COMMONWEALTH OF MASSACHUSETTS
SUPREME JUDICIAL COURT

NO. SJ-2024-0032

BRUCE CHAFFEE, KIM JANEY, MARK BRODIN, ELIZABETH BARTHOLET,
AUGUSTA MCKUSICK, MICHAEL S. ROBERTON, JR., KEVIN BATT,
THERESA MASON and STEPHANIE SANCHEZ,

Petitioners,

v.

MASSACHUSETTS STATE BALLOT LAW COMMISSION,
DONALD JOHN TRUMP, WILLIAM FRANCIS GALVIN, in his official capacity as Secretary of the Commonwealth of Massachusetts, and the
MASSACHUSETTS REPUBLICAN PARTY
Respondents.

RESPONSE OF DONALD JOHN TRUMP TO EMERGENCY PETITION FOR RELIEF PURSUANT TO M.G.L. c. 214 sec. 1, M.G.L. c. 231A sec. 1, M.G.L. c. 249 sec. 5 and M.G.L. c. 56 sec. 59

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INTRODUCTION

The Petitioners seek to take away from voters the choice of who can appear on a presidential primary ballot. To reach this objective, the Petitioners filed with the Commonwealth of Massachusetts State Ballot Law Commission ("Commission") Objections and Complaints pursuant to M.G.L. c. 55B sec. 5 (the "Objections"). The Objections sought to remove Donald John Trump ("President Trump") from the Massachusetts presidential primary ballot based on disputed claims and application of Section Three of the Fourteenth Amendment.

The Commission correctly dismissed the Objections for lack of jurisdiction. The Commission ruled that President Trump was not placed on the primary ballot as a result of a "nomination". Instead, President Trump appears on the ballot because the Chair of the Republican State Committee ("MassGOP") submitted his name to the Secretary of the Commonwealth. In the absence of a "nomination" to challenge, the Commission does not have jurisdiction to hear the challenge.

The Petitioners also ask this Court take the extraordinary measure of declaring President Trump "ineligible" to appear on the primary ballot under Section Three of the Fourteenth Amendment and the alleged preclusive force of the Colorado Supreme Court decision in Anderson v. Griswold, 2023 WL 877011. This Court should reject their demand. Congress, not a state ballot commission or a state court, is the proper body for resolving contested questions of presidential eligibility and Anderson has no preclusive force.

PROCEDURAL HISTORY

The Massachusetts Secretary of State is the chief election official within the Commonwealth. Within the Secretary of State's office is the Elections Division which is the filing office for nominations for Federal and State elections. There are three ways by which a candidate may be placed on a presidential primary ballot: (1) The Secretary of the Commonwealth can place an individual on the ballot; (2) an individual can submit "nomination papers"; or (3) their name can be submitted on a list signed by the chairperson of a state political party". M.G.L. c. 53 Sec. 70E. President Trump was placed on the 2024 presidential primary ballot by the MassGOP pursuant to the third method.

On January 4, 2024, an Objection and Complaint under M.G.L. c. 55B was filed at the Commission by five of the individuals named in this action. On January 8, 2024, an identical Objection and Complaint was filed by the remaining individuals named in this action. The objections alleged that President Trump was ineligible to serve as President under Section Three of the Fourteenth Amendment to the U.S. Constitution.

President Trump filed his Motion to Dismiss with the Commission on January 17, 2024. **Exhibit 1** (Respondent, Donald John Trump's, Motion to Dismiss) President Trump moved to dismiss both Objections and Complaints on the following grounds: First, the case is not ripe for adjudication because President Trump has not yet been "nominated" within the meaning of G.L. ch. 55B sec. 4. As such, the Commission lacks jurisdiction to decide this matter. Second, the Objectors failed to serve all necessary parties as required

by the Code of Massachusetts Regulations. Third, even if the Commission were to reach the merits of these claims, Section Three of the Fourteenth Amendment does not apply to these Objections. On January 19, 2023, President Trump filed Respondent, Donald John Trump's, Supplemental Motion to Dismiss. **Exhibit 2**.

