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Amicus Brief of Children's Rights Legal Scholars and Advocates as Amici Curiae in Support of Neither Party: *Trump v. Anderson*

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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 CHILDREN'S RIGHTS LEGAL
SCHOLARS AND ADVOCATES AS *AMICI
CURIAE* IN SUPPORT OF NEITHER PARTY**

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INTERESTS OF *AMICI CURIAE*¹

Amici are children’s rights legal scholars and advocates.² *Amici* submit this brief to draw attention to constitutional text, history, and this Court’s precedent that unequivocally provide special protection for children and future generations in our constitutional democracy. Thus, *amici’s* analysis sets forth important guardrails for evaluating Section 3 of the Fourteenth Amendment and the Court’s role in protecting the perpetuity of the nation and the rule of law, not just for the voters in 2024, but for those who cannot vote and who make up the powerless majority of our Republic.

SUMMARY OF ARGUMENT

Too often constitutional interpretation centers adults and neglects children and future generations. This is especially true in cases, like this one, where children are not parties. The present controversy on how best to protect our democracy centers around the rights of adult voters to choose their favored political candidates and how to interpret the Constitution’s guardrails for who may hold office. Petitioner Trump writes that in 2020 he “received more than 74 million votes nationally” of registered adult voters. Pet. at 18. The U.S. census counts 74 million children under eighteen in 2024, who have no right to vote, which

¹ This brief was not authored, in whole or in part, by counsel for either party, and no person other than *amici* contributed monetarily to the preparation or submission of this brief.

² A full list of *amici* can be found in the Appendix.

accounts for 22% of our nation’s population.³ That number is growing. The number of yet-to-be-born Americans, “our Posterity,” vastly exceeds these numbers in perpetuity. *Amici* bring those voiceless interests to bear on these vital constitutional questions.

Amici write, not to urge a particular merits outcome to the questions presented, but to advocate for a judicial review process that (1) is true to constitutional text and this Court’s precedent, (2) accounts for non-voting children and future generations who fall within the protections of the counter-majoritarian provisions of the Constitution, and (3) embraces the perpetuity principle over the political question doctrine.

This case presents a tension between the fundamental right to vote for democratically elected representatives and the counter-majoritarian provisions of the Constitution guarded by this Court that protect everyone’s liberty interests and the perpetuity of the nation as a constitutional democracy. Even though children and future generations are not parties to this case, they will endure its long-lasting effect from the 2024 presidential election certainly, but also in the decades to follow if their democratic institutions cannot effectively respond to future attempts at “insurrection or rebellion” against the Constitution of the United States. Neither political party’s leading primary candidate in 2024 will walk the earth long enough to witness the most significant ramifications of this Court’s judgment. Centering children’s and posterity’s rights in the analysis will

³ U.S. Census Bureau, *Quick Facts*, <https://www.census.gov/quickfacts/fact/table/US/AGE295222>.

shine light on the long-term, as well as the immediate, consequences of this Court's ruling as it considers the questions presented. *Amici* respectfully offer that the rights of children and future generations may ultimately provide a more stable anchor on which to moor such a profound decision than the waves and swells of today's political storm.

Fundamental to constitutional democracy is the rule that voters cannot by vote violate the Constitution and the Fourteenth Amendment any more than politicians can. The Constitution “withdraw[s] certain subjects from the vicissitudes of political controversy, to place them beyond the reach of majorities and officials and to establish them as legal principles to be applied by the courts.” *West Virginia State Bd. of Educ. v. Barnette*, 319 U.S. 624, 638 (1943). For instance, voters cannot through elections vote away the fundamental right to bear arms,⁴ to marry,⁵ to attend integrated schools,⁶ to freely speak one's mind without government interference,⁷ or to be free of discrimination based on gender⁸ or race.⁹

Voters would need to seek to amend the Constitution, through the designated process, to

⁴ *District of Columbia v. Heller*, 554 U.S. 570 (2008); *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 597 U.S. 1 (2022).

⁵ *Loving v. Virginia*, 388 U.S. 1 (1967).

⁶ *Brown v. Bd. of Educ. of Topeka*, 347 U.S. 483 (1954); *Swann v. Charlotte-Mecklenburg Bd. of Educ.*, 402 U.S. 1 (1971).

