligibility using malleable standards would create an unworkable patchwork of eligibility requirements for President.

In short, petitioners "ask[] the court[] to intrude in an area in which [it] ha[s] no rightful power and no compass." *Wu Tien Li-Shou v. United States*, 777 F.3d 175, 183 (4th Cir. 2015) (cleaned up). The Court should refuse that ill-advised request and dismiss.

I. The Fourteenth Amendment Expressly Commits Section 3's Enforcement to Congress.

The President occupies a unique place under our Constitution. The President is only one of two "elected officials who represent all the voters in the Nation." *Anderson*, 460 U.S. at 795. So, when States try to impose

"more stringent ballot access requirements" or eligibility criteria on candidates for Presidents, that effort "has an impact beyond [a State's] own borders." *Id.* at 795. And the practical impact makes it essential to have a single, national answer as to whether someone is eligible to run for President. It is unworkable for 50 States to decide for themselves whether someone is constitutionally eligible.

The Constitution recognizes the need for national answers. It imposes a single set of eligibility requirements for President, *see, e.g.*, U.S. Const. art. II, § 1 (imposing age, citizenship, and residency eligibility requirements), which States may not "modif[y]," *U.S. Term Limits, Inc. v. Thornton*, 514 U.S. 779, 811 (1995). It also gives Congress—an elected, national body capable of giving a single answer—responsibility for determining whether a President may continue in office. U.S. Const. art. I, § 2 (allocating "sole Power of Impeachment" to the House); U.S. Const. art. I, § 3 (allocating "sole Power to try all Impeachments" to the Senate); *id.* (limiting "[j]udgment in Cases of Impeachment "to removal from Office[] and disqualification" from further office)); U.S. Const. art. II, § 4 (providing for "remov[al] from Office on Impeachment for, and Conviction of, Treason, Bribery, or other high Crimes and Misdemeanors").

So even assuming the Insurrection Clause applies to a candidate for President (to be clear it doesn't), Congress gets to call the tune. The Fourteenth Amendment provides that "[n]o person shall … hold any office … who, having previously taken an oath … as an officer of the United States … to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same." U.S. Const. amend. XIV, § 3. But it then stresses that "Congress shall have the power to enforce, by appropriate legislation, the provisions of this article." U.S. Const. amend. XIV, § 5. And it specifies that only "Congress … by a vote of two-thirds of each House" may "remove [the] disability" imposed by the Insurrection Clause. U.S. Const. amend. XIV, § 3. Thus, the Fourteenth Amendment charges Congress with deciding how the Insurrection Clause will be enforced. *See Kerchner v. Obama,* 669 F. Supp. 2d 477, 483 n.5 (D.N.J. 2009) (detailing constitutional provisions that show qualifications of a president constitute a non-justiciable political question).

Just months after the Fourteenth Amendment's ratification, for example, Chief Justice Salmon P. Chase (while riding circuit in Virginia) reached that very conclusion. *In re Griffin*, 11 F. Cas. 7 (C.C.D. Va. 1869).

Examining the text, he explained that the Fourteenth Amendment's "fifth section qualifies the third." *Id.* at 26. Section 5 "gives congress absolute control of the whole operation of the amendment," and hence "legislation by congress is necessary to give effect to [Section 3's] prohibition." *Id.*

Practical considerations, Chief Justice Chase explained, "very clearly" underscored the need for legislation. *Griffin*, 11 F. Cas. at 26. To give effect to Section 3, "it must be ascertained what particular individuals" are subject to a disability. *Id.* But "only … congress" may "provide" the "proceedings, evidence, decisions, and enforcements of decisions" required to "ascertain[] what particular individuals are embraced by the definition" and "ensure effective results." *Id.*; *cf. Cawthorn v. Amalfi*, 35 F.4th 245, 275–82 (4th Cir. 2022) (Richardson, J., concurring) (explaining why only Congress may decide whether its own members are disqualified under Section 3 of the Fourteenth Amendment). No wonder, then, that Congress at one point *did* pass (later repealed) enabling legislation; Congress, like Chief Justice Chase, recognized that this portion of "[t]he Constitution provides no means for enforcing itself." Kurt Lash, *The Meaning and Ambiguity of Section Three of the*

Fourteenth Amendment, Working Paper, at 46 (Oct. 28, 2023), https://bit.ly/3RfwVS8 (quoting Sen. Lyman Trumbull).