The MassGOP also filed a Motion to Dismiss with the Commission on January 17, 2023. **Exhibit 3**. In their motion, the MassGOP moved for dismissal on the grounds that they were not properly served with the Objections as required under the Code of Massachusetts Regulations.

On Thursday, January 18, 2024, a Pre-Hearing conference was held by the Commission. The conference was held for the purpose of informing the parties that the Commission would reserve acting on the Objections until it had determined whether the Commission had jurisdiction over the matters raised in the Objections. **Exhibit 4** (Order Dismissing Objections).

The Commission requested and considered oral arguments on the sole issue of jurisdiction raised in President Trump's Motion to Dismiss. At the conclusion of the Pre-Hearing Conference, Objector's Counsel requested leave to file a written memorandum to address the jurisdictional issues raised in President Trump's Motion to Dismiss. The Commission permitted the parties to file any additional briefings regarding the issue of jurisdiction by 5:00 p.m. on January 19, 2024. **Exhibit 5** (Email from Michelle Tassinari)

ARGUMENT

Jurisdiction

The Commission correctly dismissed the Objections for lack of jurisdiction. The Commission has the authority and jurisdiction to consider challenges to candidates seeking ballot access to state, national, or county offices through "nomination" as set forth in M.G.L. c 55B. Sections 4 and 5 of G.L. c. 55B set out the Commission's authority and jurisdiction to hear objections. **Exhibit 4** at 4 (Order Dismissing Objections) See also, McCarthy v. Secretary of the Commonwealth, 371 Mass. 667 (1977). These sections make clear that the objection process is limited to challenges to a candidate's "certificate of nomination" and "nomination papers".

President Trump's name will not be appearing on the presidential primary ballot as a result of "nomination papers" or a "certificate of nomination". President Trump's name will appear on the primary ballot because the MassGOP submitted his name to the Secretary of the Commonwealth pursuant to M.G.L. c. 53 se. 70E. This is significant because M.G.L. c. 55B sec. 4 and 5 distinguishes the extent of the Commission's jurisdictional review of candidates seeking nomination at a presidential primary. **Exhibit 4** at 4 (Order Dismissing Objections). A submission from a state party is not the same as a "certificate of nomination" as referenced in M.G.L. c 55B sec. 4 and 5.

M.G.L. c. 55B sec. 5 provides that "objections to certificates of nomination and nomination papers for candidates at a presidential primary, state primary, or state election shall be filed with the state secretary within seventy-two hours succeeding five o'clock post meridian of the last day fixed for filing nomination papers". The Commission has jurisdiction over any matter referred to it "pertaining to the statutory and constitutional qualifications of any nominee for state, national or county office; the certificates of nomination or nomination papers filed in any presidential state primary, state election, or special state primary or election..." M.G.L. c 55B sec. 4. At this juncture, President Trump seeks the nomination through the state primary election process. He was placed on the primary ballot at the request of the state party pursuant to M.G.L. c 53 sec. 70E, and as such there is no "nomination" or "nomination papers" subject to objection under M.G.L. c 55B sec. 5.

Here, President Trump seeks the Republican nomination for President of the United States at the Republican State Primary to be held on March 5, 2024. Until then, there are no nominees and instead only candidates seeking a nomination. Consequently, the Commission does not have jurisdiction to conduct a hearing on the merits.

A similar issue was previously considered by the Commission in Collins v. Gorman, SBLC Docket No. 06-01. **Exhibit 6**. In Collins, the Respondent was a republican candidate for the office of County

Commissioner in Norfolk County. An objection was filed challenging the Respondent's eligibility to have his name printed on the state election ballot because there was already a duly elected Norfolk County Commissioner from the same town as the Respondent. Id. at 1. Under G.L. c. 54 sec. 158 (2004 ed.), more than one county commissioner was prohibited from being elected from the same city or town as a currently serving commissioner. However, the Commission held that because the primary had not yet occurred, the issue of whether the Respondent was qualified to appear on the general election ballot was premature, and not ripe for adjudication. There was no legal basis to deny the Respondent access to the primary ballot, even though he may be disqualified due to residency requirements. Id. at 4.

