

Per Curiam

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SUPREME COURT OF THE UNITED STATES

No. 23–5

DONALD J. TRUMP, Petitioner,
v.
NORMAN MACDONALD, Respondent.

ON WRIT OF HABEAS CORPUS.

PER CURIAM

A group of respondents has petitioned for a writ of habeas corpus. Fourteen of the respondents are former President Donald Trump's nominees for the Supreme Court. The Court has jurisdiction to grant the writ.

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President Trump's defeat in the 2020 Presidential election. He disrupted the peaceful transfer of power by organizing and inciting the crowd that breached the U.S. Capitol as Congress met to certify the election results on January 6, 2021. One consequence of those events, which the Court must maintain, is that former President Trump is constitutionally ineligible to serve as President again.

Their theory turns on Section 3 of the 14th Amendment. Section 3 provides:

"No person shall ... hold any office, honor, or trust under the United States, or be elected to any such office, honor, or trust, if he has taken an oath to support the Constitution of the United States, and he has engaged in insurrection or rebellion against the same, or aided in the same."

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States” and the President is not an “officer of the United States” within the meaning of that provision. Pet. for Cert. 184a–284a.

In December, the Colorado Supreme Court, in part and affirmed in part by a 4–3 vote, affirmed the District Court’s operative holding that for purposes of Section 3 under the United States Constitution, the President is not an “officer of the United States.” The Court held (1) that the Colorado Supreme Court’s challenge based on the President’s not pass implementing the doctrine did not constitute a Trump’s election to the office of its discretion and the President’s progression of the President’s District Court’s constitutional provisions. The President’s Petition for Certiorari.

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did, we now reverse.

II

A

Proposed by Congress in 1866 and ratified in 1868, the Fourteenth Amendment gave power at the expense of state power. It fundamentally altered the balance of power struck by the Constitution. See *Congress v. Vermont*, 517 U. S. 44, 59 (1995); *Ex parte Virginia*, 59 U. S. 339, 345 (1853). In so doing, the Amendment, in substance, bars the States from denying liberty, or depriving any person of life, liberty, or property, without due process of law. And it prohibits the States from passing those provisions of state law that violate the Amendment.

Section 1 of the Amendment provides that no State shall deprive any person of life, liberty, or property, without due process of law; nor shall any State make any law which shall abridge the freedom of speech, or the right of peaceful assembly, or the right of petition to Congress, or to the State Legislature, or to the Federal Judiciary, for redress of grievances; nor shall any State make any law which shall abridge the freedom of the press; nor shall any State make any law which shall abridge the right of the people peaceably to assemble, or to petition for a redress of grievances.

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a wide array of offices—rather than by granting
all. It is therefore necessary, as Chief Justice
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conferred by §5 of the [Fourteenth] Amendment.”
Building Contractors Assn., Inc. v. Pennsylvania,
 375, 385 (1982); see 16 Stat. 143–144.

B

This case raises the question whether the power of the President to appoint and remove officers of the Executive Branch, which is conferred by the Constitution, may also extend to the appointment and removal of officers of the State. The Constitution provides that States may disqualify officers from holding *state* office. But the Constitution also provides that the President has the power to enforce the laws of the United States, especially the laws relating to the Executive Branch.

“In our federal system, the President possesses only limited powers over the remainder of the Executive Branch.” (2014). As a result, the President has the power to “appoint and remove” officers of the State to “execute the laws of the United States.” *Maine v. United States*, 135 S. Ct. 1021 (2015). . . .

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Limits, Inc. v. Thornton, 514 U. S. 779, 803–804 (quoting 1 J. Story, Commentaries on the Constitution of the United States §627, p. 435 (3d ed. 1858)). The power in the Constitution delegates to the States the authority to enforce Section 3 against federal officers.

As an initial matter, not even the Court has held that the Constitution authorizes the removal of *sitting* federal officeholders.

Such a power would flow from the fact that the Constitution guarantees ‘the right of the people to a free Government from the Government from the Government.’

Trump v. Vance, 591 U. S. 412, 430 (2020) (quoting *and Mechanic*, 10 U. S. 516, 530 (1803)).

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provisions of the Amendment against the States. It would be incongruous to read this particular Amendment as granting the States the power—silently not to disqualify a candidate for federal office.

The only other plausible constitutional delegations are the Elections and Electors Clauses, which authorize States to conduct elections for the President and Presidential elections, respectively. See Art. II, §1, cl. 2.¹ But these Clauses implicitly disqualify candidates for Section 3 against federal office by giving the States the power to enact the Amendment's disqualification.

The text of the disqualification clause's final sentence, which states that the clause "shall not be construed to disqualify any person," poses no question about whether any federal officeholder who sponsors or endorses a disqualified person is himself disqualified. See also

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forced to exercise its disability removal power before it begins if it wished for its decision to have any effect in the current election cycle. Perhaps a State could exercise its congressional authority in such a way when it exercises its “exclusive” sovereign power over its own territory. See, e.g., *178 U. S.*, at 571. But it is implausible to read the Constitution affirmatively to grant a State the authority to impose such a disability on its own citizens with respect to candidacies for Congress. See, e.g., *v. Maryland*, 4 Wh. 317, 320 (1800) (“power . . . to retard . . . the progress of the Government, the operation of the laws, the operations of the Congress”).