In requiring that "two-thirds of each House" agree to remove the disability, the Fourteenth Amendment aligns with the standard for Congress to determine a President's legal qualifications under the Twenty-Fifth Amendment. Under that amendment, if the Vice President and certain officers find that the President is unable to perform the duties of his office, "Congress shall decide the issue [of ability] … by two-thirds vote of both Houses." U.S. Const. amend. XXV. "[O]therwise, the President shall resume the powers and duties of his office." *Id.* An unable President is one who lacks the ability or the legal qualifications to discharge his office. *See Grinols v. Electoral Coll.*, No. 2:12-CV-02997, 2013 WL 2294885, at *6 (E.D. Cal. May 23, 2013) (stating that "the Twenty–Fifth Amendment provides for removal of the President should he be unfit to serve"), *aff'd*, 622 F. App'x 624 (9th Cir. 2015). So the Twenty-Fifth Amendment—and by extension the Fourteenth—gives Congress the ultimate power to decide whether an official is legally unqualified to serve.

The voters first will decide whether President Trump is legally qualified to be reelected as President. "Arguments concerning qualifications or lack thereof can be laid before the voting public before the election[.]" *Robinson v. Bowen*, 567 F. Supp. 2d 1144, 1147 (N.D. Cal. 2008). If the voters find former President Trump qualified, and Congress concurs, then the Constitution does not contemplate a time for the judiciary to second-guess that call. Rather, the Constitution gives Congress the sole and final authority to determine whether the President can continue to serve. *See Taitz v. Democrat Party of Miss.,* No. 3:12-CV-280, 2015 WL 11017373, at *16 (S.D. Miss. Mar. 31, 2015) ("[T]hese matters are entrusted to the care of the United States Congress, not this court."); *Grinols*, 2013 WL 2294885, at *6 ("Nowhere does the Constitution em power [sic] the Judiciary to … enjoin [a] President-elect from taking office.").

When the district court here reviewed Section 3's text, the court at least acknowledged that "[t]his provision clearly gives Congress the ability to remove a constitutional disability should a person be disqualified under Section Three of the Fourteenth Amendment." Order, *Anderson v. Griswold*, No. 2023CV32577, at 17 (Denver Dist. Ct. Oct. 25,

2023) ("October Order"). Yet the court tried to distinguish between who can "remove a constitutional disability" and "what government body would adjudicate or determine such disability in the first instance." *Id.* The text does not support this distinction. As Chief Justice Chase recognized, the amendment itself provides for Congress to "enforce, by appropriate legislation, [its] provisions." U.S. Const. amend. XIV, § 5; *see Griffin*, 11 F. Cas. at 26. The court erred in holding that there was no "clear textual commitment to Congress." Order, *Anderson v. Griswold*, at 6 n.2, No. 2023CV32577 (Denver Dist. Ct. Nov. 17, 2023) ("Final Order") (emphasis omitted).

II. As the District Court's Botched Treatment of the Term "Insurrection" Illustrates, Judicially Discernable and Manageable Standards Are Lacking.

Other considerations reinforce that courts are poorly suited to enforce the Insurrection Clause, including a lack of "judicially discoverable and manageable standards." *Baker*, 369 U.S. at 217; *see Rucho v. Common Cause*, 139 S. Ct. 2484, 2498 (2019).

A. Section 3's text provides little useful guidance for judges. It applies to persons who "engaged in insurrection or rebellion against the [Constitution]," or who have "given aid or comfort to the enemies thereof."

U.S. Const. amend. XIV, § 3. Evaluating whether someone has given inappropriate and actionable aid to the enemy or whether an insurrection occurred is the kind of question answered in war and diplomacy. *Cf. Pyramid Life Ins. Co. v. Masch*, 134 Colo. 70, 73, 299 P.2d 117, 119 (1956) ("The existence or nonexistence of a state of war is a political, not a judicial, question."); *accord Stinson v. N.Y. Life Ins.*, 167 F.2d 233, 236 (D.C. Cir. 1948) (same). "But [j]udges are not soldiers or diplomats." *Lin v. United States*, 539 F. Supp. 2d 173, 180 (D.D.C. 2008). In fact, one of the very first cases invoking the political-question doctrine involved a purported insurrection—and the Supreme Court refused to argue with Rhode Island's *political* determination that certain parties had "engaged in [an] insurrection." *Luther v. Borden*, 48 U.S. 1, 45–46 (1849).

