Dear Secretary Raffensperger,

We represent the voters who filed the candidacy challenge to U.S. Representative Marjorie Taylor Greene under Section 3 of the Fourteenth Amendment (the Disqualification Clause). Under O.C.G.A. § 21-2-5(b), this challenge was initially referred to an administrative law judge (ALJ) for a preliminary recommendation. But under O.C.G.A. § 21-2-5(c), "[t]he Secretary of State"—not the ALJ—"shall determine if the candidate is qualified to seek and hold the public office for which such candidate is offering." In doing so, you may "consider the whole record or such portions of it as may be cited by the parties." O.C.G.A. § 50-13-41(d). While Georgia law requires you to afford "due regard to the administrative law judge's opportunity to observe witnesses," *id.*, it is ultimately *your* responsibility to decide whether Greene is eligible for office, and you may "reject[] or modif[y] a proposed finding of fact or a proposed decision" from the ALJ. *Id.*

We ask that you reject the ALJ's initial decision, or in the alternative, remand to correct errors identified below.

As set forth below—and, unfortunately, contrary to the ALJ's initial recommendations—the evidence establishes that Greene is not "qualified to seek and hold the public office for which [she] is offering" under O.C.G.A. § 21-2-5(c) because she is constitutionally ineligible under the Disqualification Clause.

I. Introduction

You know better than most the scope, fluidity, and desperation of the increasingly chaotic efforts to overturn the 2020 election. On January 2, 2021, former President Trump—having failed through litigation—attempted to pressure you into falsifying Georgia's election results; as he put it, "I just want to find 11,780 votes, which is one more than we have." You, however, bravely resisted.

Unfortunately, that was not the end of efforts to overturn the election. Simultaneously with the effort to falsify Georgia's election results, plotters sought to delay congressional certification of the electoral votes, to buy time for additional maneuvers. When it became clear that Vice President Pence

would not participate in this scheme, attention shifted towards contingency plans to flood the Capitol and prevent Congress from meeting. On January 5, Representative Greene—a longtime advocate of political violence, who had taken office soon after telling her followers that "you can't allow it to just transfer power 'peacefully' like Joe Biden wants and allow him to become our president"—appeared on national television to discuss the certification of electoral votes scheduled for January 6. When asked her plan, she announced, "This is our 1776 moment." Violent extremists—who had been using "1776" or "1776 Returns" for months as a code word for a violent assault on federal buildings—heard their marching orders.

II. The administrative law judge's critical errors

The administrative law judge correctly stated the legal standard for "engag[ing]" in insurrection. *See* Initial Decision at 13-14. But he made two key legal errors.

First, he shifted the burden of proof to the challengers. *See* Initial Decision at 2. Under Georgia law, the "entire burden is placed upon [the candidate] to affirmatively establish [their] eligibility for office." *Haynes v. Wells*, 273 Ga. 106, 108–09 (2000).

Second, well before the hearing, he denied the challengers' motion to take Greene's deposition and sustained Greene's objection to challengers' notice to produce documents. *See* Order on Petitioners' Notice to Produce (Apr. 8, 2022); Order on Motion to Take Party Deposition (Apr. 4, 2022). This error is particularly egregious because, as his ruling emphasizes, he based his decision almost entirely on a purported *lack* of evidence. Had he permitted basic discovery, the evidence presented at the hearing may have been quite different.

Attached to this letter for your convenience is the complete post-hearing brief setting forth the challengers' case.

Respectfully submitted,

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