⁷ *Kennedy v. Bremerton Sch. Dist.*, 597 U.S. 507 (2022); *Mahoney Area Sch. Dist. v. B.L.*, 141 S. Ct. 2038 (2021).

⁸ *United States v. Virginia*, 518 U.S. 515 (1996).

⁹ *Loving*, 388 U.S. 1; *Brown*, 347 U.S. 483.

invade those enshrined rights. U.S. Const. art. V. Some of the counter-majoritarian constitutional guardrails, like Section 3, which are deliberately designed to prevent majoritarian oppression and tyranny, otherwise require “a vote of 2/3 of each house,” to “remove such disability.” U.S. Const. amend. XIV, § 3.

In 1830, in his final Advice to My Country, James Madison said, “[t]he advice nearest to my heart and deepest in my convictions is that the Union of the States be cherished & perpetuated.”¹⁰ Importantly, this Court’s analysis of Section 3 of the Fourteenth Amendment ought to consider the rights of children and future generations in realizing the Framers’ conviction. The perpetuity of the Republic depends, in part, on the power of the Court to interpret and enforce the counter-majoritarian constitutional guardrails, like Section 3, to ensure the nation our children and future generations inherit is not governed by those who “shall have engaged in insurrection or rebellion against the same, or given aid and comfort to the enemies thereof.”¹¹ U.S. Const. amend. XIV, § 3.

¹⁰ 4 *The Virginia Historical Register, and Literary Note Book* 118 (William Maxwell ed., 1851), <https://archive.org/details/virginiahistoric00maxw>; *James Madison: Advice to my Country, December 1830*, Founders Online, National Archives, <https://founders.archives.gov/documents/Madison/99-02-02-2231>.

¹¹ After securing independence for the new nation, George Washington recognized that “the destiny of unborn millions” rested on the guardrails against abuses of power the new nation would create, cautioning that “whatever measures have a tendency to dissolve the Union, or contribute to violate or lessen

Amici do not take a position here whether or not Petitioner falls within the scope of the Fourteenth Amendment, Section 3, but that question looms large for the nation our children and future generations will inherit and the systems of justice they will seek to access and uphold.¹² It is a profoundly important constitutional question for our children, and theirs, whether the voters of a single election can vote into the Executive Office of the President any person who

the Sovereign Authority, ought to be considered as hostile to the Liberty and Independency of America[.]” *From George Washington to The States, 8 June 1783*, Founders Online, National Archives, <https://founders.archives.gov/documents/Washington/99-01-02-11404>. Without preserving the perpetuity of the Republic, Washington warned, “there is a natural and necessary progression, from the extreme of Anarchy to the extreme of Tyranny, and that arbitrary power is most easily established on the ruins of Liberty abused to licentiousness.” *Id.*

¹² *Amici* also do not argue here about the appropriate venue for the Article 3 determination or the standard of review the trial court or appellate court should use in reviewing the factual record developed in the trial court. Rather, like any important constitutional question, findings of fact supported by a factual record and cross-examined evidence, while affording due process to the parties, is foundational in our system of justice. *See, e.g., Brown v. Bd. of Educ.*, 347 U.S. 483, 486 n.1 (1954) (four district court records); *Brown v. Plata*, 563 U.S. 493, 499-500 (2011) (two district courts); *Obergefell v. Hodges*, 576 U.S. 644 (2015) (three final decisions for plaintiffs and one preliminary injunction); *Grutter v. Bollinger*, 539 U.S. 306 (2003); *Lawrence v. Texas*, 539 U.S. 558 (2003); *Furman v. Georgia*, 408 U.S. 238 (1972); *Atkins v. Virginia*, 536 U.S. 304 (2002); *Roper v. Simmons*, 543 U.S. 551 (2005); *see also New York State Rifle & Pistol Ass’n, Inc. v. Bruen*, 597 U.S. 1, 25 n.6 (2022) (“The job of judges is not to resolve historical questions in the abstract; it is to resolve *legal* questions presented in particular cases or controversies. . . . Courts are thus entitled to decide a case based on the historical record compiled by the parties.”).

may be found to have committed insurrection or rebellion against the Constitution of the United States in a lawful proceeding in an appropriate venue, especially when that duly-elected President may then pardon other insurrectionists and appoint to high offices those who would ignore the rule of law and disavow an oath to defend the U.S. Constitution and the Republic. This Court's opinion should ensure that children's rights of equal protection of the law, including their interests under Section 3, are respected.