The same core arguments are made here by the Objectors - that President Trump is disqualified from the presidency, and therefore he cannot appear on the primary or general election ballot. But even if the disqualification argument had some merit - and it does not - that would not preclude President Trump from access to the primary ballot. The Commission lacks authority to evaluate the qualifications of candidates submitted for inclusion on a primary ballot by the state party.

Service of Process

The Code of Massachusetts Regulations require that "[s]imultaneously with the filing of any and all paper with the Commission, the party filing such papers shall send a copy thereof to all other parties to the proceedings" 950

CMR 59.02(10). Parties are defined as "...the objector, the respondent, all other candidates for the office (but at a primary for nomination), and the state committee of any affected political party". 950 CMR 59.01(3)(g). Failure to comply with these rules "shall be ground for refusal by the Commission to accept papers for filing." 950 CMR 59.02(10).

As evidenced by the Certificate of Service appended to the Objection and Complaint, the Objectors failed to timely serve all necessary parties including "all other candidates for the office" and the "state committee" of the affected political party (the Massachusetts Republican Party). The Commission ruled that even if it determined that it had jurisdiction to hear the Objections, they initially failed to comply with the commission's mandatory statutory and procedural notice requirements thereby subjecting them to dismissal. Notice of the objections must be served upon the Respondent and to every other party including all candidates for the office and any affected state committee. M.G.L. c. 55B sec. 5; 950 CMR 59.02(4)(a); 950 CMR sec. 59.02(10). The objections were only sent to the Respondent and not to other Republican presidential candidates on the ballot or the MassGOP.

Waiver of Arguments

Petitioners' claims that President Trump waived his ability to oppose giving preclusive effect to the findings of the Anderson Court are disingenuous on the facts and wrong on the law. Petitioners distort the procedural history at the Commission to suggest that the respondents waived their right to challenge the

preclusive force of Anderson. Their claim is that the Petitioners filed a Motion for Summary Decision that raised issue preclusion under Anderson that President Trump did not respond to, and therefore, President Trump allegedly waived his ability to oppose preclusion now.

This argument is disingenuous and misses the mark.

First, President Trump did not file a brief specifically responding to Petitioners' Motion for Summary Decision for the simple reason that the Commission postponed addressing any merits of the Objections pending resolution of the jurisdictional issues on which it ultimately dismissed. The Commission limited briefing to the sole issue of jurisdiction. **Exhibit 5** (Email from Michelle Tassinari). Its briefing schedule was not intended to be all-encompassing. The Commission held its Pre-Hearing Conference on January 18, 2024. At the outset of the hearing, the Commission Chair explained that the Commission "must first determine the threshold legal issue as to whether or not the objection relates to matters within the Jurisdiction of the Commission". **Exhibit 7** at 5 (Transcript of Pre-Hearing Conference). Each party was allowed to address the Commission "on the issue of jurisdiction and *jurisdiction only*". Id. (emphasis supplied). The same day following the hearing, the parties received an email from legal counsel for the commission stating in full:

> "Good Afternoon – I am writing on behalf of the State Ballot Law Commission to *confirm* that any additional briefings *regarding the issue of jurisdiction* must be submitted by 5:00 pm EST on Friday January 19, 2024.
>
> Any filings received after that time will not be considered by the Commission."

Exhibit 5 (Email from Michelle Tassinari (emphasis supplied)). To the extent there was any ambiguity, the final written instruction from the Commission should be interpreted plainly as written: "briefings regarding the issue of jurisdiction". Not *every* available filing as the Petitioners must contend in order to stretch and fit their waiver argument.

