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
Colorado Supreme Court

BRIEF OF *AMICI CURIAE*
GAVIN M. WAX, NEW YORK YOUNG
REPUBLICAN CLUB INC., AND NATIONAL
CONSTITUTIONAL LAW UNION INC.,
IN SUPPORT OF PETITIONER

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INTEREST OF AMICI CURIAE[1]

Gavin M. Wax is a New York-based political commentator and columnist. He is the seventy-sixth President of the New York Young Republican Club and the Executive Director of the National Constitutional Law Union. **New York Young Republican Club Inc.**, established in 1911 and incorporated in 1912, is America's oldest and largest Young Republican Club. Its mission, as set forth in the Club's statement of purpose, includes "promotion of honest and fair electoral methods, to the end that the expression of the popular will by whatever party or body, shall be as free, untrammeled and equal as possible." **National Constitutional Law Union Inc.** is a non-profit social welfare organization. Its mission is to preserve and protect the United States Constitution and the American way of life by providing legal support and funding to individuals whose constitutional rights, civil liberties, and similar rights are being violated or in jeopardy. Amici curiae have an intense interest in protecting America's elections from improper interference by courts and partisans alike, and in ensuring that Petitioner, Donald J. Trump ("President Trump"), is not disqualified from the ballot during the upcoming 2024

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

presidential election process by unconstitutional means.

SUMMARY OF ARGUMENT

Rather than let the voters decide who will be the next President of the United States, President Trump's political opponents have weaponized Section 3 of the Fourteenth Amendment—the so-called "Insurrection Clause"—to disqualify him from the ballot by arguing that he "engaged in insurrection" against the United States. U.S. CONST. amend. XIV, § 3. President Trump enjoys a virtually insurmountable polling lead over his Republican challengers and recently won the Iowa caucuses in a landslide.

Against this backdrop, the nakedly partisan effort to disqualify President Trump from the ballot is underway in multiple states, including, at issue here, Colorado. On December 19, 2023, a majority of the Colorado Supreme Court (the "CSC"), which is composed entirely of justices appointed by Democratic governors, ordered President Trump excluded from the 2024 Colorado Republican Presidential Primary ballot.

Many of President Trump's most ardent political opponents, blinded by their all-consuming hatred of him and fear that he will win the general election if the voters are allowed to decide, evidently believe the ends justify the means. These opponents cheer efforts by officials in other states to join the disqualification parade, most notably unelected

Secretary of State Shenna Bellows's disqualification of President Trump from Maine's primary ballot shortly after the CSC's decision.

But someday, perhaps sooner than President Trump's political opponents may realize, their misguided interpretation of the Insurrection Clause will work against them. Armed with a weaponized Insurrection Clause, partisan officials (Democrat and Republican alike), particularly in states overwhelmingly controlled by a single party, *will* find so-called evidence to disqualify despised political opponents from the ballot for having "engaged in insurrection" against the United States, and this process *will* be repeated *ad infinitum*.

To make matters worse, as the court below's apparently partisan decision to uphold the disqualification of President Trump demonstrates, state supreme courts may not be sufficiently politically agnostic to properly assess Insurrection Clause disqualifications. What ensues, then, will be a chaotic and ceaseless cycle of politically motivated disqualification akin to the back-and-forth feud between the Hatfields and the McCoys.

But this cycle of chaos need not, and should not, come to pass. Perhaps more than any other clause in the Constitution, the Insurrection Clause demands a strict, narrow construction based on original public meaning, rule of law, and the separation of powers necessary to insulate the courts from political

questions and the chaotic forces of partisan party politics. Unless this Court limits the word "engaged" to direct acts clearly calculated to bring about a successful insurrection against the United States, the Insurrection Clause will be stripped of its original, objective meaning, which excluded mere encouragement, tacit support, or even outright incitement.

Applying this originalist, objective meaning, President Trump did not "engage[] in insurrection" by delivering a fiery political speech that may have motivated a tiny fraction of his supporters to engage in the events at the Capitol of January 6, 2021. The definition of "engage"—*as it was understood at and around the time the Fourteenth Amendment was adopted* (1868), and in other relevant constitutional and historical sources—required direct involvement in acts of insurrection and excluded mere encouragement, tacit support, or incitement. Additionally, mere speech can only support disqualification under the Insurrection Clause if such speech rises to the level of giving "aid and comfort" to our "enemies." U.S. CONST. amend. XIV, § 3.

