IN THE OFFICE OF STATE ADMINISTRATIVE HEARINGS
STATE OF GEORGIA

DAVID ROWAN,	:	DOCKET NUMBER: 2222582
DONALD GUYATT,	:	2222582-OSAH-SECSTATE-CE-57-Beaudrot
ROBERT RASBURY	:	
RUTH DEMETER,	:	Agency Reference No.: 2222582
DANIEL COOPER,	:	
Petitioners,	:	
v.	:	
	:	
MARJORIE TAYLOR GREENE,	:	
	:	
Respondent.	:	

MOTION TO ENFORCE SUBPOENA DIRECTED TO RESPONDENT MARJORIE TAYLOR GREENE

Comes now Petitioners DAVID ROWAN, DONALD GUYATT, ROBERT RASBURY, RUTH DEMETER, and DANIEL COOPER ("Petitioners"), by and through undersigned counsel, and respectfully request an order, pursuant to Rules 616-1-2-.16, 616-1-2.30(1) and 616-1-2-.19 of the Rules of Office of State Administrative Hearings ("OSAH Rules") and this tribunal's inherent authority, directing Respondent Marjorie Taylor Greene, pursuant to a subpoena *ad testificandum* served upon Respondent on April 5, 2022 (the "Subpoena"), to appear for testimony at a hearing in the above-captioned matter (the "Hearing") on April 13, 2022, at 9:30 a.m., at OSAH – Office of State Administrative Hearings, 225 Peachtree Street NE, Suite 400, South Tower, Atlanta, GA 30303, or on such days and at such times as the Administrative Law Judge ("ALJ") may continue such Hearing.

In light of the expedited schedule in this proceeding and the April 13, 2022 Hearing date, Petitioners request, pursuant to OSAH Rule 616-1-2-.16(2), that an order be entered directing Respondent Greene to file any response to this motion no later than April 12, 2022,

at 12:00 p.m., and Petitioners request an expedited ruling on this motion, pursuant to OSAH Rule 616-1-2-.16(3).

Petitioners request a hearing on the instant motion, pursuant to OSAH Rule 616-1-2-.16(5).

BACKGROUND

OSAH Rules 616-1-2.30(1) and 616-1-2-.19, and the inherent authority of this tribunal, authorize an ALJ to compel the appearance of a party, including a party who has been served with subpoena *ad testificandum*, at a duly noticed hearing on pain of default judgment, contempt, or other appropriate sanction. OSAH Rules 616-1-2.30(1) and 616-1-2-.19.

In this case, on April 5, 2022, Respondent was duly and timely served with the Subpoena to appear at the Hearing and give testimony. Respondent has not moved to quash the Subpoena or otherwise sought relief from it.

At a Prehearing Telephone Conference conducted on April 5, 2022, Petitioners' counsel informed the ALJ of the existence of the Subpoena, explained that Petitioners wished to ensure that Respondent would be present at the Hearing to be called as a witness in Petitioners' case, and asked the ALJ to direct that Respondent inform the tribunal and Petitioners immediately whether she intended to appear personally at the Hearing. Petitioners' application for that relief was denied, and Respondent was accorded until Monday April 11, 2022, at 11:00 a.m., to notify Petitioners whether she intended to appear personally at the Hearing. In the papers filed by Respondent today shortly before 11:00 a.m., Respondent is not listed as a witness to be presented at the Hearing in her case-in-chief, and thus it appears that Respondent does not intend to appear personally for testimony at the Hearing.

Finally, it is important to note the procedural posture of this case: On March 28, 2022, Petitioners: (i) served upon Respondent a Notice to Produce seeking certain records reflective of Respondent's conduct and attitudes relative to the January 6, 2022 insurrection that occurred at the United States Capitol; and (ii) moved for leave to take Respondent's deposition in order to discover and establish facts relevant to same in advance of the Hearing. By order dated April 4, 2022, the application for leave to take a deposition of Respondent was denied, and by order dated April 8, 2022, the Court sustained Respondent's objections to the Notice to Produce and excused her from complying with it. Accordingly, the only opportunity that Petitioners have to gather and present evidence that is within the exclusive custody and control of Respondent will be at the Hearing itself, provided she appears and gives testimony.