ARGUMENT

I. The Constitution and the Court's Precedent Establish the Fourteenth Amendment Should Be Interpreted in Light of the 74 Million Children Who Cannot Vote and the Posterity Clause.

Through our Nation's children "we inculcate and pass down many of our most cherished values, moral and cultural." *Moore v. City of East Cleveland*, 431 U.S. 494, 503–04 (1977) (plurality opinion). "Children occupy a unique place in our Republic. They are, among other things, the representatives of our future and a 'new frontier' where we as a society can begin again and succeed in solving the social problems that frustrate us."¹³ While "children" are not explicitly named in the Constitution, the Framers laid the foundation for this Court's growing body of precedent

¹³ Alice Sardell & Harvey Catchen, *Expanding Health Care for Children, in* Child, Parent, and State: Law and Policy Reader 442 (S. Randall Humm et al. eds., 1994).

that the blessings of liberty be passed down to each child, generation after generation.

A. The Constitutional Text Explicitly Protects Children and Expresses the Intergenerational Philosophy of the Framers's Constitutional Meaning.

The Constitution unequivocally provides protection for children and future generations. The Fourteenth Amendment, Section 3 should be interpreted not only on its face and original meaning, but in light of the original constitutional text of the Posterity and Corruption of Blood Clauses. The Posterity Clause explicitly names future generations as the beneficiaries of the constitutional framework and democracy itself. The Corruption of Blood Clause unambiguously protects children from suffering the burdens imposed on them by adults for matters beyond their control. U.S. Const. art. III, § 3, cl. 2.

John Locke's refinement of intergenerational rights and responsibilities inherited from the ancient Greeks and Romans exerted profound influence on America's Framers.¹⁴ John Locke, *Second Treatise of Government* ¶ 116 (1690) ("whatever Engagements or Promises any one has made for himself, he is under the Obligation of them, but cannot by any Compact whatsoever, bind his children or Posterity"). The intergenerational concern is expressed explicitly in the Constitution's Preamble:

¹⁴ Forrest McDonald, *Novus Ordo Seclorum: The Intellectual Origins of the Constitution* ix (1985) ("that the central argument of the Declaration is based mainly upon John Locke's *Second Treatise* is indisputable"); *id.* at 7 (noting Locke's influence in the constitutional convention).

We the People of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defence, promote the general Welfare, and secure the Blessings of Liberty to *ourselves and our Posterity*, do ordain and establish this Constitution for the United States of America.

U.S. Const. pmbl. (emphasis supplied).

“In expounding the Constitution . . . *every* word must have its due force, and appropriate meaning; for it is evident from the whole instrument, that no word was unnecessarily used, or needlessly added.” *Holmes v. Jennison*, 39 U.S. 540, 570-71 (1840) (emphasis supplied). While “[t]he preamble . . . cannot confer any power *per se* Its true office is to expound the nature, and extent, and application of the powers actually conferred by the constitution”¹⁵ The Posterity Clause names the beneficiaries of the powers, rights, and safeguards enumerated elsewhere in the Constitution—“ourselves and our Posterity.” Every other constitutional provision, including the rights and restrictions of the Fourteenth Amendment and the Article III provision of equitable jurisdiction to the federal courts, should be construed in this intergenerational light.¹⁶

¹⁵ 1 Joseph Story, *Commentaries on the Constitution of the United States* § 462 (2d ed. 1885).

¹⁶ See Jim Gardner, *Discrimination Against Future Generations: The Possibility of Constitutional Limitation*, 9 *Env’t L.* 29, 35, 33 (1978) (“The statement in the Preamble that the Constitution was established to secure the blessings of liberty for ‘posterity’ bears [a] relationship to certain remaining provisions

Article III, Section 3, Clause 2 of the Constitution says “no attainder of treason shall work corruption of blood, or forfeiture, except during the life of the person attained.” The Corruption of Blood Clause directly secures the blessings of liberty to children by rejecting the practice of punishing children for the actions of their parents. Colloquially stated, the “sins of the fathers” shall not be passed to children and future generations. 3 Joseph Story, *Commentaries on the Constitution of the United States* § 1294 (1833). Treason was considered such a terrible act in English law that the traitor’s property would not pass to their children and the children retained the debts of their father. Attainder meant “civil death” and applied to the attained as well as their children.¹⁷ The Corruption of Blood Clause provides one of the few explicit rights named in the 1787 Constitution, and it unequivocally protects children.¹⁸ The Framers were

in the Constitution: it articulates a constitutional policy which subsequent provisions translate into specific guarantees and safeguards. . . . ‘[P]olicies’ such as the principle of intergenerational fairness may in certain circumstances limit the power of state and federal governments to impose disadvantages on future generations.”).

