BEFORE THE STATE BOARD OF ELECTIONS SITTING AS THE STATE OFFICERS ELECTORAL BOARD FOR THE HEARING AND PASSING UPON OF OBJECTIONS TO THE CERTIFICATES OF NOMINATION AND NOMINATION PAPERS OF CANDIDATES FOR THE REPUBLICAN NOMINATION FOR THE OFFICE OF PRESIDENT OF THE UNITED STATES TO BE VOTED UPON AT THE MARCH 19, 2024 GENERAL PRIMARY ELECTION

Steven Daniel Anderson; Charles J. Holley;
Jack L. Hickman; Ralph E. Cintron;
Darryl P. Baker,

Petitioners-Objectors,

v. Case No. 24 SOEB GP 517

Donald J. Trump,

Respondent-Candidate.

OBJECTORS' RESPONSE IN OPPOSITION TO CANDIDATE TRUMP'S MOTION TO DISMISS

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Petitioners-Objectors Steven Daniel Anderson, Charles J. Holley, Jack L. Hickman, Ralph E. Cintron, and Darryl P. Baker (the "Objectors"), by and through their undersigned attorneys, hereby respond in opposition to Candidate Donald J. Trump's Motion to Dismiss Objectors' Petition ("Motion") and state as follows:

INTRODUCTION

Objectors' Petition asks the State Officers Electoral Board to perform a straightforward and clear, mandatory duty: to hear and decide the Objection that Candidate Donald Trump submitted invalid nomination papers, in violation of 10 ILCS 5/7-10, because he falsely swore in his Statement of Candidacy that he is "qualified" for the office of presidency. Candidate Trump cannot meet one of the several qualifications for office set out in the United States Constitution—Section 3 of the Fourteenth Amendment, which mandates that no person shall hold office under the United States if they previously have taken an oath, as an officer of the United States, to support the Constitution of the United States and engaged in insurrection or rebellion against same, or given aid or comfort to the enemies thereof. The Objection pleads detailed facts of how Candidate Trump, while President, laid the groundwork for the January 6, 2021 attack on the Capitol, incited his armed supporters to storm it, and encouraged and supported their efforts while the violent attack was underway, until they succeeded in overtaking it and disrupting certification of the 2020 presidential election. The insurrection was ended by Trump only after it became clear that the certification, while disrupted and delayed, would nonetheless take place.

Faced with these well-pled and detailed facts, showing that Illinois law and the U.S. Constitution disqualify Candidate Trump from appearing on the Illinois ballot, he now asks the Electoral Board to impose the severe and utterly unwarranted remedy of dismissing the objection on the pleading alone. To do this, his motion misstates both the facts and the law. It attempts to grossly sanitize and distort Candidate Trump's conduct related to January 6, contravening facts in

the public record and Trump's own statements, construing them for the Candidate rather than Objectors as is required for the Motion. It takes positions that run counter to established precedent and governing statutes. In some cases, it even misrepresents the authority it cites, excluding critical passages, subsequent history, or pertinent statutory provisions. The application of the proper legal standards to the well-pled facts in Petitioners' Objection, as the Board must do, requires denial of the Motion.

Candidate Trump's request to dismiss the Objection fails for several reasons. First, he takes the peculiar and unsupported position that the Board cannot resolve objections unless they involve "undisputed or (in the Board's estimation) not materially disputed" facts, despite a clear mandate in the Election Code and Illinois Supreme Court binding precedent that the Board must decide voter objections involving candidate qualifications, statutory authority to compel evidence and witnesses and hold evidentiary hearings, and a long Board history of resolving objections based on complex records and highly disputed facts and for objections involving presidential candidates. He also suggests, without either legal authority or even argument in support, that the Board should abdicate its clear statutory obligation to decide this objection because the Supreme Court is hearing his appeal of the Colorado Supreme Court's decision disqualifying him from appearing on the Colorado ballot. The Election Code does not authorize the Board to decline to hear or even delay resolution of objections on this basis.

Second, faced with Objectors' meticulously detailed and substantiated facts about January 6 and his role in it, Candidate Trump tries to twist the legal definition of "insurrection" into an unrecognizable pretzel that fully departs from the range of accepted legal standards so he can place January 6 outside of it. He attempts to do so even though *he admitted through counsel in his impeachment proceedings, that "everyone agrees" that January 6 was a "violent insurrection."*

This new attempt to argue otherwise contradicts not only his prior admission but also the meaning of the term at the time the Fourteenth Amendment was enacted, numerous judicial decisions, the statements of the Trump Administration's own Department of Justice, and the U.S. Congress.

More disturbing is Candidate Trump's blatant mischaracterization of the facts pled by Objectors about his actions during and leading up January 6 that accompanies his parallel effort to distort the legal definition of "engage." As detailed in the Objection for more than 200 paragraphs, then-President Trump did not simply contest an election outcome, give a speech to protestors requesting peaceful behavior, then monitor the "situation" at the Capitol before calling for peace and asking protestors to go home. This recasting of the facts as pled can only be characterized as dishonest. It flies in the face of the motion to dismiss standard, which requires the Board to take Objectors' well-pleaded facts as true and construe them in Objectors' favor. Those well-pleaded facts, include, among other things, the following. That even before the 2020 election, Trump made clear he would not accept the outcome of the election if he lost. Then, after he lost the election, Trump engaged in a host of lawful and unlawful means to overturn the 2020 election. When those failed, he called for and gathered an angry and armed mob—including known violent extremists—in Washington, D.C. on January 6, incited them, and sent them to the Capitol. They then stormed the Capitol, forced the Vice President, Senators, Representatives, and staffers to flee into hiding while threatening to kill them, prevented Congress from certifying the 2020 presidential election, and captured the Capitol. As these events unfolded, Trump continued to goad his supporters and refused to call in law enforcement to aid those trapped and injured at the Capitol, or call off the attack. Applying the proper legal standard to these facts fully overrides the call for dismissal.

Third, Candidate Trump makes a host of arguments in an effort to limit the scope of Section 3. He inaccurately describes his approach as "well-recognized constitutional tradition," and then

proceeds to ask the Board to abandon the thorough legal analysis of courts interpreting the Constitution, the text of the Fourteenth Amendment, and the accepted meanings of the terms within it. In sum, these strained attempts to interpret Section 3 to exclude the Presidency or the President, and to make the Presidential oath "to preserve, protect, and defend the Constitution" mean something other than to "support the Constitution," fail under the weight of their own lack of support and logic.

Fourth, Candidate Trump invokes the political question doctrine, arguing that this narrow doctrine should be applied to state electoral assessments of candidate qualifications. This is simply wrong based on the well-defined scope of the doctrine under controlling Supreme Court precedent, decisions applying it, the text of Section 3, and logic. States have long regulated their ballots to ensure presidential candidates meet mandated constitutional qualifications; depriving them of that right and reserving it to Congress following an election would create chaos of the electoral process.

Fifth, like the rest of the Fourteenth Amendment, Section 3 does not require specific legislation from Congress for it to take effect. The Colorado Supreme Court thoroughly rejected this proposition as "absurd" based on Section 3's plain language, established Supreme Court authority, and the results that would flow from Trump's requested reading. The Electoral Board should do the same.

In sum, Objectors have established the validity of their Objection, and review of the well-pled facts and applicable standards of law requires the denial of the motion to dismiss.

STANDARD OF REVIEW

"An electoral board is empowered to consider the objections made 'to a candidate's nomination papers' and the 'validity of those objections.'" *Daniel v. Daly,* 2015 IL App (1st) 150544, ¶ 32 (citing *Nader v. Illinois State Board of Elections,* 354 Ill. App. 3d 335, 343 (2004)). When faced with motions to dismiss objectors' petitions, an electoral board must determine

"whether [the] objections were in proper form, whether they were valid and whether they should be sustained." *Id.* (citing 10 ILCS 5/10-10). In making such a determination, all well-pleaded facts should be accepted as true, as should all reasonable inferences that may be drawn from those facts. *Marshall v. Burger King Corp.*, 222 Ill. 2d 422, 429 (2006) (citing *Ferguson v. City of Chicago*, 213 Ill. 2d 94, 96–97 (2004)); *see also* SOEB Rules of Procedure 2024, at § 13. Moreover, allegations shall be construed in the light most favorable to the objector. *Marshall*, 222 Ill. 2d at 249 (citing *King v. First Capital Financial Services Corp.*, 215 Ill.2d 1, 11–12 (2005)).

ARGUMENT

I. THE BOARD IS AUTHORIZED AND OBLIGATED TO HEAR AND RULE ON THIS OBJECTION.

The Candidate takes the completely unsupported position that the Electoral Board cannot hear this objection because it involves a "complicated factual dispute[]" and a presidential primary candidate. Controlling Illinois law, the clear language of the Election Code, and plain logic bely both points. First, the Election Code *mandates* that the Electoral Board hear objections by voters to candidates and grants the Electoral Board full powers to hold evidentiary hearings on complex issues, and unequivocal Illinois Supreme Court precedent dictates that the validity of candidates' nomination papers turns on whether they meet constitutional qualifications for office. There is no authority for the unworkable proposition that the Electoral Board's authority to hear objections depends on a subjective consideration of where the facts fall on a continuum from simple to complex. Second, the Election Code explicitly mandates the Electoral Board to hear objections to presidential primary candidates (10 ILCS 5/7-12.1). While it does extend deference to political parties on certain other issues, it clearly and unequivocally requires the electoral board to ensure that candidates on the Illinois ballot meet mandatory qualifications for office such as that at issue here.

A. The Election Code Requires and Equips the Electoral Board to Decide Objections That Involve Disputed Facts

There is no dispute between the parties that: (1) the Illinois Election Code defines the Electoral Board's authority; and (2) the Board must follow its statutory mandate when exercising its powers. *See* Mot. at 4; *Delgado v. Bd. Of Election Comm'rs*, 224 Ill. 2d 481, 485 (2007). The Candidate attempts to deviate from these fundamentals, however, by ignoring the equally clear fact that the Election Code mandates and equips the Board to resolve objections like this one.[1]

The Electoral Board's duties and authority regarding candidate objections are set out in Article 10, Section 10 of the Election Code. It mandates that the Board *must* decide objections to the validity of candidate nominating papers:

> The electoral board . . .*shall decide whether or not the certificate of nomination or nominating papers or petitions on file are valid or whether the objections thereto should be sustained* and the decision of a majority of the electoral board shall be final subject to judicial review as provided in Section 10-10.1.The electoral board *must* state its findings in writing and must state in writing which objections, if any, it has sustained.

10 ILCS 5/10-10 (emphasis added).

In addition, the Illinois Supreme Court has clearly directed that determinations of the validity of a candidate's nominating papers include whether the candidate has falsely sworn that they are qualified for the office specified, and candidate qualifications include constitutional qualifications. *Goodman v. Ward*, 241 Ill. 2d 398, 406-07 (2011) (striking candidate's name from ballot and holding electoral board erred in denying objection where candidate falsely stated he was "qualified" for office despite not meeting eligibility requirements set forth in Illinois Constitution).

[1] The Electoral Board's authority to hear Petitioners' Objection also is comprehensively addressed in Objectors' Petition at ¶¶ 46-54 and in Objectors' Motion to Grant Objectors' Petition or in the Alternative for Summary Judgment, Argument, Section I (pp. 32-36).

Contrary to the Candidate's suggestion, this directive that electoral boards must *apply* constitutional requirements differs entirely from the well-established and unremarkable principle that administrative bodies, like and including the Electoral Board, do not have the authority to evaluate the validity of a statute or declare it unconstitutional. *Compare Goodman*, 241 Ill. 2d at 409-10 (recognizing the "statutory requirements governing statements of candidacy and oaths are mandatory" and board must evaluate whether statement "I am legally qualified to hold [the office specified]" is true or untrue), *with Delgado,* 224 Ill. 2d at 485 (Board of Elections exceeded its authority when it rejected objections to a candidate's nomination papers on the basis that the underlying statute was unconstitutional and thus unenforceable).[2] Under our tripartite form of government, only courts may declare legislative enactments unconstitutional, but all three branches of government must obey and apply constitutional mandates.

The Candidate's argument that Section 10-10 somehow limits authority based on the complexity of the challenge or whether the facts "in the SOEB's estimation, [are] not materially disputed" (Mot. at 5) is not supported by the plain language of the statute. It is made up from whole cloth. It would mean that certain objections would be foreclosed based on the nature of fact-finding required rather than by the powers granted by the Election Code. Or that the Board would have the authority to decide certain categories of qualifications but if, in its estimation, the facts were too complicated, that authority would dissipate. This would make the electoral objection process

[2] *See also Harned v. Evanston Mun. Officers Electoral Bd.*, 2020 IL App (1st) 200314, ¶ 23 ("While petitioner is correct that electoral boards do not have authority to declare statutes unconstitutional, they are required to decide, in the first instance, if a proposed referendum is permitted by law, even where constitutional provisions are implicated."); *Zurek v. Petersen*, 2015 IL App (1st) 150456, ¶¶ 33-35 (unpublished) (recognizing that while "the Board does not have the authority to declare a *statute* unconstitutional[, this] does not mean that the Board had no authority to consider the constitutionally-based challenges" and that to determine whether the referendum "was valid and whether the objections should be sustained or overruled, the Board was required to determine if the referendum was authorized by a statute or the constitution").

chaotic, unpredictable, and unworkable, and leave many objectors without recourse for objections encompassed by the statute.