The word "engaged" as used in the Insurrection Clause, is plainly not applicable to President Trump or to any of his purported conduct at issue, and there was no allegation before the CSC that President Trump's speech amounted to giving "aid and comfort" to our "enemies." Accordingly, this Court should reverse the decision below.

ARGUMENT

I. President Trump Has Not "Engaged" in Any Overt Acts Amounting to Insurrection

A. The Court Below Ignored The Plain Meaning of The Word "Engaged" as Originally Understood

Contrary to the facts, the court below found that President Trump incited supporters to acts of insurrection and therefore that he "engaged in" insurrection. Pet. App. 10a. The court specifically found that President Trump (1) made multiple uses of the word "fight" in his speech on January 6, 2021, along with other more ambiguous "coded" language, which encouraged lawless behavior; (2) made untrue claims about the 2020 presidential election; (3) knew of the potential for violence; and finally that (4) although President Trump made repeated calls for his supporters to remain "peaceful," he did not direct them to leave the Capitol grounds for about two-and-a-half hours after receiving reports that some of them had broken into the Capitol building. Pet. App. 91a-99a.

But critically, the court fashioned its own 2023 definition of what the word "engaged" and the term "engaged in" actually meant, rather than identifying the definition of "engaged" as it was understood *at the time of the adoption of the Fourteenth Amendment*, and at other relevant points in American history. The

court went so far as to insist that "incitement qualifies as 'engagement'" under the Insurrection Clause, contrary to the plain meaning of the word "engage." Pet. App. 89a-91a. And—intentionally operating without a proper definition of "engaged"—the court willfully ignored the full and proper context of President Trump's words on January 6, 2021; using words like "fight" is common in the context of political rallies, and, in any event, President Trump also called upon his supporters to "be peaceful.'" Pet. App. 96a-98a. Even if President Trump's words may have encouraged unlawful behavior amongst a tiny fraction of his supporters, this type of speech cannot be considered action *directly* calculated to help an *insurrection succeed*. *See United States v. Powell*, 27 F. Cas. 605, 607 (C.C.D.N.C. 1871) (The word "engage" in the Fourteenth Amendment requires "a voluntary effort to assist the Insurrection or Rebell[i]on, and to bring it to a successful termination.").

When the Fourteenth Amendment was adopted, the word "engaged" in the context of insurrection was already a well-understood legal term, and was consistently defined by courts and in statutes to require, at the very least, conduct that obstructs the execution of law by "combinations too powerful to be suppressed by the ordinary course of judicial proceedings, or by the power vested in the marshals." *Luther v. Borden*, 48 U.S. 1, 38 (1849) (construing the Insurrection Act of 1807); *The Amy*

Warwick, 67 U.S. 635, 691 (1862) (same); Militia Act of 1795, ch. 36, § 2, 1 Stat. 424; Insurrection Act of 1807, ch. 39, 2 Stat. 443. When applying the same language in the context of the Insurrection Clause, therefore, courts understood that the term "engaged in" would only apply to "voluntary effort to assist the Insurrection or Rebell[i]on, and to bring it to a successful termination." *Powell*, 27 F. Cas. at 607.

Clearly, nothing President Trump said or did was meant to bring an insurrection to a "successful" conclusion, nor did the court below consider any such evidence. Nevertheless, to avoid the plain meaning of President Trump's words in favor of political bias, the court below relied on the "expert" opinion of a sociology professor, who opined that President Trump used "coded" language some of his supporters understood as "literal calls to violence." Pet. App. 107a. Based on these facts alone, the court ultimately held that President Trump "engaged in insurrection" by intentionally inciting others to unlawful action. Pet. App. 110a-112a.

However, President Trump did not arm insurrectionists nor command them. Nor did President Trump say anything that could fairly be characterized as advocating for violence against Capitol Police or otherwise encouraging any other *specific* acts of insurrection. In summary, the court utilized a dubious expert opinion and circumstantial

evidence instead of determining the original meaning of "engaged in," an approach that was wholly insufficient in this context. Were the proper definitions of the word "engaged" utilized, the outcome below would have been different.