¹⁷ “[A]ll the property of one attainted, real and personal, is forfeited; his blood is corrupted, so that nothing can pass by inheritance to, from, or through him; . . . and thus, his wife, children, and collateral relations suffering with him, the tree, falling, comes down with all its branches.” Joel Prentiss Bishop, *Bishop on Criminal Law* § 967 (John M. Zane & Carl Zollman eds., 9th ed. 1923) (footnote omitted) (explaining the corruption of blood penalty in English Law); 2 William Blackstone, *Commentaries on the Laws of England* 251–54 (1765).

¹⁸ At the time of the founding these clauses benefited certain children who were white and whose parents owned property and wealth, but the Corruption of Blood Clause was nonetheless

intent on not imposing burdens on children and all posterity by allowing government to take something as foundational as property from the child, while burdening them with the actions of their forebears.¹⁹ 3 Joseph Story, *Commentaries on the Constitution* § 1294 (“Thus the innocent are made the victims of a guilt, in which they did not, and perhaps could not, participate; and the sin is visited upon remote generations.”).

This Court has affirmed that the Corruption of Blood Clause was introduced in the Constitution to protect children. *Wallach v. Van Riswick*, 92 U.S. 202, 210 (1875) (“No one ever doubted that it was a provision introduced for the benefit of the children and heirs alone; a declaration that the children should not bear the iniquity of the fathers.”); *Illinois Cent. R.R. Co. v. Bosworth*, 133 U.S. 92, 102 (1890). Through this explicit constitutional text, the Framers anticipated treason and sought to prevent the act of treason against the Republic from unduly burdening the next generation’s opportunity for liberty.

among the few provisions establishing specific individual rights in the original Constitution, indicating the importance to the Framers of centering protection of the generations who would inherit the Republic.

¹⁹ Madison wrote in the Federalist Papers that the Corruption of Blood Clause was designed to prevent government “from extending the consequences of guilt beyond the person of its author.” The Federalist No. 43, at 269 (James Madison) (Henry Cabot Lodge ed., 1888). Hamilton wrote in the Federalist Papers that the Corruption of Blood Clause and the Bill of Attainder Clause were two constitutional provisions that secured important individual liberties. The Federalist No. 84, at 534 (Alexander Hamilton) (Henry Cabot Lodge ed., 1888).

B. The Fourteenth Amendment is for Children, Too, Not Only Adult Voters.

As the Court interprets Section 3, it is also critical to remember that “neither the Fourteenth Amendment nor the Bill of Rights is for adults alone.” *In re Gault*, 387 U.S. 1, 13 (1967). It equally protects our Nation’s children, especially those who have not yet gained the right to vote. *Levy v. Louisiana*, 391 U.S. 68, 70 (1968) (“We start from the premise that . . . children . . . are humans, live, and have their being. They are clearly ‘persons’ within the meaning of the Equal Protection Clause of the Fourteenth Amendment.”). Thus, the constitutional issue the Court faces is not as binary as should the voters alone decide, and should the Court abstain from deciding, the question of whether someone who may meet the criteria of insurrection or rebellion under Section 3 of the Fourteenth Amendment can “hold any office, civil or military, under the United States,” including the Office of the President.

