No. 23-939

In The
Supreme Court of the United States

DONALD J. TRUMP,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

On Writ of Certiorari to
the United States Court of Appeals
for the District of Columbia Circuit

BRIEF OF *AMICUS CURIAE* MATTHEW D. WILSON IN SUPPORT OF THE PETITIONER

MATTHEW D. WILSON
Counsel of Record
2218-B West Main Street
Tupelo, MS 38801
(662) 260-6544
lawyermatt@betteraskmatt.com
Counsel for Amicus Curiae

March 12, 2024

QUESTION PRESENTED

Whether and if so to what extent does a former President enjoy presidential immunity from criminal prosecution for conduct alleged to involve official acts during his tenure in office.

TABLE OF CONTENTS

QUESTION PRESENTED i

TABLE OF CONTENTS.. ii

TABLE OF AUTHORITIES iv

INTEREST OF *AMICUS CURIAE* 1

SUMMARY OF THE ARGUMENT 3

ARGUMENT 4

I. Presidential Immunity Should Extend to Former Presidents Who Have Acted in Good Faith or Who Are Being Prosecuted in Bad Faith by Their Successors 4

A. As the Sole Member of the Executive Branch, the President Has the Final Say on Prosecutions 4

B. Due to His Conflict of Interest, President Biden's Selective Prosecution of President Trump Cannot Vindicate the Public Interest 5

II. Even if President Biden Has Not Engaged in Selective Prosecution, President Trump Acted in Good Faith 10

A. President Trump Had the Affirmative Duty Under Federal Law to Combat Election Fraud.. 10

B. President Trump Acted in Accordance with His Statutory Duty to Combat Election Fraud.. 11

C. President Trump's Actions Should Be Immune from Prosecution Since They Were Discretionary Acts in Furtherance of His Official Duty to Combat Election Fraud............................ 18

CONCLUSION... 20

TABLE OF AUTHORITIES

Cases

Burson v. Freeman,
504 U.S. 191, 112 S. Ct. 1846 (1992) 11

Bush v. Gore,
531 U.S. 98, 121 S. Ct. 525 (2000) 15

Fletcher v. Peck,
10 U.S. (6 Cranch) 87 (1810)................................. 17

Marbury v Madison,
5 U.S. (1 Cranch) 137 (1803)..................... 12, 18, 19

Myers v. United States,
272 U. S. 52, 47 S. Ct. 21, 71 L. Ed. 160 (1926) ... 10

Nixon v. Fitzgerald,
457 U.S. 731, 102 S. Ct. 2690 (1982), ... 5, 6, 8

Trump v. Mazars USA, LLP,
140 S. Ct. 2019, 207 L. Ed. 2d 951 (2020) 4, 7, 8, 18

United States v. Armstrong,
517 U.S. 456, 116 S. Ct. 1480 (1996) 6, 8, 9

United States v. Nixon,
418 U. S. 683, 94 S. Ct. 3090, 41 L. Ed. 2d 1039 (1974) 4, 7, 8

