No. 23-719

IN THE

Supreme Court of the United States

DONALD J. TRUMP, *Petitioner,*

v.

NORMA ANDERSON, ET AL., *Respondents.*

On Writ of Certiorari to the Supreme Court of Colorado

Oral Argument February 8, 2024

AMICUS CURIAE BRIEF IN SUPPORT OF PETITIONER BY "CONDEMNED USA"

George T. Pallas, Esq.
GEORGE T. PALLAS, P.A.
2420 Coral Way
Miami, Florida 33145
Telephone: (305) 856-8580
Email: George@PallasLaw.com

January 17, 2024

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

STATUTES

OTHER AUTHORITIES

RULES

INTEREST OF AMICUS CURIAE

Condemned USA is a Legal Advocacy Group, headed by Treniss Evans, which does not provide legal services but rather promotes public advocacy about legal issues. It fights to restore the freedom and unity of under-represented American families. It often works to help defendants locate attorneys. It is a united front of Americans dedicated to sharing the truth that leads to change. [1]

Condemned USA, and its founder and leader Treniss Evans, filed an *Amicus Curiae* brief on this topic in the Colorado Supreme Court, from which this appeal is taken. Record No. 235A300, decided Dec. 19, 2023.

Treniss Evans, as President of Condemned USA, was falsely portrayed in an evidentiary submission in the court below which underscores the problems inherent in a state-by-state, haphazard determination of ballot qualification.

Mr. Evans has been investigating the events of January 6th since January 6th 2021. Mr. Evans has served as a consultant & expert for numerous January 6th cases, including what have been the

---

[1] No counsel for a party authored this brief in whole or in part, and no counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than *Amicus Curiae*, its members, or its counsel made a monetary contribution to its preparation or submission.

largest criminal trials related to the January 6th event.

Mr. Evans has been featured in numerous publications and recognized for his work. He has been interviewed over two hundred times, sought out for his expertise on the events of January 6th. He testified before the South Dakota state legislature.

Condemned USA delivered a white paper to the House Affairs Committee in the United States Congress: Weaponization FULL.pdf (hyperlink).

I. SUMMARY OF THE ARGUMENT

The Court directed briefing towards the primary election in Colorado, and necessarily a ruling that will be equal for all States. Primary elections are not governmental functions.

Political parties as private organizations can and do – at their discretion – use diverse methods of choosing their nominee to stand in the actual or general election. Political parties use caucuses, State-wide or congressional district or county conventions, or "firehouse primaries" which are non-governmental distributed conventions allowing voters to walk in and vote and immediately leave.

Because political parties are not in any way restricted to or bound to use a primary hosted by a governmental entity, a government has little grounds to dictate who a private political party can nominate for President.

In fact, it violates the First Amendment of the U.S. Constitution's right of political association, as interpreted by this Court, for any jurisdiction to dictate who the Republican Party can choose as its nominee for elected office. It is a direct intervention by the government into the inferred right of political association, the right to peaceably assemble, and the inferred right of political organization.

Generally, none of the attempts to remove former President Donald Trump from election ballots for President of the United States in the 2024 election is valid because they have not been brought by the U.S. Attorney for the district in which the President holds office.

One of the raging debates about the 14th Amend. § 3 is whether it is "self-executing," that is, the Constitutional provision can be applied directly, or whether § 3 authorizes passage of legislation by Congress as an expansion to Article I, Section 8, and that legislation governs disqualification.

Ending that argument decisively, Congress did in fact pass legislation to implement § 3. Session Law 41st Congress, Chapter CXIV § 14 (later 14a), 16 Stat. 140, 143, Revised Statutes of 1873-74 (Section 2004), enacted May 31, 1870. [2] Professor McConnell responded to our researcher.[3]

---

[2] Per Professor Michael McConnell of Stanford University School of Law. **"Federalist Society Discussion on Insurrection and the 14th Amendment,"** November 10, 2023. https://www.c-span.org/video/?531786-2/federalist-society-discussion-insurrection-14th-amendment#

[3] Professor Michael McConnell at Stanford University Law School answered: "This was Section 14 of the Enforcement Act of 1870 (also called the Force Act -- I like the other title because it makes clear they were enforcing the newly enacted 14th amendment). The Act is attached. It seems to have been repealed in 1948, but there is a bit of confusion about that. My notes indicate that it was codified in the 1946 edition of the United States Code, as 5 U.SC. 14a. * * * I never sorted out what really happened. Will Baude is confident the statute was repealed. "

> Sec. 14. And be it further enacted, That whenever any person shall hold office, except as a member of Congress or of some State legislature, contrary to the provisions of the third section of the fourteenth article of amendment of the Constitution of the United States, it shall be the duty of the district attorney of the United States for the district in which such person shall hold office, as aforesaid, to proceed against such person, by *writ of quo warranto*, returnable to the circuit or district court of the United States in such district, and to prosecute the same to the removal of such person from office; and any *writ of quo warranto* so brought, as aforesaid, shall take precedence of all other cases on the docket of the court to which it is made returnable, and shall not be continued unless for cause proved to the satisfaction of the court.

