

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

**BRIEF OF *AMICUS CURIAE* JOSH AUTRY IN
SUPPORT OF THE ANDERSON RESPONDENTS**

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INTEREST OF AMICUS CURIAE

Amicus is a voting citizen who has interests in the peaceful transfer of power, preventing insurrections and rebellions, and in preventing insurrectionists and rebels from serving as President of the United States. *Amicus* speaks for himself and not for any other person.¹

INTRODUCTION AND SUMMARY OF ARGUMENT

This Court should affirm the determination that Trump engaged in an “insurrection.” In the alternative, this brief advocates that Donald Trump engaged in a “rebellion” when he attempted to rig the electoral college and usurp power with fake electors.

ARGUMENT

REBEL WITHOUT A CLAUSE?

President Trump’s Attempted Coup D’état Involving the Use of Fake Electors to Usurp Power is a “Rebellion”

This Court should determine that Donald Trump engaged in an “insurrection” on January 6th. In the alternative, Donald Trump engaged in a “rebellion”

1. No counsel for any party authored this brief in whole or in part, no party or counsel for any party made a monetary contribution intended to fund the preparation or submission of this brief, and no person or entity other than *amicus* made any monetary contribution toward the preparation of this brief.

when he attempted to usurp power through a fake elector conspiracy. He is unfit and disqualified from serving in our Nation's Highest Office.

In November and December 2020, Donald Trump and the Trump campaign set up pretend state electors in an attempt to usurp power at the close of Trump's term. As many of the events transpired in plain sight, Trump's attempted coup d'état has been well known for years.² Trump's fake electors were not appointed or certified by their respective States; indeed, those States each certified lawful electors. Trump's fake electors were imposters with the sole purpose of rigging the electoral college for Trump. Trump is currently facing criminal charges in federal court and Georgia court related to the fake elector scheme, and the fake electors themselves face charges in Georgia, Michigan and Nevada.³ For their

2. See Select January 6th Committee Final Report and Supporting Materials Collection, FAKE ELECTORS AND THE "THE PRESIDENT OF THESENATE STRATEGY" (Dec. 22, 2022) (available at <https://www.govinfo.gov/content/pkg/GPO-J6-REPORT/pdf/GPO-J6-REPORT-2-3.pdf>) (accessed Jan 30, 2024).

3. *U.S. v. Trump*, 1:23-cr-257, Doc. 1 pp. 4-6, 9-37 (D.D.C. Aug. 1, 2023) (available at <https://www.washingtonpost.com/documents/8a7503af-fde7-4061-818c-7d7e0ee06036.pdf>) (accessed Jan 30, 2024); *Ga. v. Trump et al.*, 23SC188947, Indictment (Ga. Fulton Sup. Ct. Aug. 14, 2023) (available at https://fm.cnbc.com/applications/cnbc.com/resources/editorialfiles/2023/08/14/23SC188947_-_CRIMINAL_INDICTMENT.pdf) (accessed Jan 30, 2024); *Mich. v. Berden et al.*, 2022-0343234-A, Affidavit in Support of Complaint (Mich. Ingham County July 18, 2023) (available at https://www.washingtonpost.com/documents/7f8581ba-d5a2-43cea1e3-12b0e9fb2d9e.pdf?itid=lk_inline_manual_22) (accessed Jan 30, 2024); *Nevada v. McDonald et al.*, C-23-379122-3,

part, the Wisconsin fake electors reached a settlement where they admitted that they were used “as part of an attempt to improperly overturn the 2020 presidential election results.”⁴ In short, Trump’s fake elector scheme is a well known attempt to usurp power by a lame duck President. As explained below, the Constitution bars would-be usurpers from holding office.

No doubt, a civil war is an organized rebellion. However, “rebellion” also includes a non-violent attempt to usurp power. For example, a would-be usurper is a rebel if they conspire with members of court to steal the crown—even if the scheme is quickly discovered and ended without bloodshed. Similarly, secession is rebellion—even if the rebel State quickly backs down without war. *See Texas v. White*, 74 U.S. 700, 728 (1868) (referencing Texas’s “rebellion which involves the government of a State, and, for the time, excludes the National authority from its limits...”); Attorney General Stanbery, *The Reconstruction Acts.*, 12 U.S. Op. Atty. Gen. 182, 205 (1867) (referring to rebels “such as members of the rebel conventions, congress, and legislatures”).

Significantly, Noah Webster’s AMERICAN DICTIONARY OF THE ENGLISH LANGUAGE 613 (1860), explained that

Indictment (Nev. Clark County Dec. 6, 2023) (available at <https://thenevadaindependent.com/article/nevada-gop-fake-electors-indicted-for-falsely-claiming-trump-won-states-2020-election>) (accessed Jan 30, 2024).

4. Mutual Release and Settlement Agreement at 2 (available at https://www.washingtonpost.com/documents/730a3889-6bd4-4895-a9e9-e60b82ccbb43.pdf?itid=lk_inline_manual_5) (accessed Jan 30, 2024).

rebellion “expresses a revolt, *or an attempt to overthrow the government, to establish a different one*, or to place the country under another jurisdiction.” Pet. App. 85a.⁵ Read in the disjunctive, rebellion may include a non-violent attempt to usurp power.

As Baude and Paulsen explained, a “rebellion” does not necessarily require force:

There are such things as “bloodless coups”: actions that effectively displace or upend the prior constitutional order without shots being fired, but that nonetheless are in unlawful defiance or repudiation of the existing legal order.

Baude & Paulsen, 172 U. PA. L. REV. at 66. *See id.* (“The secession ordinances might still immediately constitute acts of ‘rebellion,’ even before any accompanying violence.”).

Here, Trump tried to steal power by setting up fake State electors who pretended that they had been lawfully appointed and certified. This is the constitutional equivalent of a State’s minority political party meeting on their own and passing a “bill” to “secede.” By attempting to steal power through fraud, Trump has disgraced his office and rebelled against the United States.

5. *See also* Baude & Paulsen, *The Sweep and Force of Section 3*, 172 U. PA. L. REV. (forthcoming 2024) at 70 n. 245 (citing 1 Noah Webster, AMERICAN DICTIONARY OF THE ENGLISH LANGUAGE 51 (1828) (defining “rebellion” as “[a]n open and avowed renunciation of the authority of the government to which one owes allegiance.”)).

CONCLUSION

This Court should affirm.

Respectfully submitted,

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