ARGUMENT

Respondent bears the burden of establishing that she satisfies the qualifications for candidacy for the office of United States Representative for Georgia's 14th Congressional District. *Haynes v. Wells*, 273 Ga. 106, 108–09 (2000). Here, the question to be decided is whether Respondent is disqualified from the office of U.S. Representative by Section 3 of the 14th Amendment of the Constitution—specifically, whether, having taken an oath to defend the Constitution on January 3, 2022, when she was sworn in as a member of the House of Representatives, Respondent thereafter "engaged in insurrection" against the United States. In this context, Respondent bears the burden of showing that she is in fact qualified for office, notwithstanding the constitutional disqualification of those who have engaged in insurrection. The Hearing is the forum in which Respondent must offer her proof.

Petitioners, who are registered voters in Georgia's 14th Congressional District, are entitled to present their own case at the Hearing. Petitioners fully intend to contest

Respondent's proof, and present affirmative evidence on the two core issues: (i) that the attack on the United States Capitol on January 6, 2022 was, in fact, an insurrection; and (ii) that Respondent "engaged" in that insurrection by actions that included aiding, abetting and facilitating the insurrection.

It is unclear how Respondent intends to meet her burden without personally testifying about her own conduct and state of mind.[1] That said, Petitioners are entitled and intend to present affirmative proof that Respondent aided and engaged in an insurrection to obstruct the peaceful transfer of presidential power, disqualifying her from serving as a Member of Congress under Section 3 of the 14th Amendment, and rendering her ineligible under state and federal law to be a candidate for such office. *See* Not. of Candidacy Challenge ¶ 1. Respondent's own testimony is essential evidence on this core issue—and she is uniquely in possession of such evidence.

The Notice of Candidacy Challenge identifies and describes in detail dozens of statements supporting Petitioners' claims that Respondent engaged in insurrection. For example, two years prior to January 6, 2021, Respondent said in a video: "If we have a sea of people shut down the streets . . . flood the Capitol building, flood all of the government buildings, go inside these are public buildings we own them." *Id.* ¶ 22. Respondent also stated, in advance of January 6, 2021, that she was "planning a little something on January 6th," *id.* ¶ 37, told her supporters to "HOLD THE LINE on Jan. 6," *id.* ¶ 38, said "[y]ou can't allow it to just transfer power 'peacefully,'" and stated that Speaker Pelosi should be punished by death, *id.* ¶ 39. On January 5, 2021, she told her supports on Twitter that January 6, 2021 would be "our 1776 moment!" and that "the people will remember the Patriots who stood for election integrity." *Id.* ¶ 42. The Notice of Candidacy Challenge alleges that, based

[1] Of course, Petitioners reserve the right to move for a directed verdict at the close of Respondent's case.

on Respondent's communications with groups and individuals that used "1776" as a codeword for violence, she was aware that she herself was encouraging violence. *Id.* ¶¶ 43-45. The Notice of Candidacy Challenge also alleges that Respondent helped *plan* some of the events of January 6. *Id.* ¶ 35.

Respondent's testimony is critical to understanding the key issues that will determine her eligibility for congressional office, including: (i) her state of mind and intentions when she made the statements described above (and others); (ii) her knowledge of the violent intentions of those who organized the January 6, 2021 insurrection; (iii) her understanding of the terminology she used; (iv) her contacts with known insurrectionists and persons who have publicly expressed insurrectionist sentiments, both before and after January 6, 2021; and (v) her involvement in planning the events of January 6.

Respondent bears the burden to establish her eligibility for office, *see Haynes*, 273 Ga. at 108-09, and, in this case, her eligibility turns on her own personal conduct and statements, both public and private; her interactions with others; her knowledge of others' plans, attitudes, and intentions; and her own plans, attitudes, and intentions, both before and after January 6, 2002. There is no more important evidence in this case than the words and actions of Marjory Taylor Greene, and there is no more important witness in this case than Marjory Taylor Greene herself. Respondent can certainly elect not to propound her own testimony in her own case in chief; that is her right. But, especially having been subpoenaed, she cannot absent herself from the Hearing in order to deprive Petitioners of *their* right to offer her testimony as a hostile witness. Consistent with fundamental notions of fairness in an adversarial proceeding, Petitioners must be permitted to present Respondent's own testimony as part of their case.