United States v. Texas,
599 U.S. 670, 143 S. Ct. 1964 (2023) 4

United States v. Trump,
9:23-cr-80101 (S.D. Fla 2023). 7

United States v. Trump,
91 F.4th 1173 (D.C. Cir. 2024) 11, 12

Wayte v. United States, 470 U.S. 598, 105 S. Ct. 1524 (1985) 8

Constitutional Provisions

U. S. CONST. amend. XII 17

U. S. CONST. art. I, §3, cl. 7 10

U. S. CONST. art. I, §7, cl. 2 16

U. S. CONST. art. II, §1, cl. 1 4

U. S. CONST. art. II, §3, cl. 4 .... 4, 9, 10

Statutes

3 U.S.C. §102 8

3 U.S.C. §15 (2020) 16

3 U.S.C. §5 (2020) 13

3 U.S.C. §7 (2020) 13

52 U.S.C. §§20501, *et seq.* 10, 11, 18

52 U.S.C. §20501 .... 10, 11

52 U.S.C. §20505 11

Rules

Fed. R. of Civ. Proc. 12 (a)(1)(A)(i) 13

Fed. R. of Civ. Proc. 16 (b) 14

Fed. R. of Civ. Proc. 26 (d)(1) 13

Fed. R. of Civ. Proc. 26 (f) 14

Fed. R. of Civ. Proc. 65 (b) 14

Other Authorities

Bethany Blankley, *National survey: Majority of Americans believe there's a two-tiered justice system* (Aug 15, 2022), *available at* https://www.thecentersquare.com/national/article_fa88bd9e-1cd3-11ed-813d-83eb93b2e2cd.html........ 1

Chris Land & David Schultz, *On the Unenforceability of the Electoral Count Act*. 13 Rutgers J. L. & Pub. Pol. 3 (2016).. 17

Jack Beermann & Gary Lawson, *The Electoral Count Mess: The Electoral Count Act of 1887 Is Unconstitutional, and Other Fun Facts (plus a Few Random Academic Speculations) about Counting Electoral Votes*, 16 FIU L. REV. 297 (2022)......... 17

Special Counsel Robert K. Hur, *Report on the Investigation into Unauthorized Removal, Retention, and Disclosure of Classified Documents Discovered at Locations Including the Penn Biden Center and the Delaware Private Residence of President Joseph R. Biden, Jr.*, UNITED STATES DEPARTMENT OF JUSTICE (Feb. 2024)...................... 7

Vasan Kesavan, *Is the Electoral Count Act Unconstitutional*, 80 N.C. L. Rev. 1653 (2002) 17

INTEREST OF *AMICUS CURIAE*[1]

Our nation is being torn apart at the seams. Seventy-nine percent of Americans now believe that we have a two-tiered justice system.[2] *Amicus* believes that the weaponization of the Judiciary is to blame.

Presently, the Left has aimed cannons of division toward a Republican President, bombarding him with the full weight and power of the Government. As a result, we now face a Rubicon moment. If this Court does not set clear boundaries today, the Right will reciprocate in kind tomorrow, directing its ire toward a Democrat President. Stranded between these warring factions in the scorched earth of no man's land will be *Amicus* and other rank-and-file Americans who simply want to bequeath the guarantees of life, liberty, and the pursuit of happiness to our children.

The phrase "no one is above the law" is the battle cry for those who wish to banish former President

---

[1] *Amicus* states that no counsel for any party authored this brief in whole or in part and that no entity, aside from *Amicus* and counsel, made any monetary contribution toward the preparation or submission of this brief.

[2] *See* Bethany Blankley, *National survey: Majority of Americans believe there's a two-tiered justice system* (Aug 15, 2022), *available at* https://www.thecentersquare.com/national/article_fa88bd9e-1cd3-11ed-813d-83eb93b2e2cd.html

Donald Trump to the ash-heap of history. In a literal sense they are correct: No one is above the law. However, no one is below the law, either—not even former Presidents or, for that matter, their supporters. In this case, "the law" is the Constitution and the doctrine of separation of powers that it enshrines.

The Government's ostensible purpose for prosecuting President Trump is to bring him to justice for interfering with the 2020 presidential election. A curious byproduct of this prosecution is a different form of election interference, one where the Government indirectly seeks to deprive *Amicus* and millions of other Americans of their right to inform the selection of the presidential electors from their respective States.

Amicus's interest in this matter can therefore be expressed succinctly: As a United States citizen, *Amicus* does not want the Government to dilute his say in who becomes the next President by wrongfully prosecuting the last President for discretionary acts in furtherance of his official duties. To permit otherwise would countenance the very election interference the Government seeks to prosecute.

SUMMARY OF THE ARGUMENT

The prime directive for any President is to faithfully execute the laws. In light of that responsibility, a President should have immunity from criminal prosecution after leaving office if he has performed his official duties in good faith. By this same token, neither the current President nor any of his subordinates should be permitted to prosecute a former President in bad faith. Questions of good faith may be difficult for a court to decide without difficulty, though. As such, this Court should simply grant Presidents absolute immunity for all official actions while they are in office unless they have been impeached by the House of Representatives and convicted by the Senate. Then bad faith would be conclusively established.