Indeed, Chief Justice Roberts has recently "redirect[ed] the judge's interpretive task back to its roots, away from open-ended policy appeals and toward the traditional tools of interpretation judges have employed for centuries to elucidate the law's original public meaning." *Kisor v. Wilkie*, 139 S. Ct. 2400, 2442 (2019) (Roberts, C. J., concurring); *Facebook, Inc. v. Duguid*, 592 U.S. 395, 406 (2021) (holding that alternative interpretive methods are not needed unless "traditional tools of interpretation" leads "to a 'linguistically impossible' or contextually implausible outcome"); *Am. Hosp. Ass'n v. Becerra*, 596 U.S. 724, 739 (2022) ("[T]his Court is not the forum to resolve th[e] policy debate.").

The "traditional tools of interpretation" applicable here, spanning statutes, case law, and historical sources, all demonstrate that "engaged" could not have meant "incite." These sources uniformly show that the word "engage" or "engaged" required intentional action to directly affect the unlawful purpose at issue.

B. The Plain Meaning of The Word "Engaged" as Originally Understood Excluded Mere Rhetoric

To work around the plain historical and original meaning of the word "engaged," the court below cherry-picked modern dictionary definitions and other sources, none of which support the expansion of "engaged" to encompass mere rhetoric or "incitement." Pet. App. 89a-91a. The Colorado trial court implicitly acknowledged the total lack of support from legitimate sources defining the word "engaged," and therefore relied instead on the fallacious policy argument that acts of "incitement" are typically "taken by those in leadership roles," and that to "exclude from disqualification such people would seem to defeat the purpose of disqualification." Pet. App. 259a.

But this radical expansion of the word "engaged" is wholly unnecessary to capture the intent of disqualifying insurrectionist leaders from office. Indeed, leaders of the Confederacy were guilty of far more than mere incitement. They were directly implicated in the Rebellion by giving military orders, planning military campaigns, and commanding troops during the Civil War. These are the epitome of concrete acts that typify leadership and give rise to organized insurrection or rebellion. There is no doubt

Confederate leaders "engaged in insurrection or rebellion against the United States."

By contrast, merely giving a speech in support of insurrection or rebellion (and, to be clear, President Trump did not give a speech supporting insurrection or rebellion) would not amount to "engag[ing]" in insurrection or rebellion. For example, the Committee on Elections for the Forty-First Congress considered whether Virginia congressman-elect Lewis McKenzie was disqualified under the Insurrection Clause for supporting the secession of the Confederacy. I ASHER C. HINDS, HINDS' PRECEDENTS OF THE HOUSE OF REPRESENTATIVES OF THE UNITED STATES 446 (1907). The Committee found that, as a member of the Virginia House of Delegates, McKenzie voted for a resolution stating that, should negotiations with the northern states break down, "every consideration of honor and interest demand that Virginia [] unite her destiny with the slaveholding States of the South." *Id.* at 472-75. In addition to making this statement, McKenzie voted for appropriating state funds for Confederate arms and munitions, further stating: "Virginia is not afraid. When the convention comes to a decision . . . and it is ratified by the people, she will take her position, and, if necessary, fight." *Id.* at 477. Despite McKenzie's clear and repeated expressions of support for Virginia's secession, the Committee concluded that he was *not* disqualified because his support occurred prior to Virginia's secession, and

therefore "[i]t could not be pretended that he yielded support to any government hostile to the United States." *Id.*

If McKenzie's clear public support for insurrection and rebellion immediately prior to the Civil War was not sufficient to show he engaged in insurrection under the Insurrection Clause, Trump's fiery rhetoric cannot be construed as disqualifying "engagement" in insurrection.

C. Case Law Usage of The Word "Engaged" and Its Variations From the Appropriate Historical Period Meant that Overt Acts Beyond Mere Words Were Required

The common understanding of the word "engaged" and the term "engaged in," as requiring direct participation in the act or conduct at issue, is further demonstrated by this Court's jurisprudence from the very same period as the adoption of the Fourteenth Amendment. For example, in 1864, the Court determined whether the parties responsible for a vessel, bound for the Western coast of Africa, "either adapted or capable of being adapted to a slave voyage," were guilty of engaging in the slave trade. *The Kate*, 69 U.S. 350, 364 (1864). The Court reviewed whether the circumstances "raise[d] a presumption that [the Kate] may be *about to engage* in the slave-trade." *Id.* (emphasis added). Ultimately, such

conduct was not considered sufficient to demonstrate actual engagement in the slave-trade. *Id.* The Court explained that it was not "ready to lay down, as a rule of evidence, that every vessel about to sail for the African coast shall, *ipso facto*, be presumed guilty of a *purpose to engage* in the slave-trade, unless she proves herself, affirmatively, innocent." *Id.* at 358 (emphasis added). Similarly, here, the court below improperly "presumed" Trump "guilty of a purpose to *engage in*" insurrection, in contrast to those individuals who "engaged in" overt acts at the Capitol on January 6, 2021.