The decision below illustrates how problems arise when courts intrude into a realm reserved for soldiers and diplomats. In the district court's view, an "insurrection" under Section 3 is any "(1) … public use of force or threat of force (2) by a group of people (3) to hinder or prevent execution of the Constitution." Final Order at 70–71. But that definition—which, as best the States can tell, has never been applied anywhere else—only invites more questions.

How much force and how large a group is required? Are a few student protesters blocking a road at risk of being branded insurrectionists? What about a street gang that fires a few shots at federal law enforcement or rioters who torch buildings? And what does it mean to "hinder or prevent execution of the Constitution"? The Constitution permits Congress to make laws and charges the President to "take Care that the Laws be faithfully executed." U.S. Const. art. II, § 3. Is every criminal group that forcibly opposes the President's enforcement of federal statutes guilty of insurrection? And what if people reasonably disagree as to what the Constitution requires? Are those on the losing side of the argument liable to be charged with insurrection?

B. In truth, an "insurrection" is more serious than the district court's definition supposes. Where the Constitution uses the term "insurrection," that term appears alongside terms like "invasion" and "rebellion." For example, Article I empowers Congress to use the militia to "execute" laws and to "suppress Insurrections and repel Invasions." U.S. Const. art. I, § 8. Similarly, Section 3 of the Fourteenth Amendment speaks of "insurrection" and "rebellion" together. U.S. Const. amend. XIV, § 3. This terminology suggests that an insurrection is "an effort to

overthrow the government" and therefore "more serious than" "mere[] opposition to the enforcement of the laws." Jason Mazzone, *The Commandeerer in Chief*, 83 Notre Dame L. Rev. 265, 336 n.450 (2007); *see* Myles S. Lynch, *Disloyalty & Disqualification: Reconstructing Section 3 of the Fourteenth Amendment*, 30 Wm. & Mary Bill Rts. J. 153, 167 (2021).

Other early authorities describe insurrections in similar terms. On the spectrum of civil disturbance, Blackstone places "insurrection" closer to a foreign invasion than a riot. 4 William Blackstone, *Commentaries on the Laws of England* *82, *420 (1765); *cf. Kneedler v. Lane*, 45 Pa. 238, 291 (1863) (noting Lord Coke put "invasion, insurrection," and "rebellion" in the same ballpark). Colonial-era laws often treated invasion, insurrection, and rebellion similarly. *See* James G. Wilson, *Chaining the Leviathan: The Unconstitutionality of Executing Those Convicted of Treason*, 45 U. Pitt. L. Rev. 99, 107 (1983) (quoting Laws of New Haven Colony 24 (1656) (Hartford ed. 1858)); Joseph Story, *Commentaries on the Constitution of the United States* § 111 (4th ed. 1873) (noting New York put "rebellion, insurrection, mutiny, and invasion" on a similar plane). And during the Constitutional Convention debates, James Wilson

noted that the major reason for the republican-form-of-government clause was to prevent "dangerous commotions, insurrections and rebellions." James Madison, *Notes of Debates in the Federal Convention of 1787* 321 (Adrienne Koch ed., Ohio Univ. Press, 1966) (1840); *accord* Story, *supra*, § 490.

Early Congresses took a similar view. Section 1 of the 1792 and 1795 Militia Acts says the President can use the militia to repel a foreign "invasion" or an "insurrection in any state" if the State asks, while Section 2 says he can use the militia to stop the obstruction of the execution of laws once normal civil processes are overwhelmed. Act of Feb. 28, 1795, ch. 36, 1 Stat. 424, 10 U.S.C. § 332; *cf.* The Insurrection Act of 1807, ch. 39, Pub. L. No. 9-2, 2 Stat. 443 (differentiating between "suppressing an insurrection" and "causing the laws to be duly executed"). This framing means "insurrection" and merely obstructing the execution of laws are fundamentally different "type[s] of domestic danger." F. E. Guerra-Pujol, *Domestic Constitutional Violence*, 41 U. Ark. Little Rock L. Rev. 211, 222 (2019).