In the case at bar, President Biden has selectively prosecuted President Trump. But even if there has been no selective prosecution, President Trump acted in good faith when he objected to the result of the 2020 election. Either way, President Trump should be immune from prosecution.

President Trump had a duty under Federal law to promote the voting rights of United States citizens. Given that combating election fraud would have advanced his statutory duty to promote the rights of citizens to vote, President Trump was within his discretion to combat the alleged fraud as he viewed it in the ways that he did. Ergo, his actions as complained of in the Indictment were not just on the periphery of

official conduct; they were, in fact, official acts. Ergo, they should be immune from criminal prosecution.

ARGUMENT

I. Presidential Immunity Should Extend to Former Presidents Who Have Acted in Good Faith or Who Are Being Prosecuted in Bad Faith by Their Successors

A. As the Sole Member of the Executive Branch, the President Has the Final Say on Prosecutions

"The President is the only person who alone composes a branch of government." *Trump v. Mazars USA, LLP*, 140 S. Ct. 2019, 2034, 207 L. Ed. 2d 951 (2020). "Article II of the Constitution assigns the 'executive Power' to the President and provides that the President 'shall take Care that the Laws be faithfully executed.'" *United States v. Texas*, 599 U.S. 670, 143 S. Ct. 1964, 1971 (2023) (quoting U. S. CONST. art. II, §1, cl. 1; §3, cl. 4). "Under Article II, the Executive Branch possesses authority to decide how to prioritize and how aggressively to pursue legal actions against defendants who violate the law." *Id.* (internal citations and quotations omitted); *see also United States v. Nixon*, 418 U. S. 683, 693, 94 S. Ct. 3090, 41 L. Ed. 2d 1039 (1974) ("the Executive Branch has exclusive authority and absolute discretion to decide whether to prosecute a case.").

In view of the preceding cases, one thing becomes abundantly clear: President Trump is being prosecuted by President Biden. The Special Counsel may be drafting the briefs and making the oral arguments, but President Biden—*i.e.*, the Executive Branch—is in charge of the prosecution.

B. *Due to His Conflict of Interest, President Biden's Selective Prosecution of President Trump Cannot Vindicate the Public Interest*

In *Nixon v. Fitzgerald*, 457 U.S. 731, 102 S. Ct. 2690 (1982), this Court held that Presidents are absolutely immune from private suits for damages based upon their official acts. This Court reached this conclusion by articulating the following test, *to-wit*:

> It is settled law that the separation-of-powers doctrine does not bar every exercise of jurisdiction over the President of the United States. But our cases also have established that a court, before exercising jurisdiction, must balance the constitutional weight of the interest to be served against the dangers of intrusion on the authority and functions of the Executive Branch. When judicial action is needed to serve broad public interests—as when the Court acts, not in derogation of the separation of powers, but to maintain their proper balance, or to vindicate the public interest in an ongoing

> criminal prosecution—the exercise of jurisdiction has been held to be warranted.

Id. at 753-54 (internal citations omitted).

At first blush, the phrase "to vindicate the public interest in an ongoing criminal prosecution" might appear to support the Special Counsel's position since, after all, this is a criminal prosecution. *See id.* However, not all criminal prosecutions serve to vindicate the public interest.

As the Special Counsel notes, "The government's actions are … afforded a presumption of regularity 'in the absence of clear evidence to the contrary.'" Resp. to Stay App. 13 (quoting *United States v. Armstrong*, 517 U.S. 456, 464, 116 S. Ct. 1480, 1486 (1996)). That may be true. However, given the Special Counsel's reference to *Armstrong*, he should understand that when "a prosecution [has] a discriminatory effect and that it [is] motivated by a discriminatory purpose," 517 U.S. at 465, the Court may exercise judicial power over the prosecution, even though the prosecution is "a special province of the Executive." *Id.* at 464 (internal citations and quotations omitted).