The Court’s role in upholding the Fourteenth Amendment, including Section 3, is also to protect the equal rights of those not yet eligible to vote, but who one day will be—children and future generations. The counter-majoritarian provisions in the constitutional text protect the fundamental rights and liberty interests of children and future generations who cannot vote, as much as the fundamental rights and liberty interests of the 74 million adults who, in 2020, voted for former President Trump or the 81 million adults who voted for President Biden.²⁰

²⁰ Arguably, the extra-protection afforded children in other contexts would extend here given children’s lack of access to the

Broadly speaking, the Fourteenth Amendment was a promise to align our Nation’s practices with the founding democratic ideals of not imposing special disabilities or harm on groups of people “by virtue of circumstances beyond their control.” *Plyler v. Doe*, 457 U.S. 202, 216 n.14 (1982); Catherine E. Smith, *Equal Protection for Children of Same-Sex Parents*, 90 Wash. U. L. Rev. 1589, 1608 (2013). Without suffrage rights, children are in a particularly vulnerable position and depend heavily on the counter-majoritarian constitutional provisions to protect them from abuses of majoritarian political power and government-imposed harm.

Further, through interpretation of the Fourteenth Amendment equal protection clause, this Court has repeatedly expressed special solicitude for children when those in political power inflict on them a lifetime of hardship for matters beyond their control. *Levy*, 391 U.S. 68 (protecting the equal rights of children of unwed parents to sue for parent’s wrongful death); *Weber v. Aetna Cas. & Sur. Co.*, 406 U.S. 164 (1972) (protecting the right of children of unwed parents to collect deceased parent’s workers’ compensation); *Brown*, 347 U.S. 483 (protecting children from racially segregated school systems); *Plyler*, 457 U.S. 202 (protecting undocumented children from exclusion from the public school system); *United States v.*

ballot. The Court should not presume that adult voters represent children’s interests and even if they did, an adult may still cast only a single vote even for a family of three. Catherine E. Smith, “*Children’s Equality Law*” in *the Age of Parents’ Rights*, 71 Kan. L. Rev. 533, 539 (2023) (“There are times when parents do not possess the requisite political power to protect their children, and young people—and their rights—play a formidable role in protecting themselves and the groups to which they belong.”).

Windsor, 570 U.S. 744 (2013) (protecting children of same-sex couples from humiliation and inferior benefits). When children bear the adverse consequences of majoritarian political power for matters over which they have no control, this Court has held those burdens constitute an “area of special constitutional sensitivity,” warranting a heightened level of review. *Plyler*, 457 U.S. at 226. Disadvantaging children because of their parents’ status or conduct violates “the basic concept of our system that legal burdens should bear some relationship to individual responsibility.” *Id.* at 220 (citing *Weber*, 406 U.S. at 175). This Court’s constitutional treatment of children in giving them special solicitude when the law imposes unjust burdens on them is consistent with the original text of the Corruption of Blood and the Posterity Clauses discussed above.

This Court has afforded special consideration to children’s rights and wellbeing in nearly every area of law, but this is especially true when the consideration of the right at issue might result in grave consequences on the child’s life or liberty. *Roper*, 543 U.S. at 575 (holding that capital punishment of a child who committed the crime under the age of eighteen, as opposed to an adult, is a violation of the Eighth Amendment); *Miller v. Alabama*, 567 U.S. 460, 489 (2012) (holding that mandatory life-without-parole sentences for children is cruel and unusual punishment, unlike adults); *Montgomery v. Louisiana*, 577 U.S. 190, 206 (2016) (extending the Court’s decision in *Miller* to apply retroactively to children sentenced to mandatory life-without-parole); *Safford Unified Sch. Dist. No. 1 v. Redding*, 557 U.S. 364, 376–77 (2009) (holding that a strip search of a middle school student violated the student’s

constitutional right of privacy); *New Jersey v. T.L.O.*, 469 U.S. 325, 336 (1985) (holding that Fourth Amendment protects minors from unreasonable searches and seizures by public school officials); *Goss v. Lopez*, 419 U.S. 565, 576 (1975) (holding that school officials could not impose a 10-day suspension on students without Due Process); *Breed v. Jones*, 421 U.S. 519, 541 (1975) (holding that “the prosecution of respondent [a minor] in Superior Court, after an adjudicatory proceeding in Juvenile Court, violated the Double Jeopardy Clause of the Fifth Amendment”); *In re Winship*, 397 U.S. 358, 368 (1970) (holding that “as a matter of due process * * * the case against [a minor] must be proved beyond a reasonable doubt” in juvenile adjudications) (ellipsis in original); *In re Gault*, 387 U.S. at 33–34, 41, 55 (holding that children are guaranteed rights under the Due Process Clause and Bill of Rights in juvenile adjudication proceedings); see Barbara Bennett Woodhouse, *The Courage of Innocence: Children As Heroes in the Struggle for Justice*, 2009 U. Ill. L. Rev. 1567, 1577 (2009).