Persons during the Civil War and Reconstruction Era treated "insurrection," "rebellion," and "invasion" as on the same plane, too. *See,*

e.g., *Miller v. United States*, 78 U.S. 268, 308 (1870) (discussing federal laws using these terms seemingly equivalently); *United States v. Hammond*, 26 F. Cas. 99, 101 (C.C.D. La. 1875) (discussing a state law regarding grand jury service). The primary Reconstruction Era legal dictionary—echoing many of the sources above—defined "insurrection" as a "rebellion" "against the government"; and "rebellion" primarily meant "taking up arms traitorously against the government." John Bouvier, *Bouvier's Law Dictionary* (6th ed. 1856), *available at* https://bit.ly/3uzlbAP. In the Fourteenth Amendment floor debates, legislators freely swapped terms. Cong. Globe, 39th Cong., 1st Sess. 2898, 2900 (1866). And a contemporaneous Attorney General opinion interpreting Section 3 of the Fourteenth Amendment saw no meaningful distinction either, constantly equating them and even defining them identically as a "domestic war." The Reconstruction Acts, 12 U.S. Op. Att'y Gen. 141, 160 (1867).

Indeed, throughout the early 19th century, "rebellion" and "insurrection" were often deemed "synon[y]mous." *State v. McDonald*, 4 Port. 449, 456 (Ala. 1837); *see Spruill v. N.C. Mut. Life Ins. Co.*, 46 N.C. 126, 127–28 (1853) (describing insurrection as a "seditious rising against

the government …; a rebellion; a revolt"); *Ex parte Milligan*, 71 U.S. 2, 142 (1866) (Chase, C.J., concurring) (equating "insurrection" and "invasion"); *Case of Davis*, 7 F. Cas. 63, 96 (C.C.D. Va. 1871) (treating "insurrection" and "rebellion" as interchangeable). Insurrections, like rebellions and revolutions, were understood to "come under the general head of *civil wars*." *Martin v. Hortin*, 64 Ky. 629, 633 (1867) (quoting H.W. Halleck, Elements of International Law and Laws of War 153 (1866)). They were thought to be a "war between the legitimate government of a country and portions of provinces of the same who seek to throw off their allegiance to it and set up a government of their own." U.S. War Dep't, Adjutant-Gen.'s Off., *General Order No. 100: The Lieber Code, Instructions for the Government of Armies of the United States In The Field* § X art. 151 (1863).

These descriptions are consistent with four of the pre-Civil War insurrections that would have been top of mind for the Fourteenth Amendment's framers: Shay's Rebellion (1786–1787), the Whiskey Rebellion (1794), Fries's Rebellion (1799–1800), Dorr's Rebellion (1841–1842). These insurrection-rebellions lasted several months; involved extended violence that shut down courts and revenue collection in local

areas; targeted particular local officials; involved militarily arrayed participants; and saw either combat or the election of a rival government. *See United States v. Mitchell*, 2 U.S. 348, 355 (C.C.D. Pa. 1795); *Case of Fries*, 9 F. Cas. 924, 933 (C.C.D. Pa. 1800); *Milligan*, 71 U.S. at 129. All were far more serious than the district court's definition suggests.

C. Although it's clear enough that the district court's definition was the wrong one, that's not to say that a court would be equipped to provide the right one. "Evidence from the Founding era is not entirely clear" about when a riot becomes insurrection. Mazzone, *supra*, at 336 n.450; *see* B. Mitchell Simpson, *Treason and Terror: A Toxic Brew*, 23 Roger Williams U. L. Rev. 1, 24 (2018) (saying the "distinction between insurrection and riot" can be "narrow"). The Constitution, though, provides the solution: it specifies that a politically accountable body should publicly declare whether an ongoing disturbance of the peace constitutes a war, rebellion, or insurrection precisely because the lines between them are not always clear. Across the board, the Constitution entrusts to Congress the power "[t]o declare War," "call[] forth the Militia to suppress Insurrections and repel Invasions," and of course "enforce"

Section 3 of the Fourteenth Amendment "by appropriate legislation." U.S. Const. art. I, §§ 8, 12; U.S. Const. amend. XIV, § 5.