Amicus respectfully submits that President Biden's criminal prosecutions of his predecessor in both this case and the case of *United States v. Trump*,

9:23-cr-80101 (S.D. Fla. 2023), can be nothing other than selective prosecution.[3]

Following his investigation into how President Biden had handed classified documents, Special Counsel Robert Hur, while acting under the authority of President Biden—*compare Mazars USA, LLP*, 140 S. Ct. at 2034 *with Nixon*, 418 U. S. at 693—recommended no action against President Biden even though he had "willfully retained and disclosed classified materials after his vice presidency when he was a private citizen."[4] Conversely, Special Counsel Smith, while also acting under President Biden's authority, obtained a warrant to search President Trump's home before indicting him for similar offenses.[5] This dual standard of prosecution is *prima facie* evidence of a

---

[3] Even though the case in Florida is not on appeal, the question before this Court would likely impact the Florida case, especially since both cases have the same Special Counsel.

[4] *See* Special Counsel Robert K. Hur, *Report on the Investigation into Unauthorized Removal, Retention, and Disclosure of Classified Documents Discovered at Locations Including the Penn Biden Center and the Delaware Private Residence of President Joseph R. Biden, Jr.*, UNITED STATES DEPARTMENT OF JUSTICE (Feb. 2024) at 1.

[5] *See United States v. Trump*, 9:23-cr-80101 (S.D. Fla, 2023), Doc. No. 85, *Superseding Indictment*, *available at* https://www.justice.gov/storage/US-v-Trump-Nauta-De-Oliveira-23-80101.pdf.

discriminatory effect. *See Armstrong*, 517 U.S. at 465.[6]

President Biden is the only person in the Executive Branch. *See Mazars USA, LLP*, 140 S. Ct. at 2034, Thus, President Biden is the only person with "exclusive authority and absolute discretion to decide whether to prosecute a case." *Nixon*, 418 U. S. at 693. Since President Biden is prosecuting a political rival who may take a $400,000 per year job away from him, *see* 3 U.S.C. §102, President Trump could argue that President Biden "selected or reaffirmed a particular course of action at least in part because of, not merely in spite of, its adverse effects upon" President Trump. *See Wayte v. United States*, 470 U.S. 598, 610, 105 S. Ct. 1524, 1532 (1985) (internal citations, quotations, and ellipses omitted). Therefore, given President Biden's strong pecuniary interest in defeating President Trump, a discriminatory purpose behind the prosecution may be inferred.

Thus, it hardly could be said that the public interest should be vindicated by questioning President Trump's official acts in a selective criminal prosecution that may also serve to influence the outcome of the next election. *Cf. Fitzgerald*, 457 U.S. at 755; *see also Armstrong*, 517 U.S. at 465. At any rate, the

---

[6] Although *Armstrong* discusses discriminatory effect in the context of a racial discrimination case, *Amicus* respectfully submits that the same logic should apply since Presidents Biden and Trump are similarly situated persons.

presumption of prosecutorial regularity could easily be rebutted. *Cf. id.* at 464.

Although the issue of selective prosecution may be relevant under the unique circumstances of President Trump's cases, such may not be a problem for future Presidents. Nevertheless, the perpetual risk of selective prosecution should inform the Court's decision. Given the inherent political nature of the Presidency, this Court should recognize that President Biden and the Special Counsel have opened a Pandora's box of malicious prosecution by indicting a former President not only once, but twice.

The prime directive for any President is to "take care that the Laws be faithfully executed." U. S. CONST. art. II, §3, cl. 4. In light of that responsibility, a President should have immunity from criminal prosecution after leaving office if he has performed his official duties in good faith. Likewise, neither the current President nor any of his subordinates should be allowed to prosecute a former President in bad faith since that would violate their sworn duties.