The Election Code forecloses that argument. Beyond its dictates that the Electoral Board "shall decide" on the validity of each candidate's nomination paper and "must" state its decisions on objections, the Election Code also expressly empowers the Electoral Board to evaluate evidence, hold complex evidentiary proceedings, and determine fact disputes. In authorizing the Board to do so, it provides it "shall have the power to administer oaths and subpoena and examine witnesses" and, upon majority vote, compel witness attendance and issue "subpoenas duces tecum requiring the production of such books, papers, records and documents as may be evidence of any matter under inquiry before the electoral board, in the same manner as witnesses are subpoenaed in the Circuit Court." 10 ILCS 5/10-10. It directs that the Electoral Board "on the first day of its meeting shall adopt rules of procedure for the introduction of evidence and the presentation of arguments and may, in its discretion, provide for the filing of briefs by the parties to the objection or by other interested persons." 10 ILCS 5/10-10. The Candidate's suggestion that the Board's limitations in securing witness appearances and documentary evidence mean it cannot hear complex matters is belied by the provisions of the Election Code and without any basis in fact or law.

The example provided by the Candidate to support his argument illustrates the fallacy of the argument. He notes that in *Goodman*, the candidate did not dispute that he failed to meet the residency requirements for the office sought, and for this reason the Electoral Board was "authorized to assess the qualifications," as opposed to circumstances where the facts were "materially disputed." Mot. at 5 (*citing Goodman* 241 Ill. 2d at 410). This suggests that if the candidate did dispute his residency, the Board would be divested of its power to hear evidence to

resolve the question, despite the Election Code's clear grant of authority. This is plainly false, not only based on the clear language of the statute, but also because the Illinois Supreme Court and Illinois courts of appeal have consistently confirmed the power of electoral boards to evaluate complex factual disputes on candidate qualifications, both for residency requirements and other issues. *See Maksym v. Bd. of Election Comm'rs of City of Chicago*, 242 Ill. 2d 303, 306 (2011) (crediting the "extensive evidentiary hearing" before electoral board and board's factual findings in appeal of objection on Rahm Emmanuel's qualification to appear on ballot based on disputed Chicago residency); *Dillavou v. Cnty. Officers Electoral Bd. of Sangamon Cnty.*, 260 Ill. App. 3d 127, 128, (1994) (affirming electoral board decision on objection made after holding three days of evidentiary hearings on the objectors' petition); *Raila v. Cook Cnty. Officers Electoral Bd.*, 2018 IL App (1st) 180400-U, ¶¶ 17-27 (unpublished) ("the hearing officer heard testimony from over 25 witnesses and the parties introduced over 150 documents and a short video clip" and the hearing officer "issued a 68-page written recommendation that contained his summary of the testimony and documentary evidence"); *Muldrow v. Barron*, 2021 IL App (1st) 210248, ¶¶ 28-30 (electoral board properly made factual finding of widespread fraud based on determinations as to the credibility of witnesses' testimony).

The underlying authority of the Electoral Board does not change when the objection is based on constitutional qualifications for a candidate for U.S. President. As the Motion correctly notes, the Electoral Board has repeatedly heard objections that a candidate has improperly sworn that they meet presidential constitutional qualifications. Mot. at 5 (citing *Freeman v. Obama*, No. 12 SOEB GP 103 (Feb. 2, 2012) and *Jackson v. Obama*, No. 12 SOEB GP 104 (Feb. 2, 2012)). However, the Board has done so not only in the cases the Motion cites, but also (contrary to the Candidate's argument) in others where the authority of the Board *was* evaluated. *See Graham v.*

Rubio, No. 16 SOEB GP 528 (Hearing Officer Findings and Recommendations, adopted by the Electoral Board, determining that the Electoral Board was acting within the scope of its authority in reviewing the adequacy of the candidate's Statement of Candidacy and evaluating whether it was "invalid because the Candidate is not legally qualified to hold the office of President" based on criteria in the U.S. Constitution); *Graham v. Rubio*, No. 16 SOEB GP 528 (Feb. 1, 2016) (adoption by SOEB).[3]

If the Candidate's theory were correct that presidential qualifications were somehow different, the State of Illinois would have no recourse against presidential candidates seeking to appear on the ballot regardless of their age, residency in the United States, status as natural-born citizens, or prior presidential terms served, regardless of whether the relevant facts were straightforward or complex, or challenged or disputed. But again, the Election Code and its repeated interpretation by Illinois courts makes clear that the Board has authority to resolve disputed and complex challenges; this does not change for objections to presidential candidates, who necessarily invoke qualifications set forth in the U.S. Constitution. *See id.; Socialist Workers Party of Illinois v. Ogilvie*, 357 F. Supp. 109, 113 (N.D. Ill. 1972) (three judge panel decision approving Electoral Board's decision to remove from ballot presidential candidate who did not meet constitutional age qualification and denying motion for preliminary injunction to enjoin decision). Similarly, the fact that this objection involves Section 3 of the Fourteenth Amendment instead of one of the other provisions in the U.S. Constitution establishing presidential qualifications, does not take it outside the Electoral Board's purview as a matter of either logic or law.

[3] These SOEB decisions are attached as Group Exhibit A.

B. The Board Cannot Decline to Evaluate Petitioners' Objection Based on the Supreme Court's Decision to Grant Certiorari in the Colorado Case

Without advancing any actual argument in support, the Candidate also states in passing that it would "be imprudent" for the Board to address Petitioners' objection because the United States Supreme Court has granted certiorari in his appeal of the Colorado Supreme Court's decision disqualifying him from appearing on the ballot in a similar challenge under Colorado state law. Mot. at 1 (referring to *Anderson v. Griswold*, 2023 CO 63, *cert. granted sub nom. Trump v. Anderson*, No. 23-719, 2024 WL 61814 (U.S. Jan. 5, 2024)).

Objectors reiterate the arguments made above: the Electoral Board has a mandatory duty to evaluate their objection. 10 ILCS 5/10-10. Further, the legislature and the Electoral Board itself have made it clear that this duty must be performed expeditiously. Both the Election Code and the SOEB's Rules of Procedure emphasize the importance of mandatory deadlines and expedited proceedings. *See, e.g., Id.* (requiring Board to take action within 24 hours of receiving an objection and to meet 3 to 5 days after receipt of an objection); SOEB Rules of Procedure § 1(a) (directing that the "Board must proceed as expeditiously as possible to resolve the objections"); *id.* at § 4(a) (authorizing hearing officers to "take all necessary action to avoid delay"). Moreover, the SOEB, like all administrative bodies, is a creature of statute, and the Election Code does *not* provide authority for the Board to delay a decision for weeks, past the Supreme Court's decision, which will not come until mid or late February at the very earliest and could be later.[4] Nor does it authorize the Board to decline to determine the objection altogether because the Supreme Court has taken up a similar case. *See generally* 10 ILCS 5/10-10; *Goodman v. Ward*, 241 Ill. 2d 398,

[4] Oral argument is not scheduled until February 8, 2024. *See* U.S. Supreme Court Docket, Case No. 23-719, https://www.supremecourt.gov/docket/docketfiles/html/public/23-719.html.

414-15 (2011) (electoral boards cannot exercise authority beyond powers granted by statute). Thus, the Board cannot arrogate unto itself the authority to delay ruling in this case.

Even assuming arguendo that the Board had the authority to sit back and wait for the Supreme Court to rule, Objectors submit that it would be a mistake to do so. Not only is it unclear *when* the Supreme Court might rule, but also *how* it might rule. The Court could issue a decision that does not resolve the issues in this Objection, for example, holding that each state should determine the outcome of Section 3 concerns pursuant to the Electors Clause, or as Trump has requested, that Colorado courts exceeded their statutory authority under Colorado law. Proceeding with the objection will result in development of a full evidentiary record and ready the case for expedited appeal. In that posture, a court will have the authority to issue an order that will best preserve the integrity of the election process and allow for quick implementation of the Supreme Court's decision prior to the March 19, 2024 primary election.

C. The Election Code Requires the Electoral Board to Sustain Valid Objections to the Nomination Papers of Presidential Primary Candidates; Deference to Political Parties for These Nominations Does Not Override the Statutory Mandate.

The Candidate attempts to avoid Petitioners' Objection by suggesting that the provisions in the Election Code permitting involvement from political parties in the nomination process somehow supersede the authority of the Board to rule on a primary candidate's qualifications for office. Mot. at 3 (*citing* 10 ILCS 5/7-9, 5/7-11, 5/7-14.1). This too fails.

The Motion cites Section 5/7-11 of the Election Code for the undisputed proposition that Illinois law gives certain deference to political parties to nominate candidates, stating "via written notice, national political party rules concerning the nomination of candidate for U.S. President override Election Code provisions re: primary ballot." Mot at 3. It neglects to mention that this "override" pertains only to specifications in Section 5/7-11 regarding the time period for filing and

number of petition signatures needed by primary electors. *Id.*[5] In contrast, Section 5/7-12.1 of the Election Code clearly and unequivocally states that the objection procedures set out in Section 10-10, and discussed above, *apply to presidential primary candidates*:

> 5/7-12.1. Objections to nomination petitions; governing provisions
>
> The provisions of Sections 10-8 through 10-10.1 relating to objections to certificates of nomination and nomination papers, hearings on objections, and judicial review, shall also apply to and govern objections to petitions for nomination filed under this Article [Article 7, "The Making of Nominations by Political Parties"], except as otherwise provided in Section 7-13 for cases to which it is applicable.[6]

In other words, the Election Code makes clear that any deference given to political parties regarding nominations does not supersede the electoral board authority to hear objections about candidates' qualifications under the Election Code, the Illinois Constitution, or the United States Constitution. It is well settled that the Election Code properly regulates the activities of political parties, and that political parties have no right to act in conflict with the Code's mandates. *Totten v. State Bd. of Elections*, 79 Ill. 2d 288, 293-94 (1980).

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[5] The provision states:

> Any candidate for President of the United States may have his name printed upon the primary ballot of his political party by filing in the office of the State Board of Elections not more than 113 and not less than 106 days prior to the date of the general primary, in any year in which a Presidential election is to be held, a petition signed by not less than 3000 or more than 5000 primary electors, members of and affiliated with the party of which he is a candidate, and no candidate for President of the United States, who fails to comply with the provisions of this Article shall have his name printed upon any primary ballot: Provided, however, that if the rules or policies of a national political party conflict with such requirements for filing petitions for President of the United States in a presidential preference primary, the Chair of the State central committee of such national political party shall notify the State Board of Elections in writing, citing by reference the rules or policies of the national political party in conflict, and in such case the Board shall direct such petitions to be filed in accordance with the delegate selection plan adopted by the state central committee of such national political party.

10 ILCS 5/7-11.

[6] Section 7-13, which deals with city and county electoral boards, is not applicable to this objection.

The conduct of federal elections, including presidential primaries, are fundamentally controlled and administered pursuant to the election laws of the fifty sovereign states. In Illinois, this clear expression of electoral board authority differs substantially from governing election law in certain other states such as Minnesota and Michigan, where recent presidential primary objections were declined because their state's election procedures lacked the type of defined authority that Illinois has under Sections 7-12.1, 10-10, and interpretive Supreme Court precedent. *See Growe v. Simon*, 997 N.W.2d 81, 83 (Minn. 2023) ("there is no state statute that prohibits a major political party from placing on the presidential nomination primary ballot, or sending delegates to the national convention supporting, a candidate who is ineligible to hold office"); *Davis v. Wayne Cnty. Election Comm'n*, __ N.W.2d __, 2023 WL 8656163, *4 (Mich. Ct. App. Dec. 14, 2023) ("The Legislature ha[s] not crafted any specific prohibitions regarding whom could be placed on primary ballots.").

Neither the Objection nor the Board's authority is in any way undermined by the presidential primary's function of selecting delegates to the national convention, as the Candidate suggests (Mot. at 3-4). *See* 10 ILCS 5/7-11; 5/7-12.1; *Totten*, 79 Ill. 2d at 293 (confirming while a political party has rights pertaining to the party's internal management, "these may be exercised so long as there is no violation of statutory limitations"). Moreover, in Illinois, political parties do not determine who appears on the primary ballot; candidates file their own nominating petitions. *See* 10 ILCS 5/7-10. This means that regardless of the nominee election process the party follows, Illinois law controls as to whether the candidate appears on the ballot.