Using legislative and political processes to decide what disturbances rise to the level of war, rebellion, or insurrection would been familiar to those who adopted the Fourteenth Amendment. As early as 1792, Congress required the President to issue a proclamation before exercising authority to use the Militia to suppress Insurrections and repel Invasions." U.S. Const. art. I, § 12. The 1792 Militia Act authorized the President to "call forth" the militia only if he first issued a "*proclamation*, command[ing] [the] insurgents to disperse, and retire peaceably." Act of May 2, 1792, Ch. 28, §§ 1–3, 1 Stat. 264 (emphasis added); *cf.* N.Y. Code of Crim. Proc., ch. 4, § 97 (Weed, Parsons & Co. 1850) (requiring published proclamation that a county is "in a state of insurrection"). The Militia Act of 1795 included the same requirement, Act of Feb. 28, 1795 § 3 (requiring a proclamation "forthwith")—as does federal law today, *see* 10 U.S.C. § 254 (requiring an immediate presidential "proclamation … to disperse and retire peaceably … within a limited time)

The Framers of the Fourteenth Amendment knew these processes well. Many proclamations issued throughout the Civil War proclaiming it to be an "insurrection against the United States." Andrew Johnson, U.S. President, Message Proclaiming End to Insurrection in the United States (Aug. 20, 1866) (collecting examples). In 1861, for example, Congress authorized a proclamation to be issued "when insurgents … failed to disperse by the time directed by the President" and the insurgents claimed to be acting under State authority. Act of July 13, 1861, ch. 3, § 5, 12 Stat. 255. No one therefore had to guess whether the Civil War was an insurrection; an *authoritative, public process* for proclaiming it an insurrection gave the definite answer.

If Congress or the President authoritatively give persons notice that continuing to take part in a serious, widespread disturbance constitutes an insurrection, courts perhaps would have a manageable standard to apply. *See* Lynch, *supra*, at 214–15 (stating that disqualification requires "tak[ing] part in a scheme that causes domestic unrest in opposition to state or federal laws *after* the President issues a Proclamation pursuant to the Insurrection Act" (emphasis added)). But without a proclamation, courts are ill-equipped to second-guess the

judgments of politicians, soldiers, and diplomats about how to label politically charged conflicts.

III. Chaos Would Ensue if 50+ Different Judicial Systems Determined Whether a Candidate Is Constitutionally Eligible for President.

Our country needs an authoritative, consistent, and uniform answer to whether a candidate is constitutionally eligible for President—further demonstrating that this case raises a nonjusticiable political question. Under *Baker*, courts should consider whether they can "undertak[e] independent resolution without expressing lack of respect due coordinate branches of government," whether there is an unusual need for unquestioning adherence to the political decision in play, and whether judicial action holds the "potentiality of embarrassment from multifarious pronouncements by various departments on one question." 369 U.S. at 217. All those potential pitfalls are present when a state court purports to decide a presidential candidate's constitutional eligibility to run for President.

The district court mistakenly thought it "strange for Congress to be the only entity that is empowered" both "to determine the disability and … remove it." October Order at 17. But again: a special need for a single,

national answer as to the eligibility of presidential candidates justifies apportioning responsibility in that way. Elections for President are "of nationwide importance," and when a single State tinkers with presidential election, the tinkering "has an impact beyond its own borders." *Anderson*, 460 U.S. at 795, 806. And as courts from coast-to-coast have recognized, "[i]f a state court were to involve itself in the eligibility of candidates to hold national offices, a determination reserved for the Electoral College and Congress, it may involve itself in national political matters for which it is institutionally ill-suited and may interfere with the constitutional authority of the Electoral College and Congress." *Lamb v. Obama*, No. S-15155, 2014 WL 1016308, at *2 (Alaska Mar. 12, 2014); *see, e.g.*, *Strunk v. N.Y. State Bd. of Elections*, No. 6500/11, 2012 WL 1205117, at *12 (N.Y. Sup. Ct. Apr. 11, 2012) (same).