The requirement of an overt act as a predicate for an individual to have "engaged in" something was further echoed by the Court in *E. Saginaw Salt Mfg. Co v. City of E. Saginaw*, 80 U.S. 373, 375 (1871). The Court there was faced with a dispute over the City's ability to discontinue or modify an incentive program designed to encourage manufacturing of salt, and ultimately upheld an amendment to the program limiting benefits "to those who should be *actually engaged* in the manufacture of salt prior to 1st of August, 1861," among other limits. *Id.* at 376 (emphasis added). In its discussion, the Court accepted the finding that a party was "actually engaged" in the manufacture of salt because it "erect[ed] works for the manufacture of salt," commenced manufacture for at least 8 months, actually produced 6348 barrels of salt, and purchased

all of its property for the purpose of manufacturing salt. *Id.* at 375-76. Thus, this Court clearly understood the word "engage" as requiring an overt act, such as spending large sums of money purchasing property, and actually manufacturing, to reap the benefits of engagement in a particular industry.

Similarly, in *City of Salt Lake City v. Hollister*, this Court found that a taxpayer had improperly "*engaged* in the business of distilling and producing spirits." 118 U.S. 256, 258 (1886) (emphasis added). The Court found that plaintiff had "engaged" in the business by "distilling and producing spirits, and selling the same, and placing the proceeds of the sale in its treasury; that during this time the plaintiff made regular reports as to the quantity produced, and paid the tax on the amount so reported." *Id.* at 258-59.

Courts in the nineteenth century also interpreted the word "engage" in the context of technological advancements, particularly those related to automation and new developments in machinery, where the term "engage" was used to reference the action of directly triggering a process or affecting the function of a system. This usage was common in federal district courts' interpretation of patent language in the nineteenth century. *See Freese v. Swartchild*, 35 F. 141, 141 (C.C.N.D. Ill. 1888) ("In a roller-abstractor having jaws adapted to receive and grasp the roller, and movable sliding-spindle to *engage* with the staff of the balance-wheel, and a lever

for operating the spindle, substantially as specified.'") (emphasis added); *Renwick v. Pond*, 20 F. Cas. 536, 537 (C.C.S.D.N.Y. 1872) ("This hook is so constructed as to slip by the flange of the cartridge, shown at 1, fig. 1, when pressed against it, and to *engage* with the flange in such manner that when the hook is withdrawn the cartridge is also extracted.") (emphasis added); *Newton v. Furst & Bradley Mfg. Co.*, 14 F. 465, 466 (C.C.N.D. Ill. 1882), *aff'd sub nom.*, *Newton v. Furst & Bradley Mfg Co.*, 119 U.S. 373 (1886) ("The brake mechanism is so arranged that when the brake is made to *engage* with one of the carrying wheels in motion, this axle is turned up edgewise, and the plows thereby lifted out of the ground.") (emphasis added). This sort of usage of "engage," in which physical mechanical contact occurred, such as between a lever arm or a gear and another component to be rotated, also connoted a clear requirement of overt action.

In summary, around the time the Fourteenth Amendment was adopted, and at other points during the Nineteenth Century, the word "engage," although used in a variety of judicial contexts, always connoted and required action (whether by man or machine), or active involvement in or commitment of individuals to various social, business, and/or mechanical courses of conduct. In no context was speech conflated with active participation.

D. The Second Confiscation Act Specified "Engage" and "Incite" as Separate Acts

The drafters of the Fourteenth Amendment understood this distinction between "incitement" and "engagement," as evidenced by the fact that Congress made this exact distinction when it enacted the Second Confiscation Act in 1862. 12 Stat. 589, 590 (1862); *see also* 18 U.S.C. § 2383. The Second Confiscation Act identified separately the crime of "engaging" in and "inciting" insurrection. 12 Stat. 589, 590 ("if any person shall hereafter incite, set on foot, assist, or engage in any rebellion or insurrection against the authority of the United States . . . ."). By specifically listing "incite" and "engage" separately in the Second Confiscation Act, Congress clearly demonstrated that these terms were understood to be separate activities.