Furthermore, the 41st Congress Session Law was enacted by almost the same Members of Congress that enacted the Fourteenth Amendment in the 39th Congress.

Accordingly, under the authority of 14th

Amend. § 5, Congress has legislated that:

1. The 14th Amend. § 3 can only apply to whether a person "***holds***" office – not to whether they may appear on a ballot.

2. Removal must be brought by "the district attorney of the United States for the district in which such person shall hold office." (Now termed U.S. Attorney.)

This indicates that a formal, official, quasi-criminal court proceeding is required – brought by the U.S. Attorney. The legislation requires that § 3 cannot be brought as proceedings by voters, by activists, or others, but by the United States Attorney.

3. "The district attorney of the United States for the district in which such person shall hold office, as aforesaid, must proceed against such person, by writ of quo warranto," and

4. the action must be brought in "the circuit or district court of the United States in such district."

This indicates that a formal, official, quasi-criminal court proceeding is required in a full court proceeding complying fully with the rules of evidence, due process, cross-examination of witnesses, the right to call witnesses, and a clear standard for decision.

5. Furthermore, the U.S. Attorney is required to "prosecute the same to the removal of such person from office."

This indicates that a formal, official, quasi-criminal court proceeding must be initiated by the U.S. Attorney. The legislation requires that on a §3 challenge, the U.S. Attorney must "prosecute the same" and do so "to the removal."

Nevertheless, the U.S. Attorney is to "prosecute" the question, again indicating a formality and quasi-criminal proceeding complying fully with the rules of evidence, due process, cross-examination of witnesses, the right to call witnesses, and a clear standard for decision.

II. ARGUMENT

Amicus contends that the Colorado courts erred on these novel issues, perhaps trusting this Court to resolve the uncertainties.

A. LOWER COURT OPINION APPEALED FROM

The Colorado Supreme Court's Order of December 19, 2023, from which this appeal arises, states of greatest significance on pages 7-8 that:

…. We hold as follows:
* * *

- Congress does not need to pass implementing legislation for Section Three's disqualification provision to attach, and Section Three is, in that sense, self-executing.
- Judicial review of President Trump's eligibility for office under Section Three is not precluded by the political question doctrine.
- Section Three encompasses the office of the Presidency and someone who has taken an oath as President. On this point, the district court committed reversible error.
- The district court did not abuse its discretion in admitting portions of Congress's January 6 Report into evidence at trial.
- The district court did not err in concluding that the events at the U.S. Capitol on January 6, 2021, constituted an "insurrection."
- The district court did not err in concluding that President Trump "engaged in" that insurrection through his personal actions.
- President Trump's speech inciting the crowd that breached the U.S. Capitol on January 6, 2021, was not protected by the First Amendment.

B. BACKGROUND OF FOURTEENTH AMENDMENT

The Fourteenth Amendment to the United States Constitution was enacted by Congress on June 13, 1866, during the 39th Congress, Second Session,[4] and ratified by the States as of July 9, 1868, during the 40th Congress, Second Session (April 1, 1867 to November 10, 1868)[5]

Section 3 states that:[6]

> No Person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote

[4] https://www.senate.gov/about/origins-foundations/senate-and-constitution/14th-amendment.htm?embed=true

[5] https://www.senate.gov/legislative/DatesofSessionsofCongress.htm

[6] https://www.law.cornell.edu/constitution/amendmentxiv

> of two-thirds of each House, remove such disability.

Section 5 states that:

> The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

C. THE FOURTEENTH AMEND. § 3 CANNOT PREVENT A CANDIDATE FROM APPEARING ON A PRIMARY ELECTION/NOMINATION CONTEST BALLOT

Primary elections are for political parties to choose who they want to be their nominee to compete in the *actual* election. We should hesitate to discuss "primary" versus "general." The actual election is held on November 5, 2024.

A primary is a private political party taking advantage of the generous offer of the State or local government to lend its election machinery and systems to aid the party nomination process. However, a primary election is not a governmental election.

The Republican Party is a private organization, and it actually violates the First Amendment of the U.S. Constitution's right of political association formally recognized by this Court, see, e.g., *Roberts v. United States Jaycees*, 468 U.S. 609, 618 (1984); *Libertarian*

Party of Ill. v. Scholz, 872 F.3d 518 (7th Cir. 2017) for any Federal, State, or local jurisdiction to dictate whom the Republican Party can choose as its nominee for elected office.

Legally, Colorado cannot control who a party may nominate.

D. DOES THE 41st CONGRESS SESSION LAW DEMONSTRATE THAT IMPLEMENTING LEGISLATION IS REQUIRED?

Is Session Law 41st Congress, Chapter CXIV, § 14 still in force? Was it repealed or expired? And does that matter?