As to the Candidate's comments about delegates, as a practical matter, party leaders and National Convention Statewide Delegates (totaling 13 of 51 delegates) are bound to the candidate receiving the largest number of votes statewide. If a candidate cannot appear on the ballot because

the Electoral Board determines they have deficient nominating papers under Section 10-10, the candidate will lose at least these thirteen delegates from the state of Illinois at the national convention.[7] But even if the remaining delegates ultimately supported Candidate Trump, Illinois law is clear that *when the Electoral Board invalidates a statement of candidacy, that nullifies the candidate's request to be placed on the primary ballot*. 10 ILCS 5/10-10; *Goodman*, 241 Ill. 2d at 408-10 ("If a candidate's statement of candidacy does not substantially comply with the statute, the candidate is not entitled to have his or her name appear on the primary ballot" including because the "representation that 'I am legally qualified to hold the office' . . . was untrue."). And Illinois law also is clear that candidates must be qualified for office at the time they seek to appear on the ballot. *Id.* at 408-10; *see also infra* Part III.A. To ask the Electoral Board to throw up its hands and abdicate its responsibility to enforce the Election Code because certain Trump delegates might support his candidacy, despite a decision he is ineligible under Illinois law to appear on the ballot, flies in the face of the legislature's mandate that the Electoral Board must ensure that candidates on the Illinois ballot meet baseline qualifications for office.

II. PETITIONERS ADEQUATELY ALLEGE THAT CANDIDATE TRUMP ENGAGED IN INSURRECTION.[8]

For this Objection, the candidate qualification that the Board must consider is whether the well-pled facts in Petitioners' Objection that President Trump "engaged insurrection" through his involvement in the events of January 6 and thus is disqualified from the Presidency are sufficient to withstand the Candidate's motion to dismiss. Because the detailed facts in the Objection not only meet but exceed the applicable legal standards, the Objection cannot be dismissed.

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[7] *See* The Green Papers, *2024 Presidential Primaries, Caucuses, and Conventions*, https://www.thegreenpapers.com/P24/IL-R (providing the Republican Party of Illinois delegate plan).

[8] The issues in this section also are comprehensively addressed in Objectors' Motion to Grant Objectors' Petition or in the Alternative for Summary Judgment, Argument, Section III (pp. 39-51).

A. The Events of January 6 Constituted an "Insurrection" under Section 3.

Candidate Trump's contention that January 6 was not an "insurrection" flies in the face of the public record, the definitions and public usage of the term "insurrection" at the time the Fourteenth Amendment was enacted, at least fifteen judicial decisions, the statements of the Trump Administration's own Department of Justice, and the admission of Trump's own defense lawyer in his impeachment proceedings, not to mention the decisions from Colorado and Maine—the only two states to reach the merits in a Section 3 challenge to Candidate Trump's eligibility. The Colorado trial court's finding in *Anderson* that the events of January 6 constituted an insurrection is thus hardly an "outlying opinion" as Trump suggests, Mot. at 18; rather, it represents the settled, overwhelming consensus.

Under any reasonable interpretation of Section Three, the events of January 6, as alleged here, constituted an insurrection. The Colorado Supreme Court in *Anderson* declined to adopt a single definition of the word "insurrection" but concluded, after a careful review of the historical record, that any definition of the term for purposes of Section Three would necessarily "encompass a concerted and public use of force or threat of force by a group of people to hinder or prevent the U.S. government from taking the actions necessary to accomplish a peaceful transfer of power in this country." *Anderson v. Griswold*, 2023 CO 63, ¶ 184. There can be no serious or legitimate question that this definition is easily met by the events of January 6.

That general interpretation tracks the definitions and public usage of "insurrection" in the nineteenth century *See* William Baude & Michael Stokes Paulsen, *The Sweep and Force of Section Three*, 172 U. Pa. L. Rev. __, at 64 (forthcoming) (summarizing dictionary definitions, public and political usage, judicial decisions, and other sources to define "insurrection" as "concerted, forcible

resistance to the authority of government to execute the laws in at least some significant respect")[9]; *see also Allegheny Cty. v. Gibson*, 90 Pa. 397, 417 (1879) ("A rising against civil or political authority; the open and active opposition of a number of persons to the execution of law in a city or state; a rebellion; a revolt"); President Lincoln, *Instructions for the Gov't of Armies of the United States in the Field*, Gen. Orders No. 100 (Apr. 24, 1863), art. 149 ("Insurrection is the rising of people in arms against their government, or a portion of it, or against one or more of its laws, or against an officer or officers of the government. It may be confined to mere armed resistance, or it may have greater ends in view.").

Candidate Trump's suggestion that "insurrection" is limited to a war-like "effort to break away from or overthrow the government's very authority" is simply incorrect. It is entirely unsupported and does not engage with the extensive historical evidence of the meaning of the term. Mot. at 17-18. Even the sole dictionary definition Trump cites, for example, is carefully presented incompletely. *Bouvier's Law Dictionary* did define "insurrection" to mean "rebellion," but it defined "rebellion" to include not only "taking up arms traitorously against the government" but also "[t]he *forcible opposition and resistance to the laws and process lawfully issued*." John Bouvier, *A Law Dictionary Adapted to the Constitution and Laws of the United States of America and of the Several States of the American Union* (6th ed. 1856).[10]

And the sole case Trump cites on this point, *United States v. Greathouse*, 26 F. Cas. 18 (C.C.N.D. Cal. 1863), did not purport to define "insurrection," and dealt, rather, with the level of conduct that must be proved to convict a criminal defendant of *treason*—an issue that has no

[9] *Available at* https://papers.ssrn.com//.cfm?abstract_id=4532751.

[10] Other dictionaries of the time track the full definition. *See, e.g., Insurrection,* WEBSTER'S DICTIONARY (1830) (defining insurrection as "combined resistance to … lawful authority…, with intent to the denial thereof").

bearing here. Moreover, the statement in *Greathouse* that "engaging in rebellion" amounts to a "levying of war" does not help Trump because, at the time, the meaning of "levying war" included actions far short of outright war to overthrow the government, such as the use of violence by an group for the common purpose of preventing execution of the law:

> [T]he words 'levying war,' include *not only the act of making war for the purpose of entirely overturning the government*, but also *any combination forcibly to oppose the execution of any public law of the United States*, if accompanied or followed by an act of forcible opposition to such law in pursuance of such combination. The following elements, therefore, constitute this offence: (1) A combination, or conspiracy, by which different individuals are united in one common purpose. (2) This purpose being to prevent the execution of some public law of the United States by force. (3) The actual use of force, by such combination, to prevent the execution of that law.

In re Charge to Grand Jury - Neutrality Laws & Treason, 30 F. Cas. 1024, 1025 (C.C.D. Mass. 1851) (emphasis added). In other words, even under the "levying of war" standard proposed by Candidate Trump, the elements of insurrection are the same as the consensus historical definition and the interpretation adopted in *Anderson*: (1) a common effort, (2) using violence, (3) to prevent the execution of the law. *See* Baude & Paulsen, *supra*, at 64; *Anderson*, 2023 CO 63, ¶ 184.

Based on that common understanding of the term, prior to the Civil War, violent uprisings against federal authority comparable to January 6 were regularly understood to be "insurrections." *See* Robert Coakley, *The Role of Federal Military Forces in Domestic Disorders, 1789–1878* (U.S. Army Ctr. of Mil. Hist. 1996) (recounting antebellum insurrections that involved loosely organized, lightly-armed groups and few deaths). None of these pre-1861 insurrections approached the scale of the Civil War; nor would any meet Trump's concocted insurrection standard of attempting to actually "break away from or overthrow the government." *See* Coakley, *supra*, at 6, 35-66, 74 (describing Shays, Whiskey, and Fries insurrections). And the framers and early interpreters of Section 3 made clear that these antebellum insurrections *were* the types of

insurrections to which Section 3 applied. *Cong. Globe,* 39th Cong. 1st Sess. 2534 (1866) (Rep. Eckley) (during debates over clause, arguing that "[b]y following the precedents of our past history will we find the path of safety," then discussing approvingly as a model the expulsions and investigations of representatives who supported the Whiskey Insurrection); *The Reconstruction Acts (I),* 12 U.S. Op. Atty. Gen. 141, 160 (1867) (opining that, in similarly-worded statute, "[t]he language here comprehends not only the late rebellion, but every past rebellion or insurrection which has happened in the United States").

Courts interpreting Section 3 are clear that no minimum threshold of violence or level of armament is required. *See In re Charge to Grand Jury*, 62 F. 828, 830 (N.D. Ill. 1894) ("It is not necessary that there should be bloodshed"); *Case of Fries,* 9 F. Cas. 924, 930 (C.C.D. Pa. 1800) ("military weapons (as guns and swords . . .) are not necessary to make such insurrection . . . because numbers may supply the want of military weapons, and other instruments may effect the intended mischief"). And even a failed attack with no chance of success can qualify as an insurrection. *See In re Charge to Grand Jury,* 62 F. at 830 ("It is not necessary that its dimensions should be so portentous as to insure probable success."). Here, of course, the January 6 invasion of the United States Capitol involved bloodshed, guns, and the equivalent of swords, and the successful interruption of the certification of a presidential election, but even without those damning facts, the violent uprising easily met the definition of an "insurrection."

To be clear, while there is no minimum threshold of violence or success, the requirement that an insurrection be "violent" and directed "against" the Constitution of the United States ensures that Section 3 of the Fourteenth Amendment would not apply, as Trump argues, to merely "any public, joint effort to obstruct federal law." Mot. at 18-19. Rather, it is the unprecedented nature of January 6 in modern times—the concerted violent effort to prevent the peaceful transfer

of power at the core of the U.S. Constitution—that brings that day's events within the scope of Section 3.

Under any viable and reasonable definition of insurrection, the events of January 6 meet the necessary criteria. As alleged in the Objection, the January 6 insurrectionists sought to block Congress from executing the law. Objection ¶ 38. Their attack was also unquestionably an "insurrection against" the Constitution of the United States, within the meaning of Section 3, in that it sought to prevent Congress from fulfilling its core constitutional duty to certify the results of a presidential election and thereby prevent the peaceful transfer of power. *Id.* ¶¶ 38, 43, 226, 331. Then-President Trump had repeatedly and baselessly denounced the results of the election as fraudulent, and openly and repeatedly called on everyone from the Vice President on down to his supporters to prevent the certification of the election results so that he could remain in power. That outcome was the attackers' common purpose, as established by, among other things, their pre-attack planning, gathering in Washington, D.C. at Trump's request on the date of the election certification, and taking direction from Trump as he exhorted them to march to the Capitol to "fight" to prevent anyone from "taking" the White House. *Id.* ¶¶ 38, 139-40, 202.

The attackers managed to achieve their common purpose, albeit only for a few hours, by causing Congress to suspend the count of the electoral vote. *Id.* ¶ 38. Thankfully, the success was short-lived, but even a failed attack with no chance of success can qualify as an insurrection. *See Charge to Grand Jury*, 62 F. at 830. In fact, the January 6 insurrection achieved something that *no past insurrection* achieved: its violent and armed seizure of the Capitol, in fact, obstructed and delayed an essential constitutional procedure. *See* Objection. ¶¶ 222-28. Even the Confederates never attacked the heart of the nation's capital, prevented a peaceful and orderly presidential transition of power, or took the U.S. Capitol.

The attack was extremely violent. Five people died and over 150 law enforcement officers were injured, some severely. *Id.* ¶ 269. This equaled or surpassed the level of violence in antebellum insurrections specifically characterized as insurrections. *See* Coakley, *supra* (describing Whiskey, Shays, and Fries Insurrections). The violence was so significant that civil authorities were unable to resist the attack; military and other federal agencies had to be called in. *Id.* ¶¶ 250-51.

Given the facts in the public record, presented in the Objection, it cannot genuinely be disputed that January 6 was an insurrection. Both house of Congress, by overwhelming majorities, deemed those who attacked the Capitol on January 6, 2021 to be "insurrectionists." Act of Aug. 5, 2021, Pub. L. No. 117-32, 135 Stat 322. Just days afterward, the U.S. Department of Justice under the Trump administration labeled the attack an "insurrection" in federal court. Government's Br. in Supp. of Detention at 1, *United States v. Chansley*, No. 2:21-MJ-05000-DMF, ECF No. 5 (D. Ariz. Jan. 14, 2021). So have at least fifteen court opinions. *See* Objection ¶ 279 nn. 219-28 (listing decisions). Even Trump's own defense attorney admitted during his impeachment trial that the January 6 attack was a violent insurrection. *See* 167 Cong. Rec. S729 ("[T]he question before us is not whether there was a violent insurrection of [*sic*] the Capitol. *On that point, everyone agrees.*") (emphasis added).

