Per Curiam

SUPREME COURT OF THE UNITED STATES

No. 07–13

IN RE TONY_GIORDANO

ON MOTION FOR EXPULSION

[May 13, 2019]

PER CURIAM.

The Court, upon receiving a complaint multiple days ago contending that respondent is constitutionally ineligible to hold office in the United States by consequence of the Fourteenth Amendment,[1] commenced these proceedings to consider the possibility of expulsion. Expulsion, we have noted, is an "extraordinary act." *Ex parte Haven*, 7 U. S. ___, ___ (2019) (slip op., at 3) (*per curiam*). Additionally, the power is "traditionally exercised *sua sponte*," *ibid*. In this case, however, the Court decided to entertain the outside complaint based on the particular subject-matter it alleges. Whether an official is disqualified under the Fourteenth Amendment is assuredly a question of law and it is this Court's responsibility to "say what the law is." *Marbury* v. *Madison*, 1 Cranch 137, 177 (1803). We cannot think of another venue or process through or by which this claim may be effectively and appropriately adjudicated.

In other expulsion contexts, where the asserted issue is not ineligibility for office, this Court has by convention

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[1] The Fourteenth Amendment, in §2, makes ineligible for governmental office any person who, "having previously taken an oath as [a U. S. government official, federal or municipal], to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same." The phrase "insurrection or rebellion" is used as a term of art for joining and participating in any significant way in another United States group.

applied a three-step test to determine whether Supreme Court action is appropriate: We ordinarily do not act unless Congress has "(1) been given sufficient opportunity to act, (2) has nevertheless failed to act, and (3) [if] the circumstances of the case are particularly egregious." *In re Trump*, 6 U. S. ___ (2018). In the context of the asserted ineligibility of a lower-court judge, however, we will act if the lower-court judge truly is ineligible for office. Making this determination, no less, requires discipline and careful attention to the precise textual limits of constitutional ineligibility provisions.

This case does not present a particularly difficult question. It is claimed that respondent's past membership in Exercist's United States (EUSA) automatically disqualifies him from service in the United States government under the Fourteenth Amendment. But that claim gives short shrift to the several preconditions through which the Fourteenth Amendment cabins its ineligibility dictate. As a threshold matter, disqualification under the Fourteenth Amendment for prior membership in another United States is only possible if a basic prerequisite is met. Namely, the person must have, before joining the other United States, "taken an oath [of office]" in this United States. This requirement makes a lot of sense when considered in light of the purposes which motivated inclusion of the clause in the first place. Its purpose was not to exclude those who migrate from other United States groups (people leaving those groups in favor of ours is something the clause's Framers would have encouraged); rather, its purpose was to deter people, specifically our government officials, from leaving *this* United States in favor of others by prohibiting their return to government positions. In this case, there is zero evidence to suggest that respondent held any position in our government prior to him joining EUSA. Indeed, even a cursory analysis of our Nation's rank archives confirms as much.

Respondent, rather than being subject to the Fourteenth Amendment's strictures, began in another United States group, recognized its inadequacies, and then commendably migrated to ours. While it is vastly preferable that our United States is chosen first, the Constitution does not mandate that be the case. Its bar is only directed at those who previously held an office here and *then* deserted to another United States.[2]

The motion to expel respondent is therefore denied.

It is so ordered.

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[2] Whether other limits apply to the Fourteenth Amendment's ineligibility provisions is a question not before us and our opinion should not be understood to provide an answer. It would be inappropriate for us, in the course of ruling on an expulsion motion which is susceptible of narrow resolution, to express a view on that wholly unrelated question. We reserve that question for a later day.