Questions of good faith may be difficult for any court to decide. As such, this Court should simply extend to Presidents absolute immunity for all official actions unless they have been impeached and convicted pursuant to the Impeachment Judgment Clause, which states that the Party convicted after impeachment "shall nevertheless be liable and subject to Indictment, Trial, Judgment and Punishment,

according to Law." U. S. CONST. art. I, §3, cl. 7. Then bad faith could be established conclusively.

Regardless, President Trump should be granted immunity because of President Biden's selective prosecution.

II. Even if President Biden Has Not Engaged in Selective Prosecution, President Trump Acted in Good Faith

A. President Trump Had the Affirmative Duty Under Federal Law to Combat Election Fraud

The President is vested with "power to execute the laws." *Myers v. United States*, 272 U. S. 52, 117, 47 S. Ct. 21, 71 L. Ed. 160 (1926). With this power comes the responsibility to "take Care that the Laws be faithfully executed." U. S. CONST. art. II, §3. Thus, while President Trump was still in office, he, like every other President, had the heightened duty to faithfully execute the laws of the United States.

Title 52 of the United States Code is devoted to the topic of elections. One statute contained therein is the National Voter Registration Act ("NVRA"), 52 U.S.C. §§20501, *et seq*. The NVRA declares that "the right to citizens of the United States to vote is a fundamental right," §20501 (a)(1), and that "it is the duty of the Federal, State, and local governments to promote the exercise of that right." § 20501 (a)(2).

Although the NVRA articulates specific ways that voting rights can be promoted—such as by implementing procedures for mail-in voter registration (*see* 52 U.S.C. §20505)—the law does not list all the ways by which the Government may exercise its duty to promote voting rights of citizens. Rather, the NVRA declares that the right of citizens to vote is fundamental, that the Government has a duty to promote that right, and that the specific mechanisms found in the NVRA are designed to advance those ends. *See* § 20501.

To this end, President Trump, who was vested by the Constitution with all powers of the Executive, had a statutory duty under the NVRA to promote the voting rights of citizens. *See id.* Implicitly, the President had an affirmative duty to address allegations of fraud in a Federal election so that "an individual's right to vote is not undermined by fraud in the election process." *See Burson v. Freeman*, 504 U.S. 191, 199, 112 S. Ct. 1846, 1852 (1992).

B. President Trump Acted in Accordance with His Statutory Duty to Combat Election Fraud

On November 3, 2020, then-President Trump faced now-President Biden in the 2020 presidential election. Afterwards, President Trump made numerous public assertions about the validity of the election. Broadly speaking, President Trump alleged that there had been election fraud in Pennsylvania, Arizona, and Georgia. *See United States v. Trump*, 91 F.4th 1173, at *5 (D.C. Cir. 2024) ("Judgment Under Review")

(describing the claims of election fraud made by President Trump that form the basis for the Indictment).

The question of whether election fraud actually occurred is not presently before this Court. However, this question was squarely before President Trump on the dates listed in the Indictment.

Given that combating election fraud would have advanced his statutory duty to promote the rights of citizens to vote, President Trump was within his discretion to combat the alleged fraud as he saw fit. Ergo, his actions were not just on the periphery of official conduct. Instead, they were official acts. Thus, he would have been "accountable only to his country in his political character, and to his own conscience." *Marbury v Madison*, 5 U.S. (1 Cranch) 137, 166 (1803).

The Special Counsel would probably beg to differ. After all, the Indictment alleges that President Trump: (1) used knowingly false claims of election fraud to attempt to persuade State legislators and election officials to change each State's electoral votes in his favor; (2) organized fraudulent slates of electors in seven targeted States; (3) pressed officials at the Department of Justice to conduct sham election crime investigations; and (4) tried to convince Vice-President Mike Pence to fraudulently alter the election results. *Id.* at *5-6.

However, each of these charges are predicated upon the premise that President Trump knew that the

claims of voter fraud were false. Thus, if President Trump's claims of election fraud were true—or if he sincerely believed they were true even if they were false—this Indictment would fail on its face because the requisite specific intent would be absent.

