

**Skelton
Taintor
& Abbott**

ATTORNEYS AT LAW

January 10, 2024

Via Hand Delivery

Tamara Rueda, Clerk
KENNEBEC SUPERIOR COURT
1 Court Street, Suite 101
Augusta, Maine 04330

**RE: Donald J. Trump v. Shenna Bellows, Kimberly Rosen, Thomas Saviello and Ethan Strimling
Docket No. KENSC-AP-24-01**

Dear Ms. Rueda:

I enclose for filing in the above matter the Amicus Curiae Brief of Respondent and Party-in-Interest Hon. David F. Emery and Entry of Appearance of Grady Burns as counsel for Hon. David F. Emery.

Please do not hesitate to contact me with any questions.

Sincerely,



Grady R. Burns

GRB/djs

Enclosures

cc: Hon. David F. Emery (w/enc.) *Via E-mail*
Patrick Strawbridge, Esq. (w/enc.) *Via E-mail*
CREW (w/enc.) *Via E-mail*
Thomas A. Knowlton (w/enc.) *Via E-mail*
Jason Anton (w/enc.) *Via E-mail*
Ben Hartwell (w/enc.) *Via E-mail*
R. Coleman (w/enc.) *Via E-mail*
Gary Lawkowski (w/enc.) *Via E-mail*
Bruce Hepler (w/enc.) *Via E-mail*
Scott Gessler (w/enc.) *Via E-mail*
Ben Gaines (w/enc.) *Via E-mail*
Thomas Vaseliou (w/enc.) *Via E-mail*

AUGUSTA COURTS
JAN 10 '24 PM2:11

MAINE JUDICIAL BRANCH

DONALD J. TRUMP Plaintiff

"X" the court for filing:

Superior Court District Court

Unified Criminal Docket

County: KENNEBEC

V.

SHENNA BELLOWS Defendant

Location (Town): AUGUSTA

Kimberly Rosen, Thomas Saviello and Other Party (if any)

Docket No. AP-24-01

Ethan Strimling

ENTRY OF APPEARANCE

The Clerk will please enter my appearance **as counsel** for plaintiff defendant other party, (*print party's name*) Hon. David F. Emery, Amicus Curiae

OR

The Clerk will please enter my appearance **as a self-represented** plaintiff defendant other party, (*print your name*) _____

Date (mm/dd/yyyy): 01/10/2024



Signature

Name: Grady R. Burns, Esq.

Bar Number: Bar No. 6605

Address: Skelton, Taintor & Abbott

500 Canal Street

Lewiston, ME 04240

Telephone: 207-784-3200

Email: gburns@sta-law.com

PLEASE NOTE: This Appearance should be signed by a member of the Bar of Maine or by the party if appearing pro se, filed with the Clerk and a copy served upon each of the parties.

AUGUSTA COURT
JAN 10 '24 PM 2:11

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STATE OF MAINE
KENNEBEC, SS

SUPERIOR COURT
CIVIL ACTION
DOCKET NO. AP-24-01

DONALD J. TRUMP)
)
 Petitioner,)
)
 v.)
)
 SHENNA BELLOWS, in her official)
 Capacity as **Secretary of State, STATE OF**)
 MAINE)
)
 Respondent.)
)
 AND KIMBERLEY ROSEN, THOMAS)
 SAVIELLO, and ETHAN STRIMLING,)
)
 Parties-in-Interest.)

BRIEF OF *AMICUS*
***CURIAE* HON.**
DAVID F. EMERY
ON BEHALF OF
RESPONDENT
AND PARTIES-IN-INTEREST

INTEREST OF *AMICUS CURIAE*

Amicus curiae David F. Emery (“Mr. Emery”) is a former member of Congress, Maine legislator, and lifelong member of the Republican Party. Born in Rockland, Mr. Emery was elected to the Maine House of Representatives in 1970. From 1975 to 1983, Mr. Emery represented Maine’s 1st Congressional District in the United States House of Representatives, becoming House Republican Chief Deputy Whip. Mr. Emery continued his public service after leaving Congress, including as Deputy Director of the United States Arms Control and Disarmament Agency from 1983 to 1988, and as Maine’s Deputy Commissioner of the Maine Department of Administrative and Financial Services from 2011 to 2012. On several occasions, Mr. Emery took an oath to support the U.S. Constitution. Mr. Emery supports the rule of law, particularly to protect the

democratic processes that ensure representative government to Mainers and thus has an interest in this case.