According to the Associate Historian of the U.S. Senate Historical Office, in response to a direct question to researcher Jonathon Moseley (restated in full in Appendix hereto), Session Law 41st Congress, Chapter CXIV was codified in the Revised Statutes of 1873-74 (Section 2004), the predecessor to the modern codification U.S.C. However, that Office advises that had the Session Law been repealed, that would be observed in the Notes. [7]

[7] "Mr. Moseley—The best way to trace the life of the 1870 Enforcement Act would be through the notes in the US Code provisions related to voting rights. If you go to 52 U.S. Code § 10101, you'll see at the very bottom of the page a cite to RS Section 2004. That refers to the section of the Revised Statutes of 1873-74, a precursor to the US Code, that codified the May 31, 1870 Enforcement Act. For more details on the legislative history of the voting rights provisions in

Therefore, even though the law does not appear in the modern codification of statutes, there is no indication found so far that it is not still good law.

But its enactment on May 31, 1870, is of great importance here. Congress, a few years after enacting 14th Amend. § 3, and consisting of many of the same Members of Congress, demonstrated that § 3 is not "self-executing."

Because Congress has demonstrated the necessity of implementing legislation – that the 14th Amend. § 3 is not self-executing – this disqualification dispute must follow legislation. Even if no legislation is currently in force, the necessity of legislation has been established.

If there had been a repeal, this does not necessarily dampen this conclusion. Following the Civil War, President Andrew Johnson issued a

---

that section of the US Code, select the "Notes" tab at the top of the page. It is my understanding that if the provisions of the Enforcement Act had been repealed, the notes would indicate that. Here instead we find that the provisions were altered by the Civil Rights Act of 1957 and subsequent civil and voting rights acts. * * *
Daniel S. Holt, Associate Historian, U.S. Senate Historical Office

pardon –

> unconditionally and without reservation, to all and to every person who, directly or indirectly, participated in the late insurrection or rebellion a full pardon and amnesty for the offense of treason against the United States or of adhering to their enemies during the late civil war, with restoration of all rights, privileges, and immunities under the Constitution and the laws which have been made in pursuance thereof. [8]

Therefore, long after this pardon, it might be easy to view the 1870 Session Law as now moot. This does not necessarily mean that Congress changed its view of the necessity of implementing legislation.

Furthermore, § 5 explicitly gives Congress the power to pass legislation to enforce every aspect of the Fourteenth Amendment. That is entirely consistent with the intent that Congress must define the matters in § 3 by statute and clearly undermines the idea that no legislation is needed.

---

[8] "Proclamation 179—Granting Full Pardon and Amnesty for the Offense of Treason Against the United States During the Late Civil War, December 25, 1868," The American Presidency Project, https://www.presidency.ucsb.edu/documents/proclamation-179-granting-full-pardon-and-amnesty-for-the-offense-treason-against-the

The entirety of the Fourteenth Amendment has been subject to massive statutory enactments pursuant to § 5 in an attempt fulfill its purpose.

Congress enacted the Enforcement Act of May 31, 1870,[9] of which § 14 is a component.[10] Congress enacted[11] the Second Enforcement Act of February 1871.[12] Congress enacted[13] the Third Enforcement Act of April 1871.[14] Each of these is also called a "Force Act." Each of these have been called various colloquial names, inconsistent with their official names as specified by Congress. Congress also enacted the Civil Rights Act of 1866.

Thus, the Fourteenth Amendment has spawned a forest of legislation to implement it. Legislation implementing § 3 was enacted by Congress. It remains unexplained why every other part of the Fourteenth Amendment would require implementing legislation, except § 3.

---

[9] https://www.senate.gov/artandhistory/history/common/image/EnforcementAct_1870_Page_1.htm

[10] https://www.senate.gov/artandhistory/history/resources/pdf/EnforcementAct_1870.pdf

[11] https://www.senate.gov/artandhistory/history/common/image/EnforcementAct_Feb1871_Page_1.htm

[12] https://www.senate.gov/artandhistory/history/resources/pdf/EnforcementAct_Feb1871.pdf

[13] https://www.senate.gov/artandhistory/history/common/image/EnforcementAct_Apr1871_Page_1.htm

[14] https://www.senate.gov/artandhistory/history/resources/pdf/EnforcementAct_Apr1871.pdf

E. THE MINI-TRIAL IN COLORADO USED INVALID EVIDENCE FROM SELECT COMMITTEE

With a few exceptions, the trial judge substituted the presentation of evidence, documents, and witnesses by merely accepting, over objection, the reports of **the U.S. House of Representatives' Select Committee to Investigate the January 6 Attack on the Capitol**.

The Select Committee's proceedings and reports are inadmissible hearsay. None of the criteria of a credible prior trial or proceeding are present. Not only should the trial judge not have allowed Select Committee proceedings, it clearly could not. Thus, there is no valid evidence in the record now before this Court that any insurrection occurred. There is also no valid evidence in the record that Trump engaged in any insurrection or rebellion.