Most recently, the Maine Secretary of State had "little trouble concluding that the events of January 6, 2021 were an insurrection within the meaning of Section 3 of the Fourteenth Amendment" even under the limited standard proposed by Trump there. *In re Challenges of Rosen, Saviello, and Strimling, Gordin, and Royal*, at 24-45 (Me. Sec'y of State Dec. 28, 2023), *appeal remanded to Sec'y of State sub nom. Trump v. Bellows*, Docket No. AP-24-01 (Me. Super. Ct. Jan. 17, 2024) (Murphy, J) (upon agreement by the parties, the Maine Superior Court remanded to the

Maine Secretary of State until after U.S. Supreme Court decision), attached hereto as Ex. B. Before that, the Colorado Supreme Court affirmed that "the events of January 6 constituted a concerted and public use of force or threat of force by a group of people to hinder or prevent the U.S. government from taking the actions necessary to accomplish the peaceful transfer of power in this country" and therefore constituted an insurrection. *Anderson v. Griswold*, 2023 CO 63, ¶ 189. Trump does not cite any court or electoral board anywhere in the country that has ever concluded otherwise. There is no reason for the Electoral Board to depart from the national consensus that the events of January 6, 2021, as alleged in the Objection, constituted an insurrection for purposes of Section 3.

B. Donald Trump Engaged in the January 6 Insurrection.

On the issue of whether he "engaged in" the January 6 insurrection, Candidate Trump fails to apply—or even cite—the applicable legal standard and ignores swaths of facts set out in the Objection to provide a highly sanitized, and grossly inaccurate, account of his conduct on that day.

As the Colorado Supreme Court recognized after surveying the relevant historical evidence and case law, "engaged in" requires "an overt and voluntary act, done with the intent of aiding or furthering the common unlawful purpose." *Anderson*, 2023 CO 63, ¶ 194. *Cf. Engage*, WEBSTER'S DICTIONARY (1828) (relevantly defining "engage" as "[t]o embark in an affair"). That definition is fully consistent with established prior case law, which defines "engage" under Section 3 as providing *any* voluntary assistance, either by service or contribution. *See United States v. Powell*, 27 F. Cas. 605, 607 (C.C.D.N.C. 1871) (defining "engage" as "a voluntary effort to assist the Insurrection . . . and to bring it to a successful [from the insurrectionists' perspective] termination"); *Worthy v. Barrett*, 63 N.C. 199, 203 (1869) (defining "engage" as "[v]oluntarily aiding the rebellion, by personal service, or by contributions, other than charitable, of any thing [sic] that was useful or necessary"); *State v. Griffin*, No. D-101-CV-2022-00473, 2022 WL

4295619, *19-20 (N.M. Dist., Sept. 6, 2022) (applying definition of "engage" from *Powell* and *Worthy*); *Rowan v. Greene*, No. 2222582-OSAH-SECSTATE-CE-57-Beaudrot (Ga. Ofc. of State Admin. Hrgs. May 6, 2022), slip op. at 13-14 (same).[11]As underscored by the case law, engagement does *not* require that an individual personally commit an act of violence. *See Powell*, 27 F. Cas. at 607 (defendant made a payment to avoid serving in Confederate Army); *Worthy*, 63 N.C. at 203 (defendant simply served as county sheriff in service of the Confederacy); *Rowan*, *supra*, at 13-14 ("engagement" includes "marching orders or instructions to capture a particular objective, or to disrupt or obstruct a particular government proceeding"); *Griffin*, 2022 WL 4295619, at *20. Indeed, Jefferson Davis—the president of the Confederacy—never fired a shot.

But instead of contending with the legal standard adopted in *Anderson* and established by history and case law, Trump strains to argue for a new standard that would exclude incitement or speech in support of an insurrection from the definition of "engagement." Mot. at 19. The argument lacks any legal basis. Trump argues, for example, that Congress' inclusion of the word "incite" in the Second Confiscation Act indicates an intentional exclusion of incitement from Section 3 of the Fourteenth Amendment. *Id.* But the fact that the 1862 Second Confiscation Act criminalized a longer list of verbs is irrelevant. *See The Second Confiscation Act*, 12 Stat. 589, 590 (1862) (making it a crime to "incite, set on foot, assist, or engage in any rebellion or insurrection against the authority of the United States, or the laws thereof, or . . . give aid or comfort thereto"). No historical evidence suggests that Congress's decision to streamline this lengthy statutory verbiage in the later constitutional amendment was intended to exclude incitement or other forms of engagement. See *M'Culloch v. Maryland*, 17 U.S. 316, 407 (1819) (denying that Constitution must "partake of the prolixity of a legal code"). Nor do the House of Representatives' votes against

[11] *Available at* https://bit.ly/MTGOSAH.

excluding certain members following the Civil War establish that engagement in insurrection did not include incitement. In the particular cases cited by Trump, for example, the House voted against exclusion not because the members' conduct was limited to speech, but because both members took *immediate active efforts to defeat the insurrection once it began*. *See Cong. Globe*, 41st Cong, 2nd Sess. 5442, 5445 (1870) (Rice actively dissuaded "whole companies of men" from joining the Confederate Army and induced them to fight for the Union); 1 Asher C. Hinds, *Hinds' Precedents of the House of Representatives of the United States*, ch. 14, § 462, at 477 (1907) (McKenzie changed his mind before Virginia seceded and became "an outspoken Union man").

Contrary to Trump's claims, the historical record indicates clearly and unequivocally that engagement includes incitement: "Disloyal sentiments, opinions, or sympathies would not disqualify; but when a person has, by speech or by writing, incited others to engage in rebellion, [h]e must come under the disqualification." *The Reconstruction Acts (II)*, 12 U.S. Op. Att'y Gen. 182, 205 (1867) (opinion of Attorney General Stanbery regarding a similarly-worded statute); *see also In re Charge to Grand Jury*, 62 F. at 830 ("When men gather to resist the civil or political power of the United States, or to oppose the execution of its laws, and are in such force that the civil authorities are inadequate to put them down, and a considerable military force is needed to accomplish that result, they become insurgents; and *every person who knowingly incites, aids, or abets them, no matter what his motives may be, is likewise an insurgent*.") (emphasis added). Indeed, it would be hard to imagine how it could be otherwise, since excluding those who incite insurrection from the definition of "engaging" in insurrection would be to exclude those whose conduct is often the most culpable.

Applying the standard adopted by *Anderson* and other courts, there is no question that Objectors have pleaded more than sufficient facts to establish that Trump "engaged in

insurrection" through both acts of speech that incited and maintained the insurrection and other conduct. In an impressive feat of understatement, Trump summarizes his alleged conduct as simply "disputing an election outcome, giving a speech on January 6, and monitoring and Tweeting about the events at the Capitol as they occurred." Mot. at 21. That is, of course, hardly the extent of the facts presented in the Petitioners' Objection. Trump was not simply "contesting an election outcome." *Id.* By January 6, all of the very numerous lawful attempts by Trump to "contest" the January 6 election had been exhausted (and had failed); and yet he was attempting to subvert the Constitution by staying in office after he had lost. He repeatedly lied to the public about purported voter fraud in the 2020 election despite being told by advisers that his claims lacked merit. Objection ¶¶ 72, 117. He promoted an unlawful plan for Vice President Mike Pence to unilaterally prevent the transfer of power from Trump to President Joseph Biden by refusing to certify votes. *Id.* ¶¶ 145-48. He lied about Vice President Pence's agreement with the plan. *Id.* ¶ 148. He summoned a large crowd to Washington, D.C. to "be wild" on January 6, 2021. *Id.* ¶ 124.

Nor did Trump just "give a speech" on January 6. He personally helped plan the crucial mustering event: the "wild" Ellipse demonstration. ¶133-134. He ensured that his armed and angry supporters were able to bring their weapons to the speech and to the Capitol, *ordering* officials to remove magnetometers that would have prevented armed people from joining the assembly; *id.* ¶ 175-178; incited them against Vice President Pence, Congress, the certification of electoral votes, and the peaceful transfer of power, *id.* ¶¶ 186-191; and instructed them to march on the Capitol for the purpose of preventing, obstructing, disrupting, or delaying the electoral vote count and peaceful transfer of power, *id.* ¶¶ 192-93. As noted above, "marching orders or instructions to capture a particular objective, or to disrupt or obstruct a particular government proceeding, would appear to constitute 'engagement' under the *Worthy-Powell* standard." *Rowan*, *supra*, at 14. That describes

Trump's Ellipse speech. His supporters understood their orders perfectly: per his instructions, they *marched* to the Capitol, *captured* it, *obstructed* Congress, and *disrupted* the congressional electoral count.

Then, while the attack was ongoing, Trump did not simply "monitor it." After it became clear that Vice President Mike Pence would not participate in Trump's illegal plan to prevent the transfer of power, Trump fanned the flames of the attack by lashing out publicly at Vice President Pence for his lack of "courage." *Id.* ¶ 232. He knew, consciously disregarded the risk, or specifically intended that this tweet would exacerbate the violence at the Capitol—and it did. *Id.* ¶¶ 233-34. He also provided material support by refusing to mobilize federal law enforcement or National Guard assistance though it was clear that law enforcement at the Capitol was overwhelmed. *Id.* ¶ 40.

In short, Trump did everything he could to encourage and support the violent attack on the Capitol in an effort to achieve the illegal and unconstitutional goal of preventing the peaceful transfer of presidential power.

Based on these well-pled facts, Petitioners' Objection cannot be dismissed.

Trump's speech summoning his supporters to Washington, D.C. to "be wild" and ordering them to march to the Capitol to "fight" easily meets the standard for incitement of an insurrection:

> Having considered the President's January 6 Rally Speech in its entirety and in context, the court concludes that the President's statements that, "[W]e fight. We fight like hell and if you don't fight like hell, you're not going to have a country anymore," and "[W]e're going to try to and give [weak Republicans] the kind of pride and boldness that they need to take back our country," immediately before exhorting rally-goers to "walk down Pennsylvania Avenue," are plausibly words of incitement not protected by the First Amendment. It is plausible that those words were implicitly "directed to inciting or producing imminent lawless action and [were] likely to produce such action."

Thompson v. Trump, 590 F. Supp. 3d 46, 115 (D.D.C. 2022), *appeal pending*, No. 22-7031 (D.C. Cir.). But Trump's engagement in the January 6 insurrection was also not limited to speech. As noted, he directed the scheme to prevent certification of the votes; he helped to plan the demonstration where supporters gathered before attacking the Capitol, Objection ¶ 133; he planned the March on the Capitol, *id.* ¶ 135; and he ordered officials to remove magnetometers that were preventing armed people from joining the assembly, precisely so that they could bring weapons to the Capitol, *id.* ¶ 178.

Nor are Objectors' allegations regarding Trump's conduct during the insurrection limited to his inaction, as he suggests. Rather, Trump's tweet at the height of the violence regarding Mike Pence's lack of courage galvanized the attackers, eventually requiring Vice President Pence to be removed by the Secret Service for his safety to shelter in a secure location. *Id.* ¶¶ 232-43. Moreover, Trump's refusal to mobilize federal authorities or, for hours, give his followers a clear instruction to disperse is noteworthy given his specific duty to "take Care that the Laws be faithfully executed." U.S. Const. art. II, § 3. Yet for 187 minutes after the attack began, he refused to call in the necessary authorities or even to call off his supporters and tell them to go home. Objection ¶ 41. Instead, he fanned the flames. Objection ¶¶ 232-35.

Objectors have alleged more than sufficient facts to support the conclusion that President Trump "provided voluntary assistance for" and thus engaged in insurrection. That is the conclusion reached by the Maine Secretary of State and by the Colorado trial court and affirmed by the Colorado Supreme Court. Maine Sec'y of State Ruling, Ex. B, at 31-21; *Anderson*, 2023 CO 63, ¶ 221 (affirming finding that Trump engaged in insurrection). To date, nine federal judges have likewise ascribed responsibility for the January 6 insurrection to Trump. *See* Objection ¶ 287 (listing cases). Trump engaged in insurrection. No adjudicative body to have reached the merits of

challenges like this one has concluded otherwise. There is absolutely no basis for the electoral board to reach a contrary conclusion here.

III. SECTION 3 APPLIES TO BAR A FORMER PRESIDENT FROM THE OFFICE OF THE PRESIDENT.

Trump is wrong in arguing that, even if he engaged in insurrection, Section 3 still does not bar him from the Presidency. Section 3 clearly applies to Trump because (i) the Presidency is an "office . . . under the United States"; (ii) the President is an "officer of the Unites States"; and (iii) the presidential oath constitutes an oath "to support the Constitution of the United States." U.S. Const. amend. XIV, § 3. Moreover, the distinction he attempts to draw between "holding office" and "running for office" does not affect this Board's duty to remove him from the ballot.

A. Trump's Claim that Section 3 Disqualifies Insurrectionists from "Holding Office" but not "Running for Office" is Unavailing.

As a preliminary matter, Trump insists that this Board must allow him to appear on the ballot because, he argues, Section 3 bars insurrections from "holding office" but not from "appearing on a ballot or being elected." Mot. at 11-12. He does not cite any decision that agrees with him by any adjudicative body that has reached the merits of a challenge like this one.