The Insurrection Clause, in contrast, set a high bar for constitutional disqualification, well above mere incitement, since incitement was excluded from the Insurrection Clause. Congress's omission of "incite" from the Insurrection Clause was clearly intentional, and demonstrates that Congress specifically intended that merely encouraging, urging, or otherwise inciting insurrection should *not* result in a constitutional disqualification. *See Jennings v. Rodriguez*, 583 U.S. 281, 300 (2018) (applying the negative implication canon, that "[t]he expression of one thing implies the exclusion of others (*expressio*

freeunius est exclusio alterius)" (quoting A. SCALIA & B. GARNER, READING LAW 107 (2012)); *Ford v. United States*, 273 U.S. 593, 611 (1927).

E. The Word "Engage" in the War Clause Requires a State's Direct Prosecution of War

Other than the Fourteenth Amendment, the Constitution contains the term "engage" in the "War Clause" of Article I, Section 10. The War Clause provides, *inter alia*, that "[n]o state shall . . . ***engage in War***, unless actually invaded . . ." Clearly, this clause is intended to prevent states from actually prosecuting a war directly, not merely encouraging others to engage in war.

Under the CSC's modern, politically-driven definition of "engage," however, the War Clause would apply to any State that shows mere *support* for a war. This is not merely a theoretical question, but one with very contemporary meaning. Texas and at least seven other states recently passed resolutions supporting Israel's right to defend itself by waging war against Hamas in response to the Hamas terrorist attack on October 7, 2023. Geoff Mulvihill, *Israel and Hamas Measures Get a Look As Most US State Legislatures Meet For First Time Since Oct. 7*, ASSOCIATED PRESS, Dec. 23, 2023. These expressions of support surely cannot be deemed constitutionally prohibited under the War Clause. To "engage" in war might include physically supplying Israel with weapons or material

aid, but mere rhetorical and moral support of Israel's right to wage war cannot equate to engagement under the War Clause.

II. Disqualification Under the Insurrection Clause Without An Overt Act Can Only Occur in Instances In Which an Individual Gave "Aid and Comfort" To The "Enemies" of the United States

Mere speech, unaccompanied by overt acts, can only support disqualification under the *second part* of the Insurrection Clause, which provides for disqualification only where an individual has "given aid or comfort to the *enemies* [of the United States]." U.S. CONST. amend. XIV, § 3 (emphasis added). Here, Respondents never alleged that any participants in the events at the Capitol on January 6, 2021 were "enemies" of the United States, or that President Trump provided such enemies "aid and comfort." *See Cramer v. United States*, 325 U.S. 1, 76 (1945) (defining "enemies" to include only "subjects of a foreign power in a state of open hostility with us"). Accordingly, since President Trump was disqualified for his speech based on the "engaged in" portion of the Insurrection Clause, when speech-based disqualification can only occur under the "aid or comfort" portion of the Insurrection Clause, this is separate grounds for reversal of the decision below.

The plain text of the Insurrection Clause makes clear that there are two entirely different predicate acts that trigger constitutional disqualification: "engag[ing] in insurrection or rebellion," or, alternatively, "giv[ing] aid or comfort to [our] enemies." U.S. CONST. amend. XIV, § 3. In this way, the Insurrection Clause clearly distinguishes direct action, "engaged in insurrection," from more tangential conduct amounting to "aid and comfort." *Id.*; *see* Jennifer K. Elsea, *The Insurrection Bar to Office: Section 3 of the Fourteenth Amendment*, CONGRESSIONAL RESEARCH SERVICE, Sept. 7, 2022, at 3-4 (the "Insurrection Bar to Office").

It follows, then, that the Insurrection Clause did not use the term "engage" to mean anything more attenuated than direct physical actions specifically calculated to cause insurrection. Examples of such direct action might include physical attack or delivering supplies to an enemy of the United States. Mere words of support at a political rally, by contrast, could be considered unlawful only to the extent those words amounted to giving "aid and comfort to [our] enemies."