Amicus respectfully submits that President Trump could not have proven his allegations of fraud—regardless of their veracity—given the constraints he faced. *Amicus* will briefly explain why.

Under the statutory framework in force in 2020, President Trump had exactly 35 days—and no more—to contest the election in court.[7] Normally, litigants could hardly expect to adjudicate a complicated matter in only five weeks. Responsive pleadings are due 21 days after a defendant has been served with process. *See* Fed. R. of Civ. Proc. 12 (a)(1)(A)(i) ("… a defendant must serve an answer within 21 days after being served …"). Also, litigants are usually unable to begin discovery prior to the Rule 26 (f) discovery conference. *See* Fed. R. of Civ. Proc. 26 (d)(1). ("A party may not seek discovery from any source before the

---

[7] The electors met on December 14, 2020, pursuant to 3 U.S.C. §7 (2020) (stating that electors meet on the first Monday after the second Wednesday in December). And pursuant to 3 U.S.C. §5 (2020), the so-called "Safe Harbor" deadline was six days before the meeting of the electors, or in this case, December 8, 2020.

parties have conferred as required by Fed. R. of Civ. Proc. 26 (f), except … by court order.")

Thus, under normal circumstances, it would be impossible for a plaintiff to file a complaint, serve process, respond to a motion to dismiss, conduct discovery, and take matters to trial in the space of five weeks. And if that plaintiff were to allege that fraud had been committed in multiple jurisdictions, like President Trump did, the task would be even more insurmountable.

Granted, courts may implement scheduling orders to accelerate time-sensitive matters. *See*, *e.g.*, Fed. R. of Civ. Proc. 16 (b) (describing scheduling orders). And, of course, motions for temporary restraining orders can be done rather quickly. *See* Fed. R. of Civ. Proc. 65 (b). Even so, a motion for a temporary restraining order must be verified or be based on affidavits. *See id.* However, if the plaintiff is unable to compel the production of evidence because there has been no Rule 26 (f) conference, he must make do with whatever evidence he has at his disposal. Even if fraud truly has occurred, that still may not be enough.

Regardless of how evidence of election fraud is presented to a court, the sheer task of initiating, prosecuting, and concluding what would be tantamount to

a racketeering case in the space of only 35 days seems Herculean at best.[8]

Fortunately, an aggrieved presidential candidate has another route to seek relief. He can petition the legislatures of the several States to appoint the electors directly. As this Court observed 23 years ago:

> [T]he State legislature's power to select the manner for appointing electors is plenary; it may, if it so chooses, select the electors itself, which indeed was the manner used by State legislatures in several States for many years after the Framing of our Constitution.

Bush v. Gore, 531 U.S. 98, 104, 121 S. Ct. 525, 529 (2000). “There is no doubt of the right of the legislature to resume the power at any time, for it can neither be taken away nor abdicated.” *Id.* (internal quotation marks and citation omitted).

Whether a given legislature has the will to appoint electors directly is, obviously, a political question that can only be answered following heated

---

[8] Given the Special Counsel’s posture toward the actions of President Trump and his supporters, any lawyer thinking about representing a failed presidential candidate in the future would do so at great peril to his law license and to his personal liberty—even if his client is correct. Sadly, this reality should embolden bad actors, both at home and abroad, to attempt to manipulate future elections since they will likely proceed without fear of reprisal.

debate. Nevertheless, if an aggrieved candidate does not obtain the legislative relief he seeks—or if he does and his opponent takes exception thereto—either side may proceed to Congress, where the votes are tabulated.