This is the same argument that then-judge, now Justice Gorsuch rejected in *Hassan v. Colorado,* 495 F. App'x 947 (10th Cir. 2012). Like Trump here, Hassan argued that "even if Article II properly holds him ineligible to assume the office of president," it was unlawful "for the state to deny him a *place on the ballot*." *Id.* at 948 (emphasis in original). The court rejected this distinction, concluding that "a state's legitimate interest in protecting the integrity and practical functioning of the political process permits it to exclude from the ballot candidates who are constitutionally prohibited from assuming office." *Id.* (upholding the exclusion of a constitutionally ineligible presidential candidate from state primary election ballots); *accord Lindsay v. Bowen*, 750 F.3d 1061 (9th Cir. 2014) (same); *Socialist Workers Party*, 357 F. Supp.

109 (same); *see also Anderson*, 2023 CO 63, ¶ 67 ("Nor are we persuaded by President Trump's assertion that Section Three does not bar him from *running for* or *being elected* to office because Section Three bars individuals only from *holding* office. *Hassan* specifically rejected any such distinction.") (emphasis in original).

Trump seems to argue that Section 3's provision "that any disability may be removed by Congress" renders it unenforceable at the ballot stage. Mot. at 11. But Trump cannot himself cure the disqualification. Only Congress, by a two thirds majority of each house, may remove the Section 3 disability. Trump has not even requested that Congress do so, and there is no evidence that it would act in his favor, if presented with such a request. Trump's contention that election officials and the courts are powerless to enforce Section 3 unless and until a disloyal insurrectionist has successfully run for an office for which he is not currently qualified, then belatedly and unsuccessfully asks Congress to remove the disability, is both completely unfounded and a recipe for chaos. *See supra* Part IV.A. Even Trump specifically acknowledges "the constitutional crisis of a President-elect being chosen by loyal electors in a nationwide election, and then having his or her qualifications challenged." Mot. at 16. Yet he urges a course that could lead to *precisely* that outcome, by arguing that only Congress can adjudicate his eligibility—which would take place no sooner than January 6, 2025.

In short, the fanciful and speculative possibility that two-thirds of each chamber would vote to remove Trump's Section 3 disqualification provides no basis for including Trump on the ballot. As of this time (and indeed for the foreseeable future), he is disqualified from holding office and therefore may not appear on the ballot.

The cases Trump relies upon—*Schaefer v. Townsend*, 215 F.3d 1031 (9th Cir. 2000), and *U.S. Term Limits, Inc. v. Thornton*, 514 U.S. 779 (1995)—are inapposite. In *Thornton*, unlike here,

the state of Arkansas imposed term limits on Representatives and Senators that were not contained in the Constitution. *Id.* at 783. And in *Schaefer*, California imposed a requirement that Representatives reside within the state *before* the election, which, the Ninth Circuit held, "contravenes the express language of the Qualification Clause" specifically providing that a Representative need not be an "Inhabitant of that State" until he is elected. *See* 215 F.3d at 1036-38 (citing U.S. Const. art. I, § 2, cl. 2). Furthermore, recognizing the risk that nonresident candidates might fail to establish residence in California upon winning the election and each state's "interest 'in avoiding confusion, deception, and even frustration of the democratic process at the general election,'" the court reasoned that California could "require candidates to file a document with their nomination papers attesting that they will be inhabitants of the state when elected." *Id.* at 1038. As explained above, Trump could never honestly attest that his disqualification will be removed by Congress. Unlike a nonresident candidate, who controls his own ability to move to the state by election day and can therefore truthfully attest that he will do so by election day, Trump cannot so attest because removal of disqualification depends on an entirely speculative act of a congressional supermajority. "[A] State has an interest, if not a duty, to protect the integrity of its political processes from frivolous or fraudulent candidacies." *Bullock v. Carter*, 405 U.S. 134, 145 (1972). In removing a disqualified candidate from the ballot, Illinois is acting properly in accordance therewith.

Finally, in arguing that "the SOEB is not authorized to investigate matters under Section Three for purposes of ballot placement in a presidential primary election," (Mot. at 12.), Trump is asking this Board to ignore binding Illinois Supreme Court precedent, providing that, when a candidate submits his nomination papers to run for office, the candidate must swear that he is *currently* qualified for the office sought. *See Cinkus v. Vill. of Stickney Mun. Officers Electoral*

Bd., 228 Ill. 2d 200, 219 (2008). If his statement of candidacy is false, the candidate's name may not be printed on the ballot. *Goodman*, 241 Ill. 2d at 409-10. In short, a candidate is "ineligible to run for office" unless the disqualifying circumstances have already been "remedied by the time the candidate files his or her nomination papers." *Cinkus*, 228 Ill. 2d at 219-20. Trump's statement that he is currently qualified for the office of the Presidency is false, and accordingly, he must be excluded from the ballot.

B. The Presidency is an "Office . . . Under the United States." [12]

Trump argues that the presidency is not an office under the United States from which oath-breaking insurrectionists are disqualified by Section 3. Mot. at 15-16. He does not cite any decision agreeing with him by any adjudicative body to have reached the merits of challenges like this one.[13]

His contention defies the "normal and ordinary meaning" of "office . . . under the United States." *District of Columbia v. Heller*, 554 U.S. 570, 576 (2008). Not only does the Constitution refer to the presidency as an "office" no less than 25 times,[14] the plain meaning of "office" includes the Presidency, and the ratifying public understood the Presidency as an "office . . . under the United States." *See, e.g.,* Noah Webster, *An American Dictionary of the English Language* 689 (C.A. Goodrich ed. 1853) (defining "office" as a "particular duty, charge or trust conferred by public authority, and for a public purpose," that is "undertaken by . . . authority from government or those who administer it"); MONTPELIER DAILY JOURNAL, Oct. 19, 1868 (observing that Section 3 "excludes leading rebels from holding offices . . . from the Presidency downward"); TERRE

[12] The arguments in this Part and Parts III.C.-D. *infra* also are addressed in Objectors' Motion to Grant Objectors' Petition, or in the Alternative for Summary Judgment in Argument, Section VI (pp. 53-60).

[13] The Colorado trial court so ruled but was reversed on appeal. *See Anderson*, 2023 CO 63, ¶ 129.

[14] *See, e.g., U.S.* Const. art. II, § 1, cl. 1 ("[The President] shall hold his *Office* during the Term of four years."), art. II, § 1, cl. 8 ("Before he enter on the Execution of his *Office*, he shall take the following Oath or Affirmation:—'I do solemnly swear (or affirm) that I will faithfully execute the *Office* of President of the United States . . . .'").

HAUTE WKLY. EXPRESS, Apr. 19, 1871, at 4, col.1 (assuming that, unless he were granted amnesty, Section 3 would bar Jefferson Davis from the Presidency); *The Administration, Congress and the Southern States—The New Reconstruction Bill*, N.Y. HERALD, Mar. 29, 1871, at 6[15] (same). Trump's reading, which would disqualify disloyal insurrectionists from every public office, from meat inspector, to Governor, to Supreme Court Justice, *except the presidency*, flies in the face of the plain meaning and purpose of Section 3.

The fact that an early draft of Section 3 included the phrase "office of the President or Vice President," *Cong. Globe*, 39th Cong., 1st Sess. 919 (1866), does not, as Trump claims, suggest that the drafters intentionally *omitted* the office of the President or Vice President from Section 3. Instead, the drafters chose to include a "much broader catchall"—one that still included, but was not limited to, the office of the Presidency and Vice Presidency. Maine Sec'y of State Ruling, Ex. B, at 22; *Anderson*, 2023 CO 63, ¶ 140-141. Indeed, during amendment debates, when Senator Reverdy Johnson expressed his concern that Section 3 needed to prevent rebels from being elected President or Vice President, his colleague Senator Lot Morrill easily assuaged this concern by drawing his attention to the catchall phrase "'or hold any office, civil or military, under the United States," which would indeed include the President and Vice President. *Cong. Globe*, 39th Cong., 1st Sess. 2899 (1866).

Nor does the fact that Section 3 lists senators, representatives, and electors, but not the presidency, provide any evidence that the office of the presidency was omitted from the "offices under the United States," to which Section 3 applies. As the Colorado Supreme Court reasoned, Section 3 does not specifically mention the Presidency but lists senators, representatives, and presidential electors because the Presidency "is so evidently an 'office'" that to list it would be

[15] Reproduced in *Northern View*, FAIRFIELD HERALD, Apr. 12, 1871, at 1.

surplusage. *Anderson*, 2023 CO 63, ¶ 131. By contrast, senators, representatives, and presidential electors needed to be listed because none of these positions constitutes an "office." *Id.* The Constitution does not refer to Senators and Representatives as such, *see* U.S. Const. art. I, § 5, cl. 1 (referring to "Members" of Senate and House); *id.* art. I, § 6, cl. 2 (same); *id.* art. II, § 1 cl. 2 (distinguishing Senators and Representatives from those holding office under the United States), and electors are "no more officers . . . of the United States than are . . . the people of the States when acting as electors of representatives in congress," *Fitzgerald v. Green*, 134 U.S. 377, 379 (1890).

Last, Trump advances the misguided argument that two other Constitutional references to "office 'under the' United States" exclude the Presidency. *See* Mot. at 16 (citing U.S. Const. art. I, §§ 6, 9). That is not so. First, Trump claims that the Foreign Emoluments Clause, which restricts the acceptance of foreign gifts by any "Person holding any Office . . . under [the United States]"—is understood to exclude the President. But that is false. *See, e.g.*, *Trump v. Mazars USA, LLP*, 39 F.4th 774, 792 (D.C. Cir. 2022) (observing that the Foreign Emoluments Clause "bars federal officials (*including the President*) from accepting gifts or other payments from foreign governments") (emphasis added). Trump's reliance on Article I, Section 6 fares no better. This Section contains the Incompatibility Clause, which states that "no Person holding any *Office under the United States*, shall be a member of either House during his Continuance in Office." *Id.* at art. I, § 6, cl. 2 (emphasis added). If "office under the United States" were read to omit the Presidency, a sitting President could simultaneously occupy a seat in Congress, which would violate the precise aim of the Incompatibility Clause: the separation of powers. *See Buckley v. Valeo*, 424 U.S. 1, 124 (1976) ("The principle of separation of powers . . . was woven into the [Constitution] . . . . The

further concern of the Framers of the Constitution with maintenance of the separation of powers is found in the so-called 'Ineligibility' and 'Incompatibility' Clauses . . . .").

For these reasons, the Colorado Supreme Court decision correctly held that "both the constitutional text and historical record" show that the Presidency is an "office . . . under the United States" within the meaning of Section 3. *Anderson*, 2023 CO 63, ¶ 129.

C. The President of the United States is a Covered "Officer of the United States" Under Section 3.

Trump also contends that "Officer of the United States" should be read as a term of art—not according to its plain language—and interpreted, counterintuitively, as excluding the President. Mot. at 14 ("[T]he phrase has a *particular legal meaning* when it appears in the Constitution . . . and that meaning excludes the President.") (emphasis added).

In so arguing, Trump attempts to overcomplicate what should be a straightforward reading of clear constitutional text. "[T]he Constitution was written to be understood by the voters; its words and phrases were used in their normal and ordinary as distinguished from technical meaning." *Heller*, 554 U.S. at 576-77 ("Normal meaning . . . excludes . . . secret or technical meanings that would not have been known to ordinary citizens in the founding generation"); *see also Whitman v. Nat'l Bank of Oxford*, 176 U.S. 559, 563 (1900) ("The simplest and most obvious interpretation of a Constitution . . . is the most likely to be that meant by the people in its adoption.").

As the Colorado Supreme Court explained, "If members of the Thirty-Ninth Congress and their contemporaries all used the term 'officer' according to its ordinary meaning to refer to the President, we presume this is the same meaning the drafters intended it to have in Section Three. . . . [I]n the absence of a clear intent to employ a technical definition for a common word, we will not do so." *Anderson*, 2023 CO 63, ¶ 148. Like the Colorado Supreme Court, this Board too should

reject Trump's urging to adopt a "particular legal meaning" of the phrase "officer of the United States." Mot. at 14.

Notably, the self-serving definition of "Officer of the United States" that Trump advances here contradicts his federal court brief filed just a few months ago in *People v. Trump*, No. 23-cv-3773 (S.D.N.Y.). There, Trump asserted that he *is* a former "officer . . . of the United States." Memo. in Opp. to Mot. to Remand, ECF No. 34, *People v. Trump*, No. 23-cv-3773 (S.D.N.Y. filed June 15, 2023) ("Trump Opp."), at 2 (omission in original).[16] Indeed, he argued there that the reading he now advances—that the President is not an "officer of the United States"—"has never been accepted by any court." *Id.* at 2.[17] This Board should not be the first.

The phrase "Officer of the United States" by its plain language quite clearly encompasses the President. The Constitution refers to the presidency as an "office" over 25 times, *see supra* Part III.B., and the plain meaning of "officer" is one who holds an office. *See* N. Bailey, *An Universal Etymological English Dictionary* (20th ed. 1763) ("one who is in an Office"); *see also United States v. Maurice*, 26 F. Cas. 1211, 1214 (C.C.D. Va. 1823) (Marshall, C.J., riding circuit) ("An office is defined to be a public charge or employment, and he who performs the duties of the office, is an officer. If employed on the part of the United States, he is an officer of the United States") (quotation marks omitted). A reading of "officer" that excludes the President cannot be

[16] *Available at* https://bit.ly/TrumpRemandOpp.

