

officials to take oaths to protect the Constitution. *See* U.S. Const. art. VI. First Amendment “compelled speech” analysis, which protects private citizens from compelled oaths, does not apply to legislators who refuse to take their oath—the more specific provision controls. *Bond v. Floyd*, 385 U.S. 116, 132 (1966) (“A legislator of course can be required to swear to support the Constitution of the United States as a condition of holding office [O]ath provisions of the United States and Georgia Constitutions do not violate the First Amendment.”). Likewise, the First Amendment does not override Section 3 just because an insurrectionist uses words.

2. “Engage” includes speech that assists the insurrection. Reconstruction-era courts defined “engage” under Section 3 as any voluntary action to assist the insurrection. *See United States v. Powell*, 27 F. Cas. 605, 607 (C.C.D.N.C. 1871) (defining “engage” as “a voluntary effort to assist the Insurrection”); *Worthy v. Barrett*, 63 N.C. 199, 203 (1869) (defining “engage” as “[v]oluntarily aiding the rebellion, by personal service, or by contributions, other than charitable, of any thing that was useful or necessary”), *appeal dismissed*, 76 U.S. 611 (1869); *The Reconstruction Acts (I)*, 12 U.S. Op. Atty. Gen. 141, 161-62 (1867) (“any overt act for the purpose of promoting the rebellion”). This includes incitement. *See The Reconstruction Acts (II)*, 12 Op. Att’y. Gen. 182, 205 (1867) (“when a person has, by speech or by writing, incited others to engage in rebellion, he must come under the disqualification”); *see also In re Charge to Grand Jury*, 62 F. 828, 830 (N.D. Ill. 1894) (“every person who knowingly incites, aids, or abets [insurgents], no matter what his motives may be, is likewise an insurgent”).

Further, “marching orders or instructions to capture a particular objective, or to disrupt or obstruct a particular government proceeding, would appear to constitute ‘engagement’ under the *Worthy-Powell* standard.” *Rowan v. Greene*, No. 2222582-OSAH-SECSTATE-CE-57-Beaudrot (Ga. Off. of State Admin. Hg’s, May 6, 2022), at 14, <http://bit.ly/MTGOSAH>. That describes

Trump's Ellipse speech. His supporters understood their orders perfectly: they *marched* to the Capitol, *captured* it, *obstructed* Congress, and *disrupted* the congressional electoral count.

3. Trump's engagement was not just speech. While the Secretary's analysis focused on incitement, the record includes conduct, including planning and spending. *See Giboney v. Empire Storage & Ice Co.*, 336 U.S. 490, 502 (1949) (First Amendment does not protect criminal plans or conspiracy). Trump *directed* the fraudulent electors scheme, a key part of January 6 plans. R1194-1224; *Eastman v. Thompson*, 594 F. Supp. 3d 1156, 1193 (C.D. Cal. 2022) (finding it "more likely than not that President Trump corruptly attempted to obstruct the Joint Session of Congress"). He personally helped *plan* a critical mustering event: the "wild" Ellipse Demonstration. R1386-89. His political committees *paid* \$3.5 million to the demonstration's organizers. Anna Massoglia, *Trump's political operation paid more than \$3.5 million to Jan. 6 organizers*, Open Secrets (Feb. 10, 2021), <https://bit.ly/OS21021>; *see The Reconstruction Acts (II)*, 12 U.S. Op. Atty. Gen. at 205 ("voluntary contributions to the rebel cause, even such indirect contributions as arise from the voluntary loan of money to rebel authorities, . . . will work disqualification"). He *planned* a march on the Capitol to force Congress to stop electoral vote certification. R1386; *see Rowan, supra*, at 14 ("marching orders or instructions to capture a particular objective, or to disrupt or obstruct a particular government proceeding"). He *ordered* officials to remove magnetometers that prevented armed people from joining the assembly, precisely so they could bring weapons to the Capitol. R1438. He *directed* officials to take him to the Capitol with the armed crowd; when they refused, he *attempted to go* anyway. R1440.

4. The National Republican Amici's single-spaced parade of horrors is an irrelevant distraction. On January 6, 2021, a violent mob acting on Trump's behalf and at his direction attacked the U.S. Capitol, defeated law enforcement, conquered the seat of our national

government, nearly assassinated the Vice President and congressional leaders, obstructed Congress, and disrupted the peaceful transfer of power. Nothing in our history compares—not even the Confederacy reached the Capitol or disrupted the peaceful transfer of power. If those amici believe that Rep. Maxine Waters did something comparable, they can file their own challenges. The fact that the Secretary correctly applied Section 3 on *these* facts does not mean that hypothetical frivolous challenges about *unrelated* facts must be taken seriously.

Respectfully submitted, this 10th day of January, 2024.

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