Second, Petitioners mislead this Court through omission by failing to note that President Trump did nonetheless demonstrate that Anderson does not have preclusive effect. To wit, President Trump filed a Motion to Dismiss that addresses many of the same arguments presented in Petitioners' Motion for Summary Decision and a supplemental memorandum in support of President Trump's Motion to Dismiss before the deadline ***that directly addressed whether Anderson had preclusive force***. **Exhibit 2** (Respondent, Donald John Trump's, Supplemental Memorandum in Support of Motion to Dismiss). A specific section of the memorandum is entitled: "*The Colorado Supreme Court's decision in Anderson v. Griswold has no bearing on "jurisdiction" and has no preclusive effect here*". Regardless of whether this document was titled a response to Petitioner's Motion for Summary Decision or a Supplemental Memorandum in Support of President Trump's Motion to Dismiss, the fact remains that President Trump squarely raised the issues Petitioners' claim were omitted. Petitioners' claim to the contrary is a disingenuous attempt to elevate form over substance and should be roundly rejected.

Collateral Estoppel

Moreover, for the reasons set forth in President Trump's Supplemental Memorandum, petitioners are wrong in their claim that issue preclusion applies to this case. Issue preclusion does not apply for the simple fact that the Colorado Supreme Court's decision in Anderson is not final. The decision is stayed until a final order of the U.S. Supreme Court, Anderson v. Griswold, 2023 Colo 63, 2023 LEXIS 1117, **8 (2023), which granted President Trump's petition for certiorari and has scheduled oral argument on his appeal for February 8, 2024.

Under Colorado law, "for the purposes of issue preclusion, a judgment that is still pending on appeal is not final." Rantz v. Kaufman, 109 P3d 132, 141 (Colo. 2005). Under the Full Faith and Credit Clause, Massachusetts courts give a Colorado judgment only the "same force and effect" as it would be given by its home court, not more as Objectors appear to be arguing for. *See, e.g.*, Wright Machine Corp. v. Seaman-Andwall Corp., 307 N.E.2d 826, 692 (Mass. 1974); Smith Barney, Harris Upham & Co., Inc. v. Connolly, 887 F. Supp. 337, 344 (D. Mass. 1994) ("Under Massachusetts law, 'the judgment of a State court which had jurisdiction of the parties and the subject matter in suit, shall be given in the courts of every other State the same credit, validity and effect which it has in the State where it was rendered, and be equally conclusive upon the merits....'"). Thus, because there is no final judgment in Colorado, there is no basis for the Objectors to obtain a judgment based on issue preclusion here.

Section 3 of the Fourteenth Amendment

I. President Trump is Not Disqualified Under Section Three of the Fourteenth Amendment

Petitioners spill much ink ineffectually arguing for this Court to give preclusive effect to deeply flawed proceedings in other jurisdictions to elide the fact that their objection lacks merit. As President Trump clearly and forcefully argued stop it Trudy before the Commission in his Motion to Dismiss and Supplemental Memorandum in Support of His Motion to Dismiss, Congress—not a state ballot commission or court—is the proper body for resolving contested questions of presidential eligibility, Section Three is not self-enforcing and requires implementing legislation, Section Three does not apply to the presidency, which is not an "office under the United States," nor President Trump, who never took an oath or served as an "officer of the United States," as those terms are used in the Constitution, Petitioners' challenge is not ripe because Section Three only restricts individuals from *holding* office, not from running for or even being elected to office, and President Trump did not "engage" in an "insurrection."

A. Congress—not a state ballot commission or state court—is the proper body for resolving contested questions of presidential eligibility.