[17] Trump disingenuously relies now on the Appointments Clause cases, *Free Enterprise Fund v. Public Co. Acct. Oversight Bd.*, 561 U.S. 477 (2010), and *United States v. Mouat*, 124 U.S. 303 (1888), but he rightly distinguished those cases in his prior briefing, explaining that the "Supreme Court was not deciding that meaning of 'officer of the United States' as used in every clause in the Constitution," but rather was only describing the meaning of "*other* officers of the United States" in that clause, and "*Free Enterprise Fund* says nothing about the meaning of 'officer of the United States' in other contexts." Memo. in Opp. to Mot. to Remand, ECF No. 34, *People v. Trump*, No. 23-cv-3773 (S.D.N.Y. filed June 15, 2023) ("Trump Opp."), at 4. He continued that *Mouat* is inapposite because the distinction drawn there was between "officers of the United States" and "employees" (who are "lesser functionaries subordinate" thereto). *Id.* at 5. The Board should reject Trump's opportunistic turnabout.

squared with the meaning of "office," which includes the President, as discussed above. *Motions Sys. Corp. v. Bush*, 437 F.3d 1356, 1371–72 (Fed. Cir 2006) (*en banc*) (Gajarsa, J., concurring in part and concurring in the judgment) (citations omitted) ("An interpretation of the Constitution in which the holder of an 'office' is not an 'officer' seems, at best, strained.").

In addition, there is well-founded historical support for this commonsense reading. Well before the Civil War, both common usage and judicial opinions described the president as an "officer of the United States." As early as 1789, congressional debate referred to the president as "the *supreme Executive officer* of the United States." 1 *Annals of Congress* 487–88 (Joseph Gales, ed. 1789) (Rep. Boudinot); *cf.* THE FEDERALIST No. 69 (Alexander Hamilton) ("The President of the United States would be an officer elected by the people"). In 1799, Congress passed a postal statute and enumerated a list of "officers of the United States" that specifically included "the President of the United States." An Act to establish the Post-Office of the United States, § 17, Mar. 2, 1799, 1 Stat. 733, 737. Chief Justice Branch wrote in 1837 while riding circuit that "[t]he president himself . . . is but an officer of the United States." *United States ex rel. Stokes v. Kendall*, 26 F. Cas. 702, 752 (C.C.D.C. 1837), *affirmed*, 37 U.S. 524 (1838).

By the 1860s, this usage was firmly entrenched. *See* John Vlahoplus, *Insurrection, Disqualification, and the Presidency,* 13 BRIT. J. AM. LEGAL STUD. __ (forthcoming 2024), at 18-20. [18] On the eve of the Civil War, President Buchanan called himself "the chief executive officer under the Constitution of the United States." *Id.* at 18 (citation omitted). That usage was repeated with respect to President Lincoln. *See Cong. Globe,* 37th Cong., 2d Sess. 431 (1862) (Sen. Davis) (referring to President Lincoln as "the chief executive officer of the United States"). In a series of widely reprinted official proclamations that reorganized the governments of former confederate

[18] *Available at* https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4440157.

states in 1865, President Andrew Johnson referred to himself as the "chief civil executive officer of the United States."[19]

This usage continued throughout the Thirty-Ninth Congress, which enacted the Fourteenth Amendment, *e.g.*, *Cong. Globe*, 39th Cong., 1st Sess. 335 (Sen. Guthrie) (1866), 775 (Rep. Conkling) (quoting Att'y Gen. Speed), 915 (Sen. Wilson), 2551 (Sen. Howard) (quoting President Johnson), and during its two-year ratification period, *see, e.g.*, *Mississippi v. Johnson*, 71 U.S. 475, 480 (1866) (counsel labeling the president the "chief executive officer of the United States"); *Cong. Globe*, 39th Cong. 2d Sess. 335 (1867) (Sen. Wade) (calling president "the executive officer of the United States"); *Cong. Globe*, 40th Cong. 2d Sess. 513 (1868) (Rep. Bingham) ("executive officer of the United States").

Even today, this plain meaning is widely used by the Supreme Court and the executive branch alike. *See, e.g.*, *Nixon v. Fitzgerald*, 457 U.S. 731, 750 (1982) (referring to president as "the chief constitutional officer of the Executive Branch"); *Cheney v. U.S. Dist. Court for the Dist. of Columbia*, 541 U.S. 913, 916 (2004) (Scalia, J.) (referring to "the President and other officers of the Executive"); *Motions Sys. Corp.*, 437 F.3d at 1368 (cataloguing multiple presidential executive orders in which the president refers to himself as an "officer"); Office of Legal Counsel, U.S. Dep't of Justice, *A Sitting President's Amenability to Indictment and Criminal Prosecution* (Oct. 16, 2000), at 222, 226, 230 (distinguishing "*other* civil officers" from the president) (emphasis added), *available at* https://www.justice.gov/d9/olc/opinions/2000/10/31/op-olc-v024-p0222_0.pdf; Exec. Order No. 11435 (1968) (referring to actions "of the President or of any other

[19] Andrew Johnson, Proclamation No. 135 (May 29, 1865); Proclamation No. 136 (June 13, 1865); Proclamation No. 138 (June 17, 1865); Proclamation No. 139 (June 17, 1865); Proclamation No. 140 (June 21, 1865); Proclamation No. 143 (June 30, 1865); Proclamation No. 144 (July 13, 1865), *all reprinted in* 8 *A Compilation of the Messages and Papers of the President*, 3510–14, 3516–23, 3524–29 (James D. Richardson ed., 1897).

officer of the United States"). Given the repeated and consistent description of the President as an "Officer of the United States," the plain meaning of the phrase in Section 3 necessarily includes the President.

In addition to violating its plain meaning, a construction of "Officer of the United States" that excluded the President would mean that one who swears an oath to protect the Constitution *in the highest office in the nation* would be unique among our nation's officers in that he would be permitted to violate that oath by engaging in insurrection and subsequently return to public office. Courts in both the nineteenth century and today have held that the phrase "officer" in Section 3 included officers of fairly low station. *See Powell*, 27 F. Cas. 605 (constable); *Griffin*, 2022 WL 4295619 (county commissioner); *Worthy*, 63 N.C. 199 (county sheriff); *In re Tate*, 63 N.C. 308, (1869) (county attorney). The *Worthy* court even enumerated additional "officers" subject to Section 3, including "Stray Valuers" and "Inspectors of flour, Tobacco, &c." 63 N.C. at 203. Under Trump's theory, Section 3 provides that a former *Inspector of Flour* who engages in insurrection is too dangerous for public office, but a former *President of the United States* who engages in insurrection is not. Such a reading would not only be absurd but would also undermine Section 3's primary purpose: that "those who had been once trusted to support the power of the United Stated, and proved false to the trust repose, ought not, as a class, to be entrusted with power again until congress saw fit to relieve them from disability." *Powell*, 27 F. Cas. at 607.

D. <u>The Presidential Oath is an Oath to Support the Constitution.</u>

Trump wrongly asks this Board to recognize yet another term of art: "oath . . . to support the Constitution of the United States." Mot. at 15. Trump does not even attempt to argue that these words, by their plain language, exclude the presidential oath—nor could he. The presidential oath to "preserve, protect and defend the Constitution," U.S. Const. art. II, § 1, cl. 8, is clearly consistent with the plain meaning of the word "support." *Anderson*, 2023 CO 63, ¶ 156 ("Modern dictionaries

define 'support' to include 'defend' and vice versa. So did dictionaries from the time of Section Three's drafting.") (citations omitted).

Finding no support for his reading in the Constitution's plain language, Trump asks this Board to decipher some implicit meaning from Section 3, which would limit its scope to officers who have taken an oath under Article VI. Mot. at 15. The Constitution is not read to convey "secret . . . meaning[s]," *see Heller*, 554 U.S. at 576-77, but even if it were, this too is a dead-end. To be sure, Article VI provides that "all executive and judicial Officers . . . of the United States . . . shall be bound by Oath or affirmation, to support this Constitution," but, as discussed above, the President is among the "executive . . . Officers . . . of the United States" to which Article VI applies. *See supra* Part III.C. The presidential oath is simply one articulation of the oath to support the Constitution required by Article VI.

In sum, Section 3 applies to bar Trump from the ballot because as President, he was an officer of the United States, and took an oath to support the Constitution, and, having engaged in insurrection, he is disqualified from the Presidency.

IV. TRUMP IS WRONG IN ARGUING THAT TRUMP'S QUALIFICATIONS FOR OFFICE ARE A NON-JUSTICIABLE POLITICAL QUESTION.

Candidate Trump also tries to dispose of this Objection by arguing it falls within the political question doctrine. His arguments on this point are not only are wrong, but significantly misrepresent several cases on which he relies. The positions taken in his motion must be rejected because the law is clear that the extremely limited application of this doctrine does not apply to a Section 3 candidacy challenge because: (1) Section 3, unlike other Constitutional provisions to which the doctrine applies, is not reserved for Congressional action in its text; (2) Section 3 involves judicially manageable standards, as illustrated by courts that have repeatedly applied and interpreted it; (3) federal circuit court precedent that the Motion fails to cite demonstrates the

inapplicability of the doctrine, as does the Colorado Supreme Court decision giving it close analysis, and (4) a host of the cases cited in the Motion do not stand for the propositions relied on and do not hold up against the on-point precedent.

The political question doctrine is a "narrow exception" to the rule that cases properly before a court are justiciable and must be decided. *Zivotofsky ex rel. Zivotofsky v. Clinton*, 566 U.S. 189, 194-95 (2012). Even cases that are political in nature generally or that involve a presidential election specifically may fall outside the bounds of the political question doctrine. *Baker v. Carr*, 369 U.S. 186, 217 (1962) (courts cannot avoid deciding whether an action exceeds constitutional authority merely because the action at issue is "denominated 'political'"); *McPherson v. Blacker*, 146 U.S. 1, 23 (1892) (rejecting argument that all questions concerning the election of a presidential elector are political in nature and thus nonjusticiable).

Contrary to Trump's assertion, questions about a presidential candidate's qualifications do *not* fall under the narrow political question exception. The doctrine applies only where the issue: (1) is textually committed to another branch of government, or (2) lacks judicially discoverable and manageable standards for resolution. *See Rucho v. Common Cause*, 588 U.S. ___, 139 S.Ct 2484, 2494 (2019); *Zivotofsky*, 566 U.S. at 195.[20] As the Colorado Supreme Court held, neither factor applies to Section Three. *Anderson*, 2023 CO 63, ¶¶ 110-126.

A. The Determination of a Presidential Candidate's Qualification Is Not Textually Committed to Congress.

Trump does not cite any constitutional provision that textually commits the authority to assess presidential candidate qualifications to Congress. That is because no such textual

[20] While the U.S. Supreme Court identified six relevant factors in 1962, when it decided *Baker*, 369 U.S. 186, the recent Supreme Court precedent cited focuses only on the two factors discussed herein. *See also Anderson*, 2023 CO 63, ¶ 110 (deeming the other four *Baker* factors "not relevant" to the same issue presented here).

commitment exists. *Id.* at ¶ 112.

Article I, for example, explicitly authorizes and directs Congress to judge qualifications of incoming *Senators* and *Representatives*, *see* U.S. Const., art. I, § 5, cl. 1 ("Each House shall be the Judge of the . . . Qualifications of its own Members . . . ."), but neither Article II nor any other constitutional provision explicitly authorizes—let alone directs—Congress to judge presidential candidates' qualifications. While Section Three requires a "vote of two-thirds of each House" to *remove* the disqualification at issue, it conspicuously does not direct the determination of disqualification to either branch. U.S. Const. amend. XIV, § 3. Further, while the Twelfth Amendment authorizes Congress to count electoral votes and the Twentieth Amendment provides a contingency procedure "if the President elect shall have failed to qualify," neither of these provisions authorize Congress to assess presidential candidates' eligibility, much less textually commit that determination to Congress. *See* U.S. Const., amends. XII, XX; *see also Anderson*, 2023 CO 63, ¶ 121 ("[W]e may not conflate actions that are textually *committed* to a coordinate political branch with actions that are textually *authorized*.") (emphases in original) (internal quotation marks omitted).

On the other hand, the Constitution *does* textually commit plenary power to the *states* to appoint presidential electors in the manner they choose. *See* U.S. Const., art. II, § 1, cl. 2 ("Each State shall appoint, in such Manner as the Legislature thereof may direct, a Number of Electors . . . ."); *see also Bush v. Gore*, 531 U.S. 98, 104 (2000) ("[T]he state legislature's power to select the manner for appointing electors is plenary."); *accord, e.g., Moore v. Harper,* 600 U.S. 1, 37 (2023); *McPherson v. Blacker*, 146 U.S. 1, 35 (1892). "[B]ecause the legislature[] may choose the manner by which it selects its electors, it follows that it may restrict the discretion of the election process through an ex ante examination of candidates' qualifications." Derek Muller, *Scrutinizing Federal*

Election Qualifications, 90 Ind. L.J. 559, 604 (2015). This is confirmed by federal appellate court precedent from the Ninth and Tenth Circuits.