Under the laws in force on January 6, 2021, the electoral votes from any given State could have been contested upon the written motion of one Representative and one Senator. *See* 3 U.S.C. §15 (2020) ("Every objection shall be made in writing, ... and shall be signed by at least one Senator and one Member of the House of Representatives before the same shall be received.") Then, the two Houses concurrently could have rejected the vote or votes. *Id.*

The statutory framework referenced above is unconstitutional because it presents an unlawful legislative entrenchment. Congress, by codifying these rules into law—instead of merely passing a joint resolution—has made it impossible for future Congresses to change these rules without (1) obtaining the approval of the President or (2) getting a two-thirds majority in both chambers to override a veto. *See* U. S. CONST. art. I, §7, cl. 2 (describing how a bill becomes law). This is in violation of this Court's holding that "one legislature cannot abridge the powers of a

succeeding legislature." *Fletcher v. Peck*, 10 U.S. (6 Cranch) 87, 135 (1810).[9]

Assuming that *Amicus* is correct, the only valid rules for counting electors would be found in the Twelfth Amendment. As such, the only arbiter as to the validity of an electoral vote would be the person counting the votes, *i.e.,* the Vice President, acting in his capacity as President of the Senate. *Cf.* U. S. CONST. amend. XII ("… [T]he President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates and the votes shall then be counted.") If the Vice President had felt uncomfortable making that call, then as President of the Senate, he could have called upon the Senate to give him guidance as to how to proceed.

Reasonable minds may differ as to the proper role of the Vice-President in the counting of electoral votes. Nevertheless, President Trump was well within his rights—not only as an aggrieved candidate, but also as a President seeking to maintain election

---

[9] *See also* Jack Beermann & Gary Lawson, *The Electoral Count Mess: The Electoral Count Act of 1887 Is Unconstitutional, and Other Fun Facts (plus a Few Random Academic Speculations) about Counting Electoral Votes*, 16 FIU L. REV. 297 (2022); Chris Land & David Schultz, *On the Unenforceability of the Electoral Count Act*, 13 Rutgers J. L. & Pub. Pol. 3 (2016); Vasan Kesavan, *Is the Electoral Count Act Unconstitutional*, 80 N.C. L. Rev. 1653 (2002).

integrity—to ask the Vice-President to disregard any vote where election fraud had occurred.

Thus, a case could be made that President Trump was acting in good faith to stop what he sincerely believed was election fraud, but that he was unable to prove his case because time was not on his side.

C. President Trump's Actions Should Be Immune from Prosecution Since They Were Discretionary Acts in Furtherance of His Official Duty to Combat Election Fraud

President Trump chose to fulfill his constitutional duty to faithfully execute the NVRA by taking various steps—ranging from filing lawsuits, petitioning state legislatures, lobbying the Vice-President to act, and by calling upon his supporters to peacefully protest at the U.S. Capitol.

President Trump—being the only person who alone comprised a branch of government, *see Mazars USA, LLP*, 140 S. Ct. at 2034—had the statutory duty to stop election fraud pursuant to the NVRA. Thus, the methods he chose were discretionary acts in pursuit of his official duties under Federal law.

In *Marbury*, Chief Justice Marshall opines:

> By the constitution of the United States, the President is invested with certain important political powers, in the exercise of which he is to use his own

> discretion, and is accountable only to his country in his political character, and to his own conscience.

Id. at 165-66. Thus, President Trump's acts as complained of in the Indictment cannot be questioned by this or any other Court since they were official acts in furtherance of his statutory and constitutional duties. *See id.* Therefore, the Indictment must be dismissed.

The Indictment is an attempt by President Biden, acting by and through the Special Counsel, to pass judgment upon how President Trump chose to address questions of election fraud. *Cf. id.* at 166 (describing how the President's officers act by his authority and in conformity with his orders). Therefore, it is an obvious attempt to criminalize public policy.

Amicus respectfully submits that if the Government is permitted to proceed with this case, the criminalization of public policy will never cease, and this great nation will never be the same.

CONCLUSION

This Honorable Court should hold that President Trump is immune from criminal prosecution for the actions complained of in the Indictment because of his presidential immunity.

Respectfully Submitted,

MATTHEW D. WILSON
Counsel of Record
2218-B West Main Street
Tupelo, MS 38801
(662) 260-6544
lawyermatt@betteraskmatt.com
Counsel for Amicus Curiae

March 12, 2024