That courts play this mediating role of balancing concerns between the government and the rights of children has been reflected in both the civil and criminal context, particularly when life and significant liberty interests are at stake. In the context of Section 3, children deserve special solicitude here, too, when the Court interprets the Constitution and weighs the arguments of the parties. The enforcement (or lack thereof) of the constitutional guardrail around preventing those who commit insurrection or rebellion from holding office will affect the lives and liberties of 74 million children and counting. As children’s rights expert Professor Woodhouse explains, “[n]o right is absolute and

children’s rights must be weighed in the balance with other competing claims of rights and authority. However, the power adults exercise over children – as parents, legislators, and judges – should not be taken for granted, but must be justified as furthering children’s interests and meeting their special needs.”²¹

This Court’s precedent is consistent with the Framers’ conviction that children should not be burdened with the harmful choices of their parents or, by extension, majoritarian voters who may not vote with the liberty interests of children or future generations in mind. In analyzing the Fourteenth Amendment’s commitment to people’s equal treatment under law, this Court’s precedent requires centering children. This Court’s analysis of Section 3 should be interpreted through a child-centered lens of equal protection just as this Court considers the interests of eligible voters to select the candidate of their choice for the Office of the President.

II. The Constitutional Text and Structure Promise Our Nation’s Children and Posterity the Perpetuity and Inheritance of Our Republic, On Which Each of Their Most Fundamental Rights Depend.

Much like the right to vote, the perpetuity of the Republic occupies a central role in our constitutional structure as a “guardian of all other rights,” *Plyler*, 457 U.S. at 217 n.15. “Civil liberties, as guaranteed by the Constitution, imply the existence of an organized society . . .” *Cox v. New Hampshire*, 312 U.S. 569, 574 (1941); *see also The Ku Klux Cases*, 110 U.S. 651, 657–

²¹ Barbara Bennett Woodhouse, *Children’s Rights*, in *Handbook of Youth and Justice* 380 (Susan O. White ed., 2001).

68 (1884). “[T]he Union of these States is perpetual[,]” because “[p]erpetuity is implied, if not expressed, in the fundamental law of all national governments.”²² Preserving “the existence of the Union” underlies the text and structure of the Constitution. The Federalist No. 1, at 11 (Alexander Hamilton) (E. H. Scott ed., 1898).

The Fourteenth Amendment solidifies the structural relationship of citizenship and the perpetuation of our Republic. Section 1 begins with the guarantee of birthright citizenship—recognizing “all persons born or naturalized” as “citizens of the United States and the State wherein they reside.” U.S. Const. amend. XIV, § 1. This clause secures to children and all future generations the benefits of citizenship determined only by the jurisdictional boundaries of the United States, rather than only by right of race, blood, or other inheritance. Just as the Constitution undid the notion of rights or privileges as conditional on inheritance, expressly prohibiting titles of nobility in Article I, Sections 9 and 10, or denying “corruption of blood” as punishment for treason in Article III, Section 3, the Fourteenth Amendment creates a positive guarantee to future generations a right to citizenship in the United States and the State in which they reside. *Id.*

Furthermore, states are prohibited from abridging the “privileges or immunities of citizens of the United States.” U.S. Const. amend. XIV, § 1. Even the intensely narrow reading of the clause from the *Slaughter-House Cases* recognizes privileges or immunities of citizenship as those interests “which

²² President Abraham Lincoln, First Inaugural Address (Mar. 4, 1861).

owe their existence to the Federal government, its national character, its Constitution, or its laws.” 83 U.S. 36, 79 (1872). This recognition of the “nature and essential character of the national government,” *In re Kemmler*, 136 U.S. 436, 448 (1890), necessarily emphasizes the significance of Section 3 of the Fourteenth Amendment in ensuring that those who would destabilize the national government through insurrection be excluded from holding office, because to do so threatens the existence and continuity of national government for children and posterity. “[O]ur political arrangements are not mere mechanical contrivances, but rather have a purpose.” Clarence Thomas, *The Higher Law Background of the Privileges or Immunities Clause of the Fourteenth Amendment*, 12 Harv. J. L. & Pub Pol’y 63, 66 (1989).