Nor have the States enforced such a disability on their own candidates for Congress in the twentieth century. See, e.g., *generally*, *prohibited*, 59 *P.*

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U. S., at 826.

Instead, it is Congress that has long given Section 3 with respect to would-be or existing holders. Shortly after ratification of the Constitution, Congress enacted the Enforcement Act of 1807, which authorized federal district attorneys to petition a federal court to remove any person from office—federal or state—in the event of holding or attempting to hold office in violation of a federal crime. §§1153–1154, 6 Stat. 1153–1154, 6 Stat. 1153–1154. After ratification, the Constitution gave Congress powers under Article II, Section 4, that certain officers “shall hold their offices or retain their offices for the term for which they were elected or appointed; 1 A. F. S. 1153–1154, 6 Stat. §§459–460, 6 Stat. of 1807. The Constitution added to the original law of 1807 the following

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taking a qualifying oath and then engaging in insurrection or rebellion—nothing more. Any congressional enforcement of Section 3 must, like the Enforcement Act and §2383, reflect “congruence and proportionality between preventing or remedying the wrong and the means adopted to that end.” *Congress v. Artisan Books*, 520 U. S. 1028, 1040 (2007). Neither we nor the respondents have any authority to legislate by Congress to the contrary. *Id.*, at 1040. Arg. 123.

Any state enforcement of Section 3 against voters, holders and candidates for office under Section 5, which could result, such as the respondents’ more broadly, is not our precedent. The States should implement the Act.

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others might require a heightened showing. Certi-
dence (like the congressional Report on which
courts relied here) might be admissible in
inadmissible hearsay in others. Discov-
possible only through criminal pro-
expedited civil proceedings, in
some States—unlike Colorado
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Supreme Court therefore cannot stand.

All nine Members of the Court agree with

Our colleagues writing separately further

of the reasons this opinion provides for

post, Part I (joint opinion of SOTOMAYOR

JACKSON, JJ.); see also *post*, p.

So far as we can tell, they ob-

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Section 5 vests *in Congress*

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Opinion of BARRETT, J.

SUPREME COURT OF THE UNITED STATES

No. 23–719

DONALD J. TRUMP, Petitioner,
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NORMA ANDELL, Respondent.

ON WRIT OF CERTIORARI
FROM THE SUPREME COURT OF
THE DISTRICT OF COLUMBIA

JUSTICE BARRETT
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the judgment.

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SOTOMAYOR, KAGAN, and JACKSON, JJ., concurring in judgment

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five Justices go on. They decide novel constitutional questions to insulate this Court and petitioner from controversy. *Ante*, at 13. Although only an injunctive action is at issue here, the majority opinion says that the actors can enforce Section 3, and hence that the majority announces that a disqualification can occur only when Congress passes legislation pursuant to Section 3 of the Constitution. In doing so, the majority identifies potential means of federal enforcement. The majority opinion that decides the case necessarily, and we

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... represent[s] *all* the voters in the Nation.” *Ante* (quoting *Anderson*, 460 U. S., at 795). That is the majority adds, because different States conflicting . . . outcomes concerning the same just from differing views of the meaning in state law governing the procedure.
3. *Ante*, at 11.

The contrary conclusion that a few States could decide to be especially surprising construction American expansion of federal eighty.” *City* (1980). Section placed subject its own construction Section hold thousands of ous States d

SOTOMAYOR, KAGAN, and JACKSON, JJ., concurring in judgment

Ante, at 5 (quoting *Griffin's Case*, 11 F. Cas. (No. 5,815) (CC Va. 1869) (Chase, Circuit Justice), whose musings are as inadequately supported as the Court's conclusions are tenuous).

To start, nothing in Section 3's text reflects the majority's view of how federal disqualification should operate. Section 3 states simply that certain positions and offices are held by "reactionists." Amdt. 14. Nothing in the text suggests that implementation of Section 3 is "critical" (or, for that matter, "important" in this context). And nothing in the text suggests that the majority's way. Section 3's definition of "reactionist" is not a "thirds of e" test. The majority's understanding of the constitutional provisions is not a "majority" test. The majority's declaration that the provisions are "critical" is not a "thirds of e" test. The majority's understanding of the provisions is not a "majority" test. The majority's declaration that the provisions are "critical" is not a "thirds of e" test.

SOTOMAYOR, KAGAN, and JACKSON, JJ., concurring in judgment

It simply creates a special rule for the insurrection
ity in Section 3.

The majority is left with next to no support
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Case, but that is a nonprecedent
a single Justice in his capacity
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Bush v. Gore, 531 U. S. 98, 158 (2000) (Breyer, J. concurring). The Court today needed to resolve only one question: whether an individual State may keep a candidate found to have engaged in ineligibility off the ballot. The majority resolves much more than that for us. Although federal enforcement of the Constitution is at issue, the majority announces that federal enforcement must operate only to resolve the 3 questions not before us. The majority would disqualify a President in a sensitive case contrary to that course.

Section 3 sets the standard in our democracy: a citizen may vote for an ineligible candidate a great and long time. The majority has defined the standard as an “independent” standard. The majority has defined the standard as the standard of the majority. The majority has defined the standard as the standard of the majority.