The Select Committee itself was heavily criticized when in session for not allowing the persons it severely attacked – primarily the Petitioner here, Donald J. Trump, – to cross-examine adverse witnesses nor call a single witness in his own defense. [15]

---

[15] Jonathan Turley, Esq., Professor, George Washington University Law School, "**Pelosi's Court: How the Jan. 6 committee undermined its own legitimacy,"** The Hill, June 11, 2022 (" In 1924, Lord Gordon Hewart famously declared, 'Justice should not only be done, but should

Colorado's Rules of Evidence are substantively indistinguishable from the Federal Rules in all relevant respects.[16] Only Rule 807 is worded differently but after analysis is of the same effect.

Federal Rules of Evidence Rule 602 requires that "A witness may testify to a matter only if evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter. Evidence to prove personal knowledge may consist of the witness's own testimony." Most of the witnesses called in the Select Committee failed Rule 602, testifying to opinions, feelings (literally), and rumors about what they did not witness.

Those Select Committee witnesses did not testify in Colorado, except Katrina Pierson and Kash Patel.

Rule 801 defines hearsay as:

> **(c) Hearsay.** "Hearsay" means a statement that:
>
> **(1)** the declarant does not make while testifying at the current trial or

---

manifestly and undoubtedly be seen to be done.' ") ("But this is Speaker Pelosi's — not Lord Hewart's — "court," where the only thing "manifestly and undoubtedly" guaranteed is politics, without the pretense of principle.")

16 Colorado Rules of Evidence https://casetext.com/rule/colorado-court-rules/colorado-rules-of-evidence

hearing; and

(2) a party offers in evidence to prove the truth of the matter asserted in the statement.

Rule 802 prohibits the use of hearsay:

> Hearsay is not admissible unless any of the following provides otherwise:
>
> - a federal statute;
> - these rules; or
> - other rules prescribed by the Supreme Court.

None of the exceptions of Rule 803 apply.

Rule 804 does not apply because all relevant witnesses were and are available to be called normally, including under the "best evidence rule."

But most damning to the erroneous findings of fact by the Colorado courts is Rule 804(b), because none of the following requirements of due process was present in the public show trial of the Select Committee:

* * *

> **(b) The Exceptions.** The following are not excluded by the rule against hearsay <u>if the declarant is unavailable as a witness</u>:
>
> **(1)** ***Former Testimony.*** Testimony

that:

> **(A)** was given as a witness at a trial, hearing, or lawful deposition, whether given during the current proceeding or a different one; and
>
> **(B)** is now offered against a party who had — or, in a civil case, whose predecessor in interest had — an opportunity and similar motive to develop it by direct, cross-, or redirect examination.

*** * ***

The Select Committee offered neither Donald Trump nor anyone with similar motive any opportunity to develop any testimony by direct, cross, or redirect examination.

Instead, it was a public show trial theatrically produced by James Goldston,[17], Some key hearings were intentionally held in the evening, with participants informing journalists that hearings were designed to entice citizens who were not previously interested to watch.

---

[17] A.J. Katz, "**Former ABC News Boss James Goldston to Produce Primetime Jan. 6 Committee Hearing Special**," TVNewser, June 6, 2022 ("Goldston has been "busily producing Thursday's 8 p.m. ET hearing as if it were a blockbuster investigative special."), https://www.adweek.com/tvnewser/former-abc-news-boss-james-goldston-to-produce-primetime-jan-6-committee-hearing-special/

Moreover, no information in defense of the targets was permitted. Thus, the goal was a public determination of guilt outside of any judicial proceeding or the safeguards of reliable fact-finding.

> … We considered not whether the supervisor's testimony about the agent's story contained guarantees of trustworthiness, but whether the original statements themselves, as made by the deceased agent, contained such guarantees. See id. at 993–94. Similarly, in a number of our cases concerning the Rule 807 admissibility of grand jury testimony at trial, the issue is quite clearly whether the statements as originally made to the grand jury have guarantees of trustworthiness, and not whether what amounts to repeating the statements at trial (the equivalent of Rodriguez recounting his conversations with McComb) is trustworthy. See *Mazer*, 556 F.3d at 1279; *United States v. Lang*, 904 F.2d 618, 623 (11th Cir.1990); *United States v. Fernandez*, 892 F.2d 976, 980–83 (11th Cir.1989).
>
> Moreover, the language of Rule 807 itself makes clear that when it comes to trustworthiness, its primary concern is that of the declarant. The

> rule asks not simply for circumstantial guarantees of trustworthiness, but for guarantees that are equivalent in significance to the specific hearsay exceptions enumerated in Federal Rules of Evidence 8037 and 804. 8 Therefore, such guarantees must be "equivalent to cross-examined former testimony, statements under a belief of impending death, statements against interest, and statements of personal or family history." *Fernandez*, 892 F.2d at 980.