Section 3, read in context with the privileges or immunities, birthright citizenship, and equal protection clauses give effect to the Preamble’s assertion of perpetuity to ensure that those who come to power in the United States are going to maintain the system of constitutional order, whereby the effective and peaceful transfers of power will ensure the Republic for children below the age of majority today and for future generations, subject only to changes allowed for by the constitutional text.²³ Section 3 is thus self-executing, unless Congress affirmatively acts, to ensure constitutional stability and perpetuity to future generations as the norm, rather than the exception.

²³ Congress still retains power to remove any disability on running for office, but this retention of power emphasizes the essential structural character of the Fourteenth Amendment in securing a participatory democratic republic for children of every generation. U.S. Const. amend. XIV, § 3.

This structural protection of the Fourteenth Amendment is all the more important for the constitutional rights of children. Children who are citizens are unable to vote until the age of eighteen under the Twenty-Sixth Amendment, but nonetheless are citizens of the United States by right of birth, and entitled to their constitutional rights, including privileges or immunities of citizenship and equal protection of the law, guaranteed by the Fourteenth Amendment. Children's exclusion from voting but guarantee of constitutional rights as citizens and persons therefore creates a special constitutional obligation of judicial guardianship to ensure the recognition and protection of children's rights. See Anne C. Dailey, *Developing Citizens*, 91 Iowa L. Rev. 431, 497 (2006); Jonathan Todres, Charlene Choi & Joseph Wright, *A Rights-Based Assessment of Youth Participation in the United States*, 95 Temple L. Rev. 411 (2023); Jeremiah Chin, *The Next Generation*, Ky. L. J. (forthcoming).

The perpetuity principle, which is embodied in the Fourteenth Amendment, including Section 3, acts to preserve the most fundamental individual rights to life, liberty, and property across generations, and guards against such existential threats to the nation arising from majoritarian politics, or those who seek to rebel or violently rise up against the Constitution.

CONCLUSION

There have been moments throughout our Nation's history when protecting the Republic, democracy, and the Constitution itself required courage. As a bulwark against tyranny, the Court

must consistently strive to act as a check on unjust government systems and conduct that harm children and future generations.

One of those most important moments was in the unanimous decision of *Brown v. Board of Education*, a children's case. 347 U.S. 483 (1954). Even though there was violent resistance in the Southern states, the Court was both courageous and correct to declare that the Constitution prohibits the abomination of segregation and the imposition of a lifetime of hardship on children. That decision, while clear from the constitutional text and historical meaning of the Fourteenth Amendment, was nonetheless a heavy lift for nine justices, disrupting the discriminatory *status quo* of the nation. And yet, they applied the Constitution. We are better as a nation as a result of decisions like *Brown*. Our children and generations to come were protected at a time they had no vote in the matter of majoritarian political decisions that would determine the course of their lives.

The citizens most in need of this Court's constitutional guardianship in this moment are not the 74 million voters who, in 2024, may again wish to vote for Former President Trump or the 81 million voters who may again wish to vote for President Biden; rather, it is the 74 million children who have no vote and the millions of children yet to come who will inherit the Nation and the quality of constitutional democracy this Court, and all of us, bequeath them.

Our Constitution makes a fundamental commitment to the well-being of children and future generations, for our Constitution is "intended to endure for ages to come." *McCulloch v. Maryland*, 17 U.S. (4 Wheat.) 316, 415 (1819). The analysis of

whether courts have the power to enforce Section 3 of the Fourteenth Amendment needs to consider the rights of children and future generations. The perpetuity of the Republic depends on applying the counter-majoritarian and structural constitutional guardrails, like Section 3, in order to ensure the nation our children and future generations inherit is not governed by those who “shall have engaged in insurrection or rebellion against the same, or given aid and comfort to the enemies thereof.”

“There is no better gift a society can give children than the opportunity to grow up safe and free—the chance to pursue whatever dreams they may have. Our Constitution guarantees that freedom.”²⁴

January 17, 2024

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²⁴ *Celebrating the Constitution: Chief Justice John G. Roberts tells Scholastic News why kids should care about the U.S. Constitution*, Scholastic News, Sept. 11, 2006, at 4, 5.

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APPENDIX

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LIST OF *AMICI CURIAE* 1a

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