If courts can decide a candidate's eligibility for President on a State-by-State-by-State basis, chaos will follow. *Cf. Moore v. Harper*, 600 U.S. 1, 36 (2023) (warning against allowing state courts to "arrogate to themselves" the power to manage federal elections). It is not hard to see how. Suppose plaintiffs in five States sue to enjoin their respective secretaries of state from placing a presidential candidate's name on their

primary ballot. Perhaps three succeed in obtaining such an injunction. Litigation takes time, and the earliest primaries will take place in just a few short months. Will early primary voters risk casting their votes for a candidate who might later be disqualified? If they do, what becomes of their votes if courts end up excluding their candidate from later primaries? Perhaps some would have chosen a different candidate had they known their preferred candidate had a reduced chance, or even no chance, at the nomination. For elections to be fair, voters need a single, certain answer as to whether someone is ineligible for President under Section 3 of the Fourteenth Amendment—an answer that only Congress can give. In contrast, "[w]ere the courts of 50 states at liberty to issue injunctions restricting certification of duly-elected presidential electors, the result could be conflicting rulings and delayed transition of power in derogation of statutory and constitutional deadlines." *Keyes v. Bowen*, 117 Cal. Rptr. 3d 207, 215 (Cal. Ct. App. 2010).

Of course, States can enact voting regulations to impose "some sort of order, rather than chaos" in "the democratic processes." *Storer v. Brown*, 415 U.S. 724, 730 (1974). Such regulations uphold "the political stability of the system of the State." *Id.* at 736. But in asking this Court

to selectively enforce a political provision of the Fourteenth Amendment without congressional authorization, petitioners seek to "sacrifice[] the political stability of the system" of the Nation "with profound consequences for the entire citizenry." *Id.*

Beyond that, the district court's attempt to determine whether Section 3 applies to former President Trump "express[es] lack of the respect due" to Congress as a "coordinate branch[] of government." *Baker*, 369 U.S. at 217. Recall that Congress has authority to remove a President from office for "Treason, Bribery, or other high Crimes and Misdemeanors." U.S. CONST. art. II, § 4. The power to accuse a President of an impeachable offense resides solely in the House of Representatives, *id.* art. I, § 2, cl. 5, while the power to remove a President resides solely in the United States Senate, *id.* art. I, § 3, cl. 6. Congress vigorously applied these powers to President Trump, as the House impeached him twice. But the Senate acquitted him both times, even when political opponents accused him of fomenting insurrection, much as petitioners do here. *See* 166 CONG. REC. S938 (daily ed. Feb. 5, 2020); 167 CONG. REC. S733 (daily ed. Feb. 13, 2021).

Congress, then, has rendered its judgment—and it disagrees with petitioners' view that former President Trump engaged in insurrection. Petitioners want this Court to try again, but "[f]ailure of political will does not justify unconstitutional remedies." *Gill v. Whitford*, 138 S. Ct. 1916, 1929 (2018). Worse still, petitioners want to forcibly enlist a state officer in their plan, even though state-imposed restrictions on a candidate's qualifications to serve are forbidden. *See Thornton*, 514 U.S. at 783; *see Greene v. Sec'y of State for Ga.*, 52 F.4th 907, 915 (11th Cir. 2022) (Branch, J., concurring) ("[I]n purporting to assess Rep. Greene's eligibility under the rubric of § 3 of the Fourteenth Amendment to the U.S. Constitution, Georgia imposed a substantive qualification on her."). Rather than tread this dangerous path, this Court should dismiss the case for want of a justiciable question and leave enforcement to Congress.

CONCLUSION

The Court should conclude that this case raises a nonjusticiable political question.

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COLORADO SUPREME COURT 2 East 14th Avenue Denver, Colorado 80203	
Appeal Pursuant to § 1-1-113(3), C.R.S. **Original Proceeding:** District Court, City and County of Denver, Colorado Hon. Sarah B. Wallace Case No. 2023CV32577	
Petitioners-Appellees/Cross-Appellants: NORMA ANDERSON, MICHELLE PRIOLA, CLAUDINE CMARADA, KRISTA KAFER, KATHI WRIGHT, and CHRISTOPHER CASTILIAN v. **Respondent-Appellee:** JENA GRISWOLD, in her official capacity as Colorado Secretary of State, v. **Intervenor-Appellee:** COLORADO REPUBLICAN STATE CENTRAL COMMITTEE, an unincorporated association, **Intervenor-Appellant/Cross-Appellee:** DONALD J. TRUMP.	▲COURT USE ONLY▲ Supreme Court Case No: 2023SA300

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I HEREBY CERTIFY that I have on this 29th day of November 2023 filed and served, via e-mail or via CCE e-service, true and complete copies of the Brief of *Amici* States in Support of Intervenors Colorado Republican State Central Committee and Donald J. Trump upon the following counsel of record:

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