Rivers v. United States, 777 F.3d 1306 (11th Cir. 2015)

The so-called Residual Exception of Rule 807 does not apply, because:

> **(a) In General.** Under the following conditions, a hearsay statement is not excluded by the rule against hearsay even if the statement is not admissible under a hearsay exception in Rule 803 or 804:
>
> **(1)** the statement is supported by sufficient guarantees of trustworthiness—after considering the totality of circumstances under which it was made and evidence, if any, corroborating the statement; and

> **(2)** it is more probative on the point for which it is offered than any other evidence that the proponent can obtain through reasonable efforts.

In fact, the trial judge did not allow questions on whether the actual witnesses in the Colorado trial like Katrina Pierson had informed the Select Committee of inaccuracies.

Almost the entirety of the Colorado District Court trial consisted of inadmissible "evidence" in violation of due process.

F. SLANDER OF TRENISS EVANS PROVES SELECT COMMITTEE REPORT LACKS CREDIBILITY

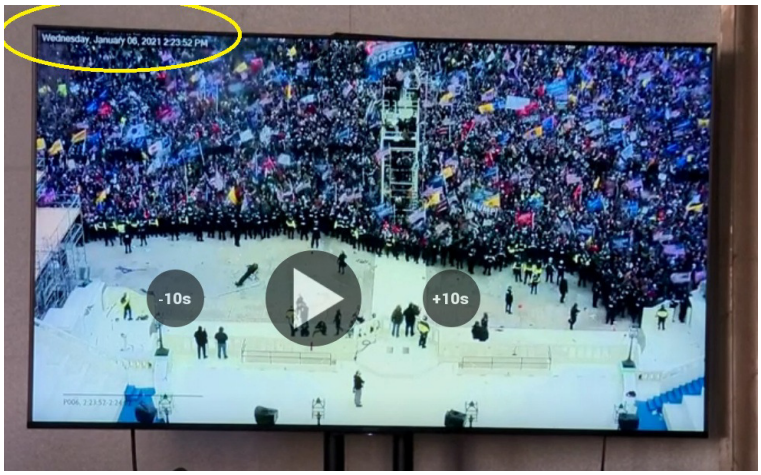
Faced with the fatal defect that Trump did not "engage in an insurrection or rebellion," as the record now before the Court demonstrates, the hard-pressed Select Committee and/or Respondents/voters in the trial court fabricated claims against Treniss Evans, founder of *Amicus* Condemned USA.

Evans was portrayed as the crucial and indispensable link between Trump's alleged inaction and brawling by demonstrators on Capitol Hill. Evans sued in case 2023CV-00689-0001. Evans also filed a Motion to Intervene, such that these matters are a part of the record before this Court.

This was a combination of James Goldston's

video with verbal claims added by Respondent's counsel, Eric Olson.

Respondents claimed that at 2:23 PM EST on January 6, 2021, then President Donald Trump was – somehow – able to view the U.S. Capitol Police internal security camera system:



The video of the Respondent's counsel's opening statement is available through C-SPAN on https://www.c-span.org/video/?531489-1/president-trump-14th-amendment-hearing-colorado-day-1-part-1, starting at about time 24:00. Olson claimed starting around 32:01 *(emphasis added):*

> But that speech which we just saw[18] got the crowd worked up and headed

[18] Trump's speech was not introduced into the trial record, only unrepresentative fragments.

> to the Capitol. *[sic]* show you a video taken from the top of the Capitol at 2:23. You can see the time stamp in the upper left.
>
> So after the speech, the crowd followed Trump's orders and marched down to the Capitol.
>
> But as you can see from the video, much of the rally, ***they weren't doing much. They were just standing there.*** So what did Trump do a minute after this video? He posted a tweet [at 2:24 PM as the video shows] ***that incited the mob to violence.*** Again, channeling on the focus on Mike Pence he used earlier in the day he said that Mike Pence was weak and he didn't have the courage to do what should have been done to protect our country and our constitution. USA demands the truth.

At time 1:09:45 at https://www.c-span.org/video/?531586-1/president-trump-14th-amendment-hearing-colorado-day-4-part-1 Olson cross-examined Amy Kremer *(emphasis added)*:

> [Olson] And you saw in that last set of videos that at 2:24 Trump sent out a tweet, referring to Mike Pence. Did you see that in the video?

> [Kremer] Yes.
>
> [Olson] And you heard the individual whom you've acknowledged is not a patriot, freedom-loving individual ***read that tweet over a bull horn to the crowd.***
>
> * * *

Because this was a produced video, it clearly shows Treniss Evans in a distinctive canary-yellow ski cap with an unusual blue bullhorn, reading Trump's 2:24 PM tweet. *Evans is unmistakable by sight and by his voice*.

To portray *action* by Trump *causing* the crowd to attack the Capitol, the Respondents locked themselves into the timeline and narrative that (1) at 2:23 PM the crowd was doing nothing, (2) Trump somehow saw that from USCP cameras, (3) therefore Trump at 2:24 PM broadcast a tweet to launch the crowd into a maddened frenzy attacking the Capitol, and (4) Evans was the crucial link announcing Trump's tweet to the crowd.