Congress—not a state court—is the proper body to resolve questions concerning a presidential candidate's eligibility. As the Court has recognized,

not all claims are "properly suited for resolution by the . . . courts."[1] "Sometimes . . . 'the law is that the judicial department has no business entertaining the claim of unlawfulness—because the question is entrusted to one of the political branches or involves no judicially enforceable rights.'"[2]

Six factors are "[p]rominent on the surface of any case held to involve a political question:" (1) "a textually demonstrable constitutional commitment of the issue to a coordinate political department;" (2) "a lack of judicially manageable standards for resolving it;" (3) "the impossibility of deciding without an initial policy determination of a kind clearly for nonjudicial discretion;" (4) "the impossibility of a court's undertaking independent resolution without expressing a lack of respect due coordinate branches of government;" (5) an unusual need for unquestioning adherence to a political decision already made;" or (6) "the potentiality of embarrassment from multifarious pronouncements by various departments on one question."[3]

First, there is a textually demonstrable constitutional commitment to Congress to resolve questions regarding presidential qualifications. The Constitution expressly provides that:

> [I]f the President elect shall have failed to qualify, then the Vice President elect shall act as President until a President shall have qualified; and the Congress may by law provide for the case wherein neither a President elect nor a vice President elect shall have qualified, declaring who shall then act as President, or the

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[1] *Rucho v. Common Cause*, 139 S. Ct. 2484, 2491 (2019).
[2] *Id.* at 2494 (quoting *Vieth v. Jubelirer*, 541 U.S. 267, 277 (2004) (plurality op.)); *see also Baker v. Carr,* 369 U.S. 186, 217 (1962).
[3] *Baker*, 369 U.S. at 217. Tellingly, *all six* are present in spades in this case.

> manner in which one who is to act shall be selected, and such person shall act accordingly until a President or Vice President shall have qualified.[4]

Similarly, both Article II and the Twelfth Amendment prescribe a role for Congress in Presidential elections.[5] Section Three embodies a clear textual commitment of authority to Congress, giving it the power to lift any "disability" under Section Three.[6] And Section Five of the Fourteenth Amendment expressly provides that "The Congress shall have the power to enforce, by appropriate legislation, the provisions of this article."[7] Were the Commission to prevent President Trump from appearing on the ballot, it would interfere with this mechanism.

The Constitution also explicitly grants Congress—and only Congress—authority to both impose a disqualification to hold federal office through the impeachment process and remove a disqualification under Section Three. *See* U.S. Const. art. I, § 2, cl. 5 (the House of Representatives has "the sole Power of Impeachment"); *Id.* at art. 1, § 2, cl. 6 ("[t]he Senate shall have the sole Power to try all Impeachments") *Id.* at art. I, § 2, cl. 7 (providing for "disqualification

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[4] U.S. Const. amend. XX, § 3.

[5] U.S. Const. art. II, cl. 3; *id.* at amend. XII.

[6] U.S. Const. amend. XIV, § 3.

[7] *Id.* at § 5.

to hold and enjoy any Office of honor, Trust or Profit under the United States" as a consequence of impeachment); *Id.* at amend. XIV, § 3.

Perhaps most importantly, section 5 of the Fourteenth Amendment expressly commits authority to Congress—and only Congress—to "enforce by appropriate legislation, the provisions of this article." U.S. Const. amend. XIV, §§ 3, 5. There is no similar commitment of questions concerning presidential eligibility to state courts, particularly in the absence of a duly enacted federal enforcement statute.

Given this textual commitment, it is little surprise that the United States District Court for the District of New Hampshire recently found that "the vast weight of authority has held that the Constitution commits to Congress and the electors the responsibility of determining matters of presidential candidates' qualifications."[8] Similarly, the Third Circuit previously observed that a challenge to the qualifications of then-candidate Obama (based on his nationality) was a political question not within the province of the judiciary.[9]

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[8] *Castro v. N.H. Sec'y of State*, Case No. 23-cv-416-JL, 2023 WL 7110390, at *9 (D.N.H. Oct. 27, 2023) (footnote omitted) *aff'd on other grounds* -- F.4th --, 2023 WL 8078010 (1st Cir. Nov. 21, 2023).