In *Hassan v. Colorado*, 495 F. App'x 947 (10th Cir. 2012), then-Judge (now Justice) Gorsuch, writing for the Tenth Circuit, upheld the Colorado Secretary of State's exclusion of a constitutionally ineligible candidate because "a state's legitimate interest in protecting the integrity and practical functioning of the political process permits it to exclude from the ballot candidates who are constitutionally prohibited from assuming office." *Id.* at 948. Similarly, in *Lindsay v. Bowen*, 750 F.3d 1061 (9th Cir. 2014), the Ninth Circuit rejected the notion that the Constitution permits only Congress to determine the qualification of a presidential candidate, finding "[n]othing in [the Twentieth Amendment's] text or history suggests that it precludes state authorities from excluding a candidate with a known ineligibility from the presidential ballot." *Id.* at 1065. Trump's argument that "presidential qualification disputes are not properly decided in state and local proceedings" and instead "belong in Congress" fails under this precedent. Mot. at 7-8.

Furthermore, Trump's claim that that pre-primary state evaluation of candidates' constitutional eligibility may lead to "chaotic results" (Mot. at 8) is fully undermined by the alternative. If states could not adjudicate presidential candidates' qualifications, only Congress, this would *maximize* chaos by barring adjudication of a candidate's constitutional qualifications until either **January 6, 2025** (under the Twelfth Amendment) or **January 20, 2025** (under the Twentieth Amendment). *That* is the invitation to chaos. Patently unqualified individuals—e.g., former President Obama (who has served two terms) or athlete Lionel Messi (a non-citizen)—could declare their candidacies for president, force Illinois and other states to include them on the ballot, and evade resolution until the eve of inauguration. "It is hard to believe the State legislatures that ratified the Constitution signed up for such a charade." *Cawthorn v. Amalfi*, 35 F.4th 245, 265

(4th Cir. 2022) (Wynn, J., concurring).

B. Section Three Involves Judicially Discoverable and Manageable Standards.

Section Three involves judicially discoverable and manageable standards, and Trump does not argue otherwise. It is easy to so conclude because Section Three involves two core terms, "engage" and "insurrection," which each have well-established definitions. As discussed *supra* at Part II.A., "insurrection" was interpreted and defined repeatedly by courts, law dictionaries, and other authoritative legal sources before, during, and after Reconstruction, and the judicial interpretation of "engage" under Section 3 has been established for 150 years. *See, e.g., United States v. Powell*, 27 F. Cas. 605, 607 (C.C.D.N.C. 1871) (No. 16,079) (defining "engage" as used in Section Three); President Lincoln, *Instructions for the Gov't of Armies of the United States in the Field*, Gen. Orders No. 100 (Apr. 24, 1863), art. 149 (defining "insurrection" as "the rising of people in arms against their government, or a portion of it, or against one or more of its laws, or against an officer or officers of the government."); *see also Anderson*, 2023 CO 63, ¶ 124 (noting that the meaning of "engage" and "insurrection" have long been interpreted by numerous courts in both this and other contexts, and citing cases). Since Section Three "does not 'turn on standards that defy judicial application,'" the standards are judicially manageable and the narrow political question doctrine does not apply. *Anderson*, 2023 CO 63, ¶ 125.

C. Trump Relies on Unpersuasive and Discredited Decisions.

The only support Trump offers for his invocation of the political question doctrine are decisions mainly issued by trial courts, nearly all of which dismissed the challenges at issue for standing, mootness, or other jurisdictional defects and addressed the political question doctrine (if at all) in dictum. The cases cited are unpersuasive for a host of reasons, including that they either are unpublished, did not address the doctrine at issue, were litigated by *pro se* plaintiffs, have been

discredited, or were expressly not adopted by a reviewing court and are undermined by *Lindsay* and *Hassan*.[21]

Castro, for instance, was litigated by a *pro se* plaintiff who did not direct the court to *Lindsay* or *Hassan*. *Castro v. N.H. Sec'y of State*, __ F. Supp. 3d __, 2023 WL 7110390, *9 (D.N.H. Oct. 27, 2023). The *Castro* appellate court, which affirmed dismissal on other grounds, expressly declined to decide the political question issue, in part "because of the limited nature" of Castro's arguments concerning the doctrine's application. *Castro v. Scanlan*, 86 F.4th 947, 953 (1st Cir 2023). *Strunk* similarly was litigated by a *pro se* plaintiff who filed a "lengthy, vitriolic, baseless diatribe" and who did not use the objection procedure provided by the New York legislature. *Strunk v. New York State Bd. of Elections*, 35 Misc. 3d 1208(A), 2012 WL 1205117, at *2 (N.Y. Sup. Ct. 2012), *order aff'd, appeal dismissed*, 126 A.D.3d 777 (N.Y. App. Div. 2015).

Three other cases Trump cites, *Keyes, Robinson, and Jordan,* did not even discuss the political question doctrine and barred the ballot access challenges on inapplicable or baseless grounds. *Keyes v. Bowen*, 189 Cal. App. 4th 647, 659–61 (2010) (dismissing entirely on state law grounds without discussing political question doctrine); *Robinson v. Bowen*, 567 F. Supp. 2d 1144, 1147 (N.D. Cal. 2008) (citing case on *ripeness* for conclusion that judicial review should occur "*after* the electoral and Congressional processes" without discussing political question doctrine) (emphasis added); *Jordan v. Reed*, 2012 WL 4739216, at *1 (Wash. Super. Ct. Aug 29, 2012) (holding court lacked subject matter jurisdiction).

Other cases cited, *Grinols, Taitz*, and *Kerchner*, are inapposite because they involved *post-election* attempts to enjoin the Electoral College or Congress and claimed remedies that do not

[21] Notably, the Colorado Supreme Court considered most of the cases Trump cites here and easily found them unpersuasive. *See Anderson,* 2023 CO 63, ¶ 120.

exist, as only *Congress* holds the power to remove a sitting president, U.S. Const. art. I, § 2, cl. 5 (House has "sole Power of Impeachment"), whereas this *pre-election* candidacy challenge falls within the *state's* plenary power. *Grinols v. Electoral Coll.*, No. 2:12-CV-02997-MCE, 2013 WL 2294885, at *1 (E.D. Cal. May 23, 2013) (post-election suit seeking to enjoin Electoral College, Congress, and others), *aff'd on other grounds*, 622 F. App'x 624 (9th Cir. 2015); *Taitz v. Democrat Party of Mississippi*, No. 3:12-CV-280-HTW-LRA, 2015 WL 11017373, at *3 (S.D. Miss. Mar. 31, 2015) (seeking to "decertify or annul" presidential primary results); *Kerchner v. Obama*, 669 F. Supp. 2d 477, 479 (D.N.J. 2009) (seeking "to remove the President from office" or compel him to prove his qualifications), *aff'd on other grounds*, 612 F.3d 204 (3d Cir. 2010).

A consistent theme of every trial case Trump relies on is that the federal and state appellate courts that reviewed them uniformly refused to indulge the lower courts' musings on the political question doctrine in this context. *See Grinols*, 622 F. App'x at 625 n.1 (reaching "only the issue of mootness"); *Kerchner v. Obama*, 612 F.3d 204, 209 n.3 (3d Cir. 2010) ("[W]e need not discuss [political question] issue"); *Davis*, 2023 WL 8656163 (similar); *Castro*, 86 F4th at 953 (similar). The authoritative appellate decisions, rather than the lower court rulings that Trump cites without their subsequent history, turn on Article III standing (in federal court), mootness (for late challenges), and questions of state law—not the political question doctrine, and not anything at issue here.

Finally, in addition to being inapplicable for the reasons discussed above, *Robinson* and *Grinols* were also superseded by *Lindsay*, which explicitly rejected the idea that resolution of presidential candidates' qualifications is exclusively committed to Congress. 750 F.3d at 1065.[22]

[22] The trial court's decision in *Grinols* preceded *Lindsay*, and after *Lindsay*, the Ninth Circuit affirmed *Grinols* on mootness alone. *See Grinols*, 622 F. App'x at 625 n.1.

D. The Senate's Acquittal of Articles of Impeachment Brought Against Trump During His Prior Presidential Term Do Not Render this Controversy Nonjusticiable.

The Board should reject Trump's argument that this case is nonjusticiable because the Senate previously acquitted him of the Articles of Impeachment brought against him pertaining to January 6. There is absolutely no legal precedent to support the rather bizarre idea that the failure of the Senate to convict an impeached president has any relevance to the application of disqualifications to run for future office. Trump's argument would reverse the intentional design of Section 3. Under Section 3, an individual is disqualified *unless and until* two-thirds of *both* houses of Congress vote to grant that person amnesty. *See* U.S. Const. amend. XIV, § 3 ("But Congress may by a vote of two-thirds of each House, remove such disability."). Trump's argument would turn that upside down: *one-third* of *one* house (the Senate) could effectively remove the disability. Thus, Trump's assertion that Objectors are asking the Board to "undo" the Senate's decision and "reach the opposite conclusion," are baseless and nonsensical. Mot. at 8.

Indeed, if the Senate vote on the Articles of Impeachment has any relevance, it *supports* the conclusion that Trump engaged in insurrection. A bipartisan majority of 57 Senators concluded, as did a majority of the House, that Trump incited insurrection and should be convicted. And 22 Senators expressly based their vote to acquit on their belief (notwithstanding an earlier 56–44 procedural vote on jurisdiction, where those 22 were in the minority) that the Senate lacked jurisdiction over a former official. Those 22 Senators either criticized him or stated no view on the merits. *See* Goodman & Asabor, *In Their Own Words: The 43 Republicans' Explanations of Their Votes Not to Convict Trump in Impeachment Trial*, JUSTSECURITY (February 15, 2021).[23] A

[23] *Available at* https://bit.ly/3uUZA1A.

clear Senate majority, and likely two-thirds, agreed that Trump incited the insurrection.[24] To convert this incriminating fact into a legal shield from disqualification would be a legally unsupported travesty.

V. SECTION 3 DOES NOT NEED CONGRESSIONAL LEGISLATION FOR STATES TO ENFORCE IT.

Finally, Trump argues that Section 3 is not self-executing and can only be enforced with specific legislative action from Congress. Like his other arguments attempting to dismiss the Objection, this too is not supported by the law, the plain language of Section 3, or basic principles of constitutional interpretation.

This argument was thoroughly analyzed and rejected by the Colorado Supreme Court. *Anderson*, 2023 CO 63, at ¶¶ 88-106:

> In summary, based on Section 3's plain language; Supreme Court decisions declaring its neighboring, parallel Reconstruction Amendments self-executing; and the absurd results that would flow from Intervenors' reading, we conclude that Section Three is self-executing in the sense that its disqualification provision attaches without congressional action.

Id. at ¶ 106. This Court should adopt the compelling reasoning of the Colorado Supreme Court and similarly reject Trump's "absurd" argument for three central reasons: (1) the Constitution plainly requires states to apply its dictates, and it is a fundamental role of state courts to do so; (2) the plain language of the Fourteenth Amendment makes clear that federal implementing legislation is not required; (3) modern court decisions on Section 3 universally have rejected this argument; and (4) the *only* case finding federal legislation is a prerequisite to Section 3 enforcement not only

[24] The United States agrees. *See* Answering Brief, *United States v. Trump*, No. 23-3228, ECF No. 2033810, at 57-59 (D.C. Cir), *available at* https://bit.ly/3NVO29n (noting that "at least 31 of the 43 Senators who voted to acquit [Trump] explained that their decision to do so rested in whole or in part on their agreement with [his] argument that the Senate lacked jurisdiction to try him because he was no longer in office," even as they held him responsible for the insurrection).

has been rejected by subsequent courts but was wrongly decided based on unusual facts and misapplication of law.

A. State Courts Do Not Need Congressional Permission to Enforce the Fourteenth Amendment.

First, nothing in the Constitution supports the idea that state judges may apply the Constitution only if Congress says they can. To the contrary, state courts are *obligated* to apply the Constitution. *See* U.S. Const., art. VI, § 2 (the U.S. Constitution "shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby"). The U.S. Supreme Court has "consistently held that state courts have inherent authority, and are thus presumptively competent, to adjudicate claims arising under the laws of the United States." *Tafflin v. Levitt*, 493 U.S. 455, 458 (1990); *Robb v. Connolly*, 111 U.S. 624, 637 (1884) (Harlan, J.) (emphasizing that obligation to enforce U.S. Constitution lies "[u]pon the state courts, equally with the courts of the Union"); *Claflin v. Houseman*, 93 U.S. 130, 136 (1876) (confirming that "State courts can exercise concurrent jurisdiction with the Federal courts in cases arising under the Constitution, laws, and treaties of the United States" except where Congress grants federal courts exclusive jurisdiction); *Martin v. Hunter's Lessee*, 14 U.S. (1 Wheat.) 304, 339-42 (1816). Indeed, when plaintiffs in state court civil actions raise federal constitutional claims, courts do not first demand a federal statute authorizing those claims. *See Testa v. Katt*, 330 U.S. 386, 389 (1947) (holding that, when federal law applies to a cause of action, state courts must apply it).