Respondents could not make their case[19] factually without the crucial link of showing Evans on video reading Trump's 2:24 PM tweet ***at***

---

[19] Sascha Segan, "**Why Cell Networks Cut Out at the US Capitol Riot**," PCMAG, January 7, 2021, https://www.pcmag.com/opinions/why-cell-networks-cut-out-at-the-us-capitol-riot

2:24 PM. Otherwise, they could not prove that any of the demonstrators on Capitol Hill amidst the noise and with cell phones overloaded knew about Trump's 2:24 PM tweet.

But Evans read the 2:24 PM tweet over the bullhorn at around *4:22 PM*.[20] The time stamp provided by the Select Committee video is fabricated. Evans could not be the proof that anyone in the crowd knew about Trump's 2:24 PM tweet when Evans did not read the tweet until almost two (2) hours later.

Thus, the Petitioner's case suffers a failure of proof. There is no link between Donald Trump somehow seeing at 2:23 PM the crowd doing nothing from a mile and a half away and sending that crowd into a frenzy at 2:24 PM.

Given that it is shown that the Select Committee video is wrong, adding the time stamp 2:24 PM over a 4:22 PM incident, the trial court erred by accepting the Select Committee report *in toto* rather than requiring live witnesses to testify. And the trial court was made aware of this error.

G. THE MINI-TRIAL FAILED TO PROVE TRUMP "ENGAGED IN" AN INSURRECTION

The case against Trump appearing on the ballot also included an expert, Professor of

---

[20] Sandi Bachom, https://vimeo.com/654284808 , time-stamp 13:10 to 13:46

Sociology Peter Semi, who with no exaggeration purported to explain to the trial court how Trump actually meant the opposite of what Trump said. [21]

Several witnesses described the riot on Capitol Hill on January 6, 2021, including those who contradicted the Petitioners below, Respondents here, who sought to establish that Trump's actions were the proximate cause of the misbehavior of a few.

But no witness testified to any link between Trump's "peacefully and patriotically let your voices be heard" speech at the Ellipse[22] and anything that happened on Capitol Hill. No demonstrator at the Capitol was proven to have heard Trump's speech. Many arrived at the Capitol before Trump's speech was over.

No witness was presented to establish that Trump in any way "engaged in an insurrection or rebellion."

---

[21] https://www.c-span.org/video/?531511-1/president-trump-14th-amendment-hearing-colorado-day-2-part-1 and https://www.c-span.org/video/?531511-101/president-trump-14th-amendment-hearing-colorado-day-2-part-2

[22] Note that the crowd at the Ellipse could not hear much of Trump's speech due to the weather and clashing speakers. https://www.youtube.com/watch?v=76w7RPLwYIs . But Trump is evaluated from news microphones clipped to his podium recording perfectly. No radio broadcast in D.C. has been found that carried Trump's speech.

H. CAN ONE "ENGAGE IN" AN INSURRECTION BY DOING NOTHING?

Can application of 14th Amend. § 3 include "engag[ing] in" *by not doing things*? The legal question is whether "engaged in an insurrection or rebellion" can include inactivity.

Most of the allegations in the trial record consisted of claiming that Donald Trump did not do things, which – improbably – the Respondents believe could potentially have come to the attention of people standing out in the grass of the Capitol Grounds or in the U.S. Capitol building and might have altered behavior.

It is well-established that where there is no textual definition, we turn as often to the common usage of terms, which is often documented in widely-used dictionaries. *Davis v. Washington*, 126 S Ct 2266, 165 L. Ed. 2d 224, 547 U.S. 813 (2006) (interpreting the Constitutional text of the Confrontation Clause).

The Cambridge Dictionary defines engage in as "**to take part in or do something:**"[23]

Merriam Webster's Dictionary defines "engage in" as "**to do (something)**." [24]

---

[23] https://dictionary.cambridge.org/dictionary/english/engage-in

[24] https://www.merriam-webster.com/dictionary/engage%20in

In any event, those claims are false (time displayed is based on time zone of the viewer) –

Therefore, one could hold many different views about whether then-President Trump did what he should have done, whether people approve or disapprove. But no one can claim that Trump "engaged in an insurrection or rebellion."

I. TRUMP TRIED TO STOP AN INSURRECTION, NOT CAUSE ONE

Considering one fact alone – that Donald Trump, then-President, pre-authorized the deployment of 10,000 to 20,000 National Guardsmen to keep the peace in Washington, D.C. on January 6, 2021, decisively rejects any finding by the trial court that Trump "engaged in insurrection or rebellion against" the United States." The two are completely contradictory.

Trump could not have "engaged in" an insurrection while directing that the National Guard be deployed to prevent one.

The Select Committee and other critics repeatedly argued that Trump did not call up the National Guard on January 6, 2021, but fail to mention that Trump had already pre-authorized the National Guard days earlier.

Counsel for Trump and the Colorado Republican Party called Kash Patel, who served as the former Chief of Staff to Acting Secretary of Defense Christopher Miller, responsible for

leading the Department's mission. [25]

On the record now before this Court, Patel testified[26] from Patel's official duties at the time that President Trump, more than once, over several days before January 6, 2021, pre-approved the deployment of 10,000 to 20,000 National Guardsmen to keep the peace in Washington, D.C. on January 6, 2021.

Also, in the trial record and before this Court,[27] Trump adviser Katrina Pierson appeared by videoconference and testified about her review on January 4, 2021, with Donald Trump, the plans for the January 6 rally on the Ellipse. [28]

Trump rejected almost all who wanted to speak, then asked if any trouble was expected. [29] Pierson answered perhaps.

Again, in the record here by Katrina Pierson, Trump then volunteered "Well, we should call the National Guard." Max Miller said "Well, we should only call the National Guard if we expect a problem." And Pierson testified that Trump

---

[25] https://www.defense.gov/About/Biographies/Biography/Article/2418491/kashyap-p-patel/

[26] https://www.c-span.org/video/?531545-102/president-trump-14th-amendment-hearing-colorado-day-3-part-3&live

[27] *Id.* starting at time-stamp 1:35:00, continuing into another segment after a break at https://www.c-span.org/video/?531545-103/president-trump-14th-amendment-hearing-colorado-day-3-part-4

[28] *Id.* starting at time-stamp 2:04:00.

[29] *Id.* starting at time-stamp 2:12:40.

answered: "No, we need to call the Guard to make sure there isn't a problem." And then he said "Let's get 10,000 National Guard. … That's it. Let's just get 10,000 National Guard and that way we won't have any problems."[30]

Respondents then highlighted Pierson's text message exchange about that meeting.[31]

Miller mocked his boss: "He thinks a million people are coming." Miller essentially argued, briefly, against deploying the National Guard because he believed Trump's expectations of the crowd size were exaggerated. Key White House staff believed the crowd would be small, and therefore the National Guard was not needed.

In documents received by the Colorado trial court, Miller texted to Pierson "Just glad we killed the National Guard and a procession."[32] And Pierson responded with a "heart" "emoji."

So the Respondents themselves proved that Donald Trump wanted the National Guard to prevent disorder, but it was White House insiders Katrina Pierson and Max Miller (and likely others) who behind Trump's back sabotaged Trump's orders that 10,000 National Guard troops be deployed to keep the peace and prevent any

---

[30] *Id.*

[31] https://www.c-span.org/video/?531545-103/president-trump-14th-amendment-hearing-colorado-day-3-part-4, starting at time-stamp 5:30.

[32] *Id.* at time stamp 7:00.

"problem" on January 6, 2021.

Therefore, the Respondents themselves proved that Trump wanted to prevent any disorder, violence, and certainly any rebellion or insurrection like riots of leftist street gangs from 2014 to 2020.

And they proved that the National Guard was blocked behind Trump's back by non-compliant White House staff who erroneously assumed that the crowd would be small and therefore (because of the small crowds) the National Guard would be an unnecessary over-reaction.

In response, the Respondents called an expert witness Professor Banks who testified[33] whether the President could have directly ordered the National Guard without the permission of the jurisdiction in question, here the District of Columbia led by Mayor Muriel Bowser.

This would have confronted the *Posse Comitatus* law at 18 U.S. Code § 1385, prohibiting the deployment of the U.S. military on U.S. soil without invoking the [Anti] Insurrection Act of 1807. 10 U.S. Code §§ 252 – 254.

The lower Courts of the State of Colorado erred. It was impossible for Trump to "**engage[] in an insurrection or rebellion**" while urging 10,000 troops to prevent one from occurring.

---

[33] https://www.c-span.org/video/?531511-103/president-trump-14th-amendment-hearing-colorado-day-2-part-4

J. SINCE THE ELECTORAL COLLEGE CHOOSES A PRESIDENT, BUT U.S. CITIZENS CAN ONLY VOTE FOR ELECTORS, THE 14TH AMEND. § 3 CANNOT BAR A CANDIDATE FROM THE ELECTION BALLOT

Section 3 does not bar a Presidential candidate from appearing on a ballot because no one votes for President. They vote for Electors to the Electoral College.

Article II, Section 1, Clauses 2-4 and Amendments XII and XX of the U.S. Constitution requires that each State choose Electors.[34]

The original expectation was that wise and experienced Electors would make a considered choice amongst themselves who to choose as President and Vice President.