ARGUMENT

A public servant's oath to the Constitution, whether as a president, congressperson, or judge, is the embodiment of his or her commitment to the rule of law. It transcends personal, political, and party interest and requires service to the public interest according to the Constitution, even when a public servant would prefer to take another path. That is never more important than when a person in the ultimate position of public trust and power, as President of the United States, having sworn an oath to and then attacked the Constitution itself to attempt to put himself beyond its reach, demands the chance to do so again. That is what Section 3 seeks to prevent.¹

Nevertheless, Petitioner and his allies argue that *even if Petitioner engaged in insurrection*, applying the Constitution to Petitioner is “undemocratic.” That is both wrong and dangerous. First, the Constitution sets the parameters of our democratic processes. In addition to Section 3, it limits voter choice for President—for the common good—to natural born citizens 35 and older who have lived in the United States for 14 years and are not term-limited.² No one would argue that Mainers would be required accept Barack Obama or George W. Bush on the 2024 ballot, no matter their respective popularity: each has served the maximum allowable two terms as President. These are the rules of our democracy, and enforcing them is never undemocratic.

Second, Petitioner created his own ineligibility by *attempting to overturn a democratic election*. Section 3 disqualification applies only after oath breakers demonstrate their disloyalty to the Constitution and, by extension, the voters. Over 81 million Americans (including 435,072

¹ U.S. Const. amend XIV, § 3; Report of the Joint Committee on Reconstruction, at the first session, Thirty-Ninth Congress (Government Printing Office: Washington, DC, 1866), p. xix; *see United States v. Powell*, 65 N.C. 709 (C.C.D.N.C. 1871).

² U.S. Const. art. II, § 1, cl. 5; U.S. Const. amend XXII.

Mainers) voted for Petitioner's opponent in 2020.³ Petitioner responded with a concerted effort to disenfranchise them, ultimately inciting a mob to violently attack their elected representatives to deny their elected choice.⁴ Petitioner continues to support the attackers and repeat the lies that he used to incite them.⁵ Petitioner's claim that it is undemocratic to enforce Section 3 in response to his attack on democracy itself confirms his disdain for the Constitution; indeed, in December of 2022, Petitioner suggested that he could abide "termination of all rules, regulations, and articles, even those found in the Constitution."⁶

Third, Petitioner ignores that Section 3 has an amnesty provision by which two-thirds of Congress can cure his disqualification.⁷ That is the mechanism by which public support can override the Constitution's protections against insurrectionists and rebels. That that amnesty requires a supermajority only highlights the hollowness of Petitioner's claim that his status as the frontrunner for a party's nomination for President (who has lost two national popular votes and the 2020 presidential election) means that his insurrection against the Constitution should be ignored.⁸

In January 1977, the 95th Congress certified the victory of President Carter over a Republican incumbent in a presidential election that was closer than the one in 2020.⁹ President Ford did not seek to weaponize the certification process by which Congress counts electoral votes,

³ Official 2020 Presidential General Election Results, Federal Election Commission (<https://www.fec.gov/resources/cms-content/documents/2020presgeresults.pdf>) ("2020 Results").

⁴ See generally, *Final Report, Select Committee to Investigate the January 6th Attack on the United States Capitol*, HR 117-663, 117th Cong., 2d Sess. (Dec. 22, 2022).

⁵ See, e.g., *Iowa Campaign Trail Recap: Trump Calls Jan. 6 Rioters Serving Prison Terms 'Hostages'*, NBC News, Jan. 6, 2024, <https://www.nbcnews.com/politics/2024-election/live-blog/election-2024-live-updates-rcna132639>.

⁶ Hope Yen, *Trump Rebuked for Call to Suspend Constitution Over Election*, AP, Dec. 4, 2022, <https://apnews.com/article/social-media-donald-trump-8e6e2f0a092135428c82c0cfa6598444>

⁷ U.S. Const. amend XIV, § 3.

⁸ *Id.*

⁹ *Compare 2020 Results with 1976 Electoral College Results*, National Archives (<https://www.archives.gov/electoral-college/1976>).

let alone use it, as Petitioner did, as an opportunity to incite an insurrection to disrupt the transfer of power. The Constitution expects disagreement in elections. It provides room and opportunity for dissent, sometimes exercised symbolically by objections to Electoral College certification.¹⁰ But it rejects insurrections to thwart the Constitutional transfer of power like the one undertaken by Petitioner in the wake of his loss in the 2020 election. On that issue, the Constitution is clear. Petitioner Donald J. Trump violated his oath and is ineligible for public office.

January 10, 2024

Respectfully Submitted



Grady R Burns, Bar No. 6605
Skelton Taintor & Abbott
500 Canal Street
Lewiston, ME 04240
(207) 784-3200
Counsel for Amicus Curiae Hon. David F. Emery

¹⁰ See Nicholas Kapoor, *Bent but not Broken: The Constitutional, Legal, and Procedural Issues in the 2020 Electoral College Vote Certification*, EJournal of Pub. Affs. at 111.