Importantly, there is no other witness or piece of evidence that can substitute for the testimony that Respondent would give live at the Hearing. Having been denied the opportunity to depose Respondent, Petitioners have been deprived of an alternative means of offering the singular and most competent and powerful evidence of Respondent's actions, statements, attitudes, and intentions: her own sworn testimony. And having been denied any document discovery at all, Petitioners are left in the dark as to investigatory options for other witnesses or other sources of information beyond what is in the public record; no such option, in any case, is a substitute for Respondent's own testimony.

Requiring Respondent to appear and be questioned in Petitioners' case is the only truly fair way to allow Petitioners to contest Respondent's proof and cross-examine Respondent herself. Only through cross-examination—"the greatest legal engine ever invented for the discovery of truth," *Clemons v. State*, 265 Ga. App. 825, 833, 595 S.E.2d 530, 536 (2004) (quoting *Harrell v. State,* 241 Ga. 181, 183(1), 243 S.E.2d 890 (1978))—can Petitioners investigate and rebut Respondent's case in chief and demonstrate that she knew when she made the statements described above that she was calling her supporters to engage in violent insurrection at the United States Capitol to stop the electoral count on January 6, 2021, and that she took steps and/or facilitated others to take steps to facilitate, support, and justify the insurrection on January 6, 2021.[2]

CONCLUSION

For the reasons set forth herein, Petitioners respectfully request an order directing Respondent Marjorie Taylor Greene to appear to testify at the Hearing. A proposed order is attached to this motion as Exhibit A. Petitioners further request an order directing

[2] Of course, were Respondent to be compelled to appear, she would retain the right to decline to answer any question by invoking her privilege against self-incrimination under the Fifth Amendment.

Respondent Greene to file any response to this motion no later than April 12, 2022, at 12:00 p.m., a hearing on this motion, and an expedited ruling. A proposed order is attached to this motion as Exhibit B.

This 11th day of April, 2022.

Respectfully submitted,

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Attorneys for the Petitioners

* Admitted pro hac vice

CERTIFICATE OF SERVICE

I hereby certify that on April 11, 2022, I served the foregoing document on the respondent by electronic mail at the following address: khilbert@hilbertlaw.com, cgardner@hilbertlaw.com, msiebert@bopplaw.com, and jboppjr@aol.com.

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Attorney for Petitioners

Exhibit A

IN THE OFFICE OF STATE ADMINISTRATIVE HEARINGS
STATE OF GEORGIA

DAVID ROWAN,	:	DOCKET NUMBER: 2222582
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v.	:	
	:	
MARJORIE TAYLOR GREENE,	:	
	:	
Respondent.	:	

[PROPOSED] ORDER

After consideration of Petitioners' Motion to Enforce Subpoena Directed to Respondent Marjorie Taylor Greene, the Motion is GRANTED. Respondent Marjorie Taylor Greene shall appear in person to testify at the hearing in this matter on April 13, 2022, at 9:30 a.m., at Office of State Administrative Hearings, 225 Peachtree Street NE, Suite 400, South Tower, Atlanta GA 30303, or on such days and at such times as such hearing is continued.

SO ORDERED THIS ____ day of ____, 2022.

_____
Judge Charles Beaudrot

Exhibit B

IN THE OFFICE OF STATE ADMINISTRATIVE HEARINGS
STATE OF GEORGIA

DAVID ROWAN,	:	DOCKET NUMBER: 2222582
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DANIEL COOPER,	:	
Petitioners,	:	
v.	:	
	:	
MARJORIE TAYLOR GREENE,	:	
	:	
Respondent.	:	

[PROPOSED] ORDER

I am in receipt of Petitioners' Motion to Enforce Subpoena Directed to Respondent Marjorie Taylor Greene, filed April 11, 2022. For good cause shown, Petitioners' request for a shortened time for response and for an expedited ruling on that Motion is GRANTED. Respondent Marjorie Taylor Greene shall file any response to Petitioners' motion no later than April 12, 2022, at 12:00 p.m. A hearing and expedited ruling will follow.

SO ORDERED THIS ____ day of ____, 2022.

_____
Judge Charles Beaudrot