B. Nothing in the Fourteenth Amendment's Text Suggests that Section 3 Requires Federal Legislation.

Second, Section 3's plain language is clear in requiring no implementing legislation. It states the disqualification as a direct prohibition: "*No person shall be* a Senator or Representative in Congress, or elector of President and Vice-President, *or hold* any office" if they previously took an oath as a covered official and then engaged in insurrection or rebellion. U.S. Const. amend.

XIV, § 3 (emphasis added). It parallels other qualifications in the Constitution that also require no special implementing legislation. *See* U.S. Const. art. I, § 2, cl. 2 ("*No Person shall be* a Representative" who does not meet age, citizenship, and residency requirements) (emphasis added); *id.* at art. I, § 3, cl. 3 ("*No Person shall be* a Senator" who does not meet age, citizenship, and residency requirements) (emphasis added); *id.* at art. II, § 2, cl. 5 ("*No Person . . . shall be* eligible to the Office of President" who does not meet age, citizenship, and residency requirements) (emphasis added); *id.* at amend. XII ("*no person* constitutionally ineligible to the office of President *shall be* eligible to that of Vice-President") (emphasis added).

Likewise, Section 3's prohibitory language resembles the language of Section 1, which is indisputably self-executing. No federal legislation is needed to enforce the Due Process or Equal Protection Clauses in state court. *See* U.S. Const. amend. XIV, § 1 ("*No State shall make or enforce any law* which shall abridge the privileges or immunities of citizens of the United States; *nor shall any State deprive* any person of life, liberty, or property, without due process of law; *nor deny* to any person . . . the equal protection of the laws.") (emphases added). Illinois courts frequently enforce Section 1 of the Fourteenth Amendment[25] and their ability to enforce Section 3 is no different based on the text of both sections. [26]

Congress did not leave Section 3 to the whims of "the next Congress" which could pass or repeal legislation by bare majority; to the contrary, Section 3 applies until *two-thirds* of each chamber grants amnesty. In contrast, constitutional provisions that require effectuating federal

[25] *See, e.g., Passalino v. City of Zion*, 237 Ill.2d 118, 130 (Ill. 2010); *Linn v. Dep't of Revenue*, 2013 IL App (4th) 121055, ¶ 33; *O'Connell v. Cnty. of Cook*, 2021 IL App (1st) 201031, ¶ 34, *aff'd*, 2022 IL 127527, ¶ 34.

[26] For this very reason, the argument that HR 14-5 (117th Cong. 1st Sess.) (the bill Congress considered to provide a cause of action under Section Three) has any relevance fails. Regardless of what legislation Congress may have considered, the core substantive provision of the amendment still has effect.

legislation explicitly state that Congress *may* enact legislation. For example, Article I authorizes Congress "[t]o provide for the Punishment of counterfeiting the Securities and current Coin of the United States." U.S. Const. art. I, § 8. This neither prohibits counterfeiting, nor establishes a punishment; it authorizes Congress to "provide for" such punishment. Such authorizing language typically uses formulations such as Congress "may" "by Law" do something, *e.g.*, U.S. Const. art. I, § 2, cl. 3; *id.* at art. I, § 4, cl.1-2, or that Congress "shall have power" to do something, *e.g.*, *id.* at art. I, § 8; *id.* at art. III, § 3, cl. 2; *id.* at art. IV, § 3, cl. 2. Unlike those provisions, Section 3 enacts its own disqualification, "No person shall be . . . or hold," the office, and like other provisions of the Fourteenth Amendment, sets no prerequisites for congressional action before a state may independently implement it. As a result, Section 3 does not require additional federal legislation.

The fact that Section 3 allows Congress to *remove* disqualification does not suggest that Congress must affirmatively establish the power for disqualification in the first place. Congress already did that by passing the amendment.

Finally, the legislation power of Section 5 does not render Section 3 nugatory without such legislation. *See* U.S. Const. amend. XIV, § 5 ("Congress shall have power to enforce, by appropriate legislation, the provisions of this article."). This provision authorizes federal legislation but does not require it. Indeed, as the Supreme Court recognized soon after the enactment of the Fourteenth Amendment—and in the specific context of a dispute about the scope of Congress's enforcement power under Section 5—"the Fourteenth [Amendment], is undoubtedly self-executing without any ancillary legislation." *Civil Rights Cases*, 109 U.S. 3, 20 (1883). Section 5 applies to the entire Fourteenth Amendment, including Section 1's Due Process and Equal Protection Clauses. If Section 5 meant states could not adjudicate questions under Section

3 without congressional legislation, then it would *also* mean states could not adjudicate Due Process or Equal Protection Clause questions without congressional legislation. Yet courts in every state, including Illinois, routinely adjudicate such questions without specific congressional authorization. Just as Section 1 is enforceable outside of 42 USC § 1983, so too Section 3 is enforceable in state court even without federal legislation.

C. Recent Decisions Regarding the January 2021 Insurrection Recognize Section 3 Enforcement Without Special Federal Legislation.

Third, since January 6, 2021, three different state courts have applied Section 3 to the January 2021 insurrection, implicitly or explicitly ruling that Section 3 is self-executing. In 2022, a New Mexico state court applied Section 3 under the state *quo warranto* statute and removed a county commissioner from office for engaging in insurrection. *See New Mexico ex rel. White v. Griffin*, No. D-101-CV-2022-00473, 2022 WL 4295619 (N.M. 1st Jud. Dist., Sept. 6, 2022), *appeal dismissed*, No. S-1-SC-39571 (N.M. Nov. 15, 2022), *cert. filed* May 18, 2023. No special federal legislation was needed. Similarly, Georgia adjudicated a Section 3 ballot challenge against Representative Marjorie Taylor Greene. *See Rowan v. Greene*, No. 2222582-OSAH-SECSTATE-CE-57-Beaudrot (Ga. Ofc. of State Admin. Hrgs. May 6, 2022).[27] Neither the administrative law judge, nor the state courts on appellate review, *see Rowan v. Raffensperger*, No. 2022-CV-364778 (Ga. Fulton Cty. Sup. Ct. July 25, 2022), nor the federal court that rejected Greene's efforts to enjoin the state proceeding, *see Greene v. Raffensperger*, 599 F. Supp. 3d 1283 (N.D. Ga. 2002), *remanded as moot*, 52 F.4th 907 (11th Cir. 2022), questioned the state's authority to adjudicate and enforce Section 3. *See, e.g., Greene*, 599 F. Supp. 3d at 1319 ("Plaintiff has pointed to no authority holding that a state is barred from evaluating whether a candidate meets the constitutional

[27] *Available at* https://sos.ga.gov/sites/default/files/2022-05/Greene-final-decision.pdf.

requirements for office or enforcing such requirements"). Finally, the Colorado Supreme Court also rejected Trump's argument that Section 3 is not self-executing. *See Anderson*, 2023 CO 63, at ¶ 96 ("[W]e agree with the Electors that interpreting any of the Reconstruction Amendments, given their identical structure, as not self-executing would lead to absurd results.").

D. The Only Case Demanding Federal Legislation to Enforce Section 3 is Erroneous.

In support of his argument that Section 3 is not self-executing, Trump cites *Griffin's Case*, 11 F. Cas. 7 (C.C.D. Va. 1869) (No. 5,815). Trump raised the same argument in the Colorado Supreme Court, but the Court rejected it. *See Anderson*, 2023 CO 63, at ¶ 104 ("[W]e do not find *Griffin's Case* compelling."). The Board should reject the argument here for the same reasons.

Caesar Griffin, a Black man, was convicted in Virginia court. *Griffin's Case*, 11 F. Cas. at 22. He brought a federal habeas petition challenging his conviction, arguing the Virginia judge presiding over his trial was disqualified under Section 3. *Id.* at 22-23. Chief Justice Salmon P. Chase, acting as a Circuit Justice,[28] rejected the petition on the purported basis that Section 3 was not self-executing and required federal legislation for enforcement. *Id.* at 26. Put simply, the decision is wrong.

Chief Justice Chase acknowledged that the "literal construction"—what today would be called plain meaning—of Section 3 would disqualify the Virginia judge. *Griffin*, 11 F. Cas. at 24. However, that would mean that not only Griffin, but presumably other prisoners sentenced by ex-Confederate judges, would go free. Noting that the judge's counsel "seemed to be embarrassed by the difficulties" supposedly presented by that plain meaning, Chief Justice Chase expounded upon

[28] Chase had a long political history in the mid-19th Century, and at the time of this ruling, he was running for the then-segregationist Democratic Party nomination for president of the United States. C. Ellen Connally, *The Use of the Fourteenth Amendment by Salmon P Chase in the Trial of Jefferson Davis*, 42 Akron L. Rev. 1165, 1171 (2009).

the "great inconvenience" of applying it, sympathizing with the various "calamities which have already fallen upon the people of these [ex-Confederate] states." *Id.* at 24-25. To avoid this outcome, he adopted two alternative holdings: (1) a constitutional interpretation of Section 3 requiring federal legislation for it to take effect, and (2) a statutory interpretation that habeas was not available simply because a prisoner was sentenced by a judge later found disqualified.

The first holding contradicted a different case that Chief Justice Chase himself had just decided. In the treason prosecution of Jefferson Davis, Chief Justice Chase concluded that Section 3 *was* self-enforcing and that *no* Act of Congress was required for its implementation. *See Case of Davis*, 7 F. Cas. 63, 90, 102 (C.C.D. Va. 1867) (No. 3,621a); *Cawthorn*, 35 F.4th at 278 n.16 (Richardson, J., concurring) ("These contradictory holdings . . . draw both cases into question and make it hard to trust Chase's interpretation."). *Griffin's Case* did not reconcile these conflicting points of view.

Additionally, *Griffin's Case* never explained why *state* law could not be the basis for Section 3 enforcement. It noted that "[t]o accomplish this ascertainment [of who is disqualified] and ensure effective results, proceedings, evidence, decisions, and enforcements of decisions, more or less formal, are indispensable." 11 F. Cas. at 26. But it never explained why *state* courts could not provide such "proceedings, evidence, decisions, and enforcements of decisions, more or less formal"—like this action under Illinois law. Instead, Chief Justice Chase proceeded, without explanation, to conclude that "these can only be provided for by [C]ongress." *Id.* That may be true in *federal* court, where constitutional provisions can only be enforced through a statutory or implied private right of action (not found in the federal writ of habeas corpus), but in *state* fora, these "proceedings, evidence, decisions, and enforcements of decisions, more or less formal" can

be provided by state legislatures, as the Illinois legislature has done in authorizing this objection. *Id.*

Chief Justice Chase also mistakenly relied on Section 5, which authorizes congressional legislation. *Id.* But *authorizing* Congress to enact legislation does not *deprive* states of their inherent authority and obligation to enforce the U.S. Constitution. *See supra* Part V.A. Chase stated that the exclusive role for Congress in removing disqualifications "gives to [C]ongress absolute control over the whole operation of the amendment." *Griffin's Case*, 11 F. Cas. at 26. But that does not follow. Rather, Section 3's grant of exclusive authority to Congress to *remove* the disqualification, coupled with the absence of such language regarding the *disqualification itself*, reinforces that Section 3's disqualification requirement, may (and must) be enforced by state courts with or without congressional action. *See Anderson*, 2023 CO 63, at ¶ 104.

VI. CONCLUSION

In sum, Petitioners' Objection is fully supported by both the applicable legal standards and properly pled facts. For that reason, Candidate Trump's Motion to Dismiss Objectors' Petition should be denied.

Respectfully submitted,

By: /s/ Caryn C. Lederer
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BEFORE THE STATE BOARD OF ELECTIONS SITTING AS THE STATE OFFICERS ELECTORAL BOARD FOR THE HEARING AND PASSING UPON OF OBJECTIONS TO THE CERTIFICATES OF NOMINATION AND NOMINATION PAPERS OF CANDIDATES FOR THE REPUBLICAN NOMINATION FOR THE OFFICE OF PRESIDENT OF THE UNITED STATES TO BE VOTED UPON AT THE MARCH 19, 2024 GENERAL PRIMARY ELECTION

Steven Daniel Anderson; Charles J. Holley;
Jack L. Hickman; Ralph E. Cintron;
Darryl P. Baker,

Petitioners-Objectors,

v. Case No. 24 SOEB GP 517

Donald J. Trump,

Respondent-Candidate.

PROOF OF SERVICE

Counsel for Objectors hereby certifies that Objectors' Response in Opposition to Trump's Motion to Dismiss was filed with the State Officers Electoral Board via email at generalcounsel@elections.il.gov and Hearing Officer Judge Clark Erickson via email at ceead48@icloud.com, and served on Candidate Trump via his counsel at AMerrill@watershed-law.com, before 5:00 p.m. on January 23, 2024.

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