[9] *See Berg v. Obama*, 586 F.3d 234, 238 (3d Cir. 2009).

Multiple district courts have reached the same conclusion.[10] State courts have largely agreed.[11]

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[10] *See Grinols v. Electoral College*, No. 2:12–cv–02997–MCE–DAD, 2013 WL 2294885, at *6 (E.D. Cal. May 23, 2013) (dismissing a challenge to President Obama's qualifications for office, stating, "the Constitution assigns to Congress, and not to federal courts, the responsibility of determining whether a person is qualified to serve as President of the United States. As such, the question presented by Plaintiffs in this case—whether President Obama may legitimately run for office and serve as President—is a political question that the Court may not answer."); *Taitz v. Democrat Party of Mississippi*, No. 3:12-CV-280-HTW-LRA, 2015 WL 11017373 (S.D. Miss. Mar. 31, 2015) (noting the presidential electoral and qualification process "are entrusted to the care of the United States Congress, not this court" and that the disqualification claims were therefore nonjusticiable); *Robinson v. Bowen*, 567 F. Supp. 2d 1144, 1147 (N.D. Cal. 2008) ("It is clear that mechanisms exist under the Twelfth Amendment and 3 U.S.C. § 15 for any challenge to any candidate to be ventilated when electoral votes are counted, and that the Twentieth Amendment provides guidance regarding how to proceed if a president elect shall have failed to qualify. Issues regarding qualifications for president are quintessentially suited to the foregoing process. Arguments concerning qualifications or lack thereof can be laid before the voting public before the election and, once the election is over, can be raised as objections as the electoral votes are counted in Congress. The members of the Senate and the House of Representatives are well qualified to adjudicate any objections to ballots for allegedly unqualified candidates. Therefore, this order holds that the challenge presented by plaintiff is committed under the Constitution to the electors and the legislative branch, at least in the first instance. Judicial review—if any—should occur only after the electoral and Congressional processes have run their course.").

[11] *See, e.g.*, *Strunk v. New York State Bd. Of Elections*, No. 6500/11, 2012 WL 1205117, *11 (Sup. Ct. Kings County NY Apr. 11, 2012) ("Plaintiff's complaint essentially challenges the qualifications of both President OBAMA and Senator McCAIN to hold the office of President. This is a non-justiciable political question. Thus, it requires the dismissal of the instant complaint."); *Keyes v. Bowen*, 189 Cal.App.4th 647, 660 (2010) ("[R]equir[ing] each state's election official to investigate and determine whether the proffered candidate met eligibility criteria of the United States Constitution, giving each the power to override a party's selection of a presidential candidate" would be a "truly absurd result" because "[w]ere the courts of 50 states at liberty to issue injunctions restricting certification of duly-elected presidential electors, the result could be conflicting rulings and delayed transition of power in derogation

Moreover, Congress' refusal to adopt enforcement legislation means that courts or state ballot commissioners lack manageable standards for resolving questions of presidential disqualification and plainly risk multifarious pronouncements by various departments on one question. For example, procedurally, Section Three is silent on whether a jury, judge, or lone state election official makes factual determinations concerning disqualification and the appropriate standard of review for doing so, creating the prospect of some courts adopting a preponderance of the evidence standard, others a clear and convincing evidence standard, while still others requiring a criminal conviction. Similarly, states have different approaches to voter standing. As a result, a voter in one state may be able to challenge a presidential candidate's qualifications, while similarly situated voters in another state cannot. Substantively, the terms "engage" and "insurrection" are unclear and subject to wildly varying standards. The result is that 51 different jurisdictions may (and have) adopted divergent rulings based on different standards on the same set of operative facts. Resolving these conflicts requires making policy choices among competing

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of statutory and constitutional deadlines." Accordingly, "[a]ny investigation of eligibility is best left to each party, which presumably will conduct the appropriate background check or risk that its nominee's election will be derailed by an objection in Congress, which