As recently as 2016, 4.3 million opponents of Donald Trump signed a petition asking "members of the Electoral College to cast their votes for Hillary Clinton when the college meets

---

[34] See, Sarah Pruitt, **"How the 1876 Election Tested the Constitution and Effectively Ended Reconstruction**," History Channel, January 21, 2020, updated August 18, 2020, https://www.history.com/news/reconstruction-1876-election-rutherford-hayes . *See also* https://www.history.com/topics/us-presidents/compromise-of-1877

on Dec. 19. "Robert Farley, "**Could the Electoral College elect Hillary Clinton instead of Donald Trump?**," USA Today, [35]

> "If they all vote the way their states voted, Donald Trump will win," the petition states. "However, they can vote for Hillary Clinton if they choose. Even in states where that is not allowed, their vote would still be counted, they would simply pay a small fine – which we can be sure Clinton supporters will be glad to pay! We are calling on the Electors to ignore their states' votes and cast their ballots for Secretary Clinton."

The petition and analysis confirmed that even where state law "binds" Electors to vote as pledged, the consequences are usually nothing more than "fines of $500 to $1,000 to so-called 'faithless electors' for not voting for the party's nominee, or [sometimes] allow them to be replaced by an alternate." *Id.*

CONCLUSION

Amicus asks the Court to decide that the 14th Amend. § 3 cannot be used to bar a candidate for President from appearing on an election ballot, and in particular a primary ballot, without

[35] https://www.usatoday.com/story/news/politics/elections/2016/2016/11/16/fact-check-could-electoral-college-elect-hillary-clinton-instead-donald-trump/93951818/

following the only legislation that the Congress has enacted on this subject. § 3 is not self-executing. A formal, quasi-criminal court proceeding, initiated by a United States Attorney, is required complying with the Federal Rules of Evidence.

Respectfully submitted, *BY COUNSEL*

/s/ George Pallas
George T. Pallas, Esq.
GEORGE T. PALLAS, P.A.
2420 Coral Way
Miami, Florida 33145
Telephone: (305) 856-8580
Email: George@PallasLaw.com

CERTIFICATE OF COMPLIANCE

As required by Supreme Court Rule 33.1(h), I certify that the BRIEF OF CONDEMNED USA, in support of Petitioners' Petition for Writ of Certiorari in the above entitled case complies with the typeface requirement of Supreme Court Rule 33.1(b), being prepared in Century Schoolbook 12 point for the text and 10 point for the footnotes, and this brief contains 5,786 words of the allowed 6,500 words, excluding the parts of the petition that are exempted by Supreme Court Rule 33.1(d).

/s/ George Pallas

STATEMENT OF SERVICE

Amicus, by counsel, certifies that a copy of the foregoing Motion for Leave to File Amicus Curiae Brief and that Brief attached were served upon attorney of record in this Court by email and by first class U.S. mail, postage prepaid, on January 18, 2024, one copy per law firm (minimum of 2 per party, more if requested), on:

Michael W. Melito
Law Office of Melito Law LLC
138 West 5th Avenue
Denver, Colorado 80204
Melito@melitolaw.com

Robert A. Kitsmiller
Podoll & Podoll, P.C.
5619 DTC Parkway Suite 1100
Greenwood Village, Colorado 80111
Telephone: (303) 861-4000
Email: bob@podoll.net

Christina A. Compagnone
Olivia F. Summers
Garrett A. Taylor
American Center For
Law & Justice
1000 Regent University Drive
Virginia Beach, Virginia 23464
Telephone: (757) 802-9160

Jay Alan Sekulow
Counsel Of Record

Jordan A. Sekulow
Stuart J. Roth
Andrew J. Ekonomou
Jane Serene Raskin
Walter M. Weber
Benjamin P. Sisney
Nathan Moelker
American Center For
Law & Justice
bsisney@aclj.org
nmoelker@aclj.org
jordansekulow@aclj.org
sekulow@aclj.org
jraskin@raskinlaw.com
201 Maryland Avenue, N.E.
Washington, D.C. 20002
Telephone: (202) 546-8890

Eric Olson,
Sean Grimsley
Jason Murray
Isabel Broer
Olson Grimsley, Kawanabe
Hinchcliff & Murray LLC
700 17th Street, Suite 1600
Denver, CO 80202
Telephone: (303) 535-9151
Email: jmurray@olsongrimsley.com
Email: eolson@olsongrimsley.com
Email: sgrimsley@olsongrimsley.com

Mario Nicolais,
KBN Law, LLC
7830 W. Alameda Ave., Suite 103-301

Lakewood, CO 80226
Telephone: (720) 773-1526
Email: Mario@kbnlaw.com

Martha M. Tierney,
Tierney Lawrence Stiles LLC
225 E. 16th Ave., Suite 350
Denver, Colorado 80203
Telephone: (303) 356-4870
Email: mtierney@tls.legal

Donald Sherman
Nikhel Sus
Jonathan Maier
Citizens for Responsibility and Ethics in Washington (C.R.E.W.)
1331 F Street NW, Suite 900
Washington, DC 20004
Telephone: (202) 408-5565
Email: dsherman@citizensforethics.org
Email: nsus@citizensforethics.org
Email: jmaier@citizensforethics.org
Counsel for Respondents

/s/ George Pallas