The term "aid and comfort to the enemies" in the Insurrection Clause is borrowed directly from the Treason Clause in Article III of the Constitution, where the distinction between physical action and mere support is critical: "Treason against the United States, shall consist only in levying War against them, *or in adhering to their Enemies, giving them Aid and*

Comfort. . . . on the Testimony of two Witnesses to the same overt Act." U.S. CONST. art. III, § 3 (emphasis added); CONG. GLOBE, 39th Cong., 1st Sess. 2498, 2500 (1866) (providing, in an early draft of Section 3, that "all persons who voluntarily ***adhered*** to the late insurrection, *giving it aid and comfort*, shall be excluded from the right to vote") (emphasis added); *see also* The Reconstruction Acts, 12 Op. Att'ys Gen. 141, 160 (1867); *cf.* The Insurrection Bar to Office at 4.

Long before the Civil War, Courts understood in the context of treason that "aid and comfort" excluded those who merely provided enemies general expressions of support or encouragement. *See United States v. Burr*, 25 F. Cas. 55 (C.C.D.Va. 1807). After completing his service as Vice President under President Thomas Jefferson, Aaron Burr *allegedly* engaged in a series of actions in the Western territories of the United States that led to suspicions that he was attempting to create an independent nation in the western part of North America. *Id.* at 88-90. Burr was then prosecuted for treason by United States Attorney George Hay, under the direction of President Jefferson. *Id.* At trial, the prosecution introduced testimony showing, in relevant part, that Burr intended to lead a military expedition against Spanish territories or possibly detach parts of the western territories from the United States. *Id.* at 81-82.

Chief Justice Marshall presided over the trial and found that Burr could only be guilty of treason based on his own conduct, not on mere opinions or general support of the acts of treason committed by others. *Id.* at 172. Chief Justice Marshall specifically noted that Burr could not be guilty of treason "if *he was not with the party* at any time before they reached the [place of battle]; if *he did not join them* there, or intend to join them there. . . then he was not of the particular party assembled at [the place of battle], and was *not constructively present, aiding and assisting in the particular act* which was there committed." *Id.* (emphases added). As a result, Burr was acquitted of treason. *Id.* at 181-82.

The precedent established under *Burr* has been uniformly adopted by subsequent cases, including *Cramer*, 325 U.S. 1. At issue in *Cramer* was whether the defendant committed treason by meeting with Nazis on several occasions to "confer, treat, and counsel" them, as well as lying to the FBI about these meetings "for the purpose of concealing the[ir] identity and mission." *Id.* at 36-37. However, the evidence did not show that Cramer gave the Nazis information of "value to their mission." *Id.* at 37. Based on these facts, the Court set aside Cramer's conviction and explained at length why the Framers sought to limit the scope of treason to exclude most forms of mere verbal expression. The Court noted that law of treason was framed by men who "were taught by experience and by history to fear abuse of the treason charge

almost as much as they feared treason itself." *Id.* at 21. These men were convinced, "as [Thomas] Paine put in the maxim that 'He that would make his own liberty secure must guard even his enemy from oppression; for if he violates this duty he establishes a precedent that will reach himself.'" *Id.* at 49. The Founding Fathers therefore structured the law of treason to ensure that "thoughts and attitudes alone cannot make a treason," that "aid and comfort would require the prosecution to show actions and deeds," and that "the overt acts of aid and comfort must be intentional as distinguished from merely negligent or undesigned ones." *Id.* at 30-31.

The principles articulated in *Burr* and *Cramer* are directly relevant to the interpretation of the Insurrection Clause. Like the Treason Clause, the Insurrection Clause requires a direct overt act of actually engaging in insurrection or rebellion, or at minimum, the attenuated act of having "given aid or comfort to [our] enemies." Therefore, the term "engaged in insurrection or rebellion" must be limited to taking direct action, and cannot be based on mere encouragement or incitement alone.

CONCLUSION

The Court should put a permanent stop to partisan use of the Insurrection Clause. To hold otherwise, by adopting the biased logic of the court below, would open a Pandora's box of endless political

retribution by opposing factions using the Insurrection Clause in a manner for which it was never intended. This cycle of electoral retaliation would wreak havoc on our cherished system of free and fair elections.

Accordingly, the Court should reverse the decision below.

Dated: January 18, 2024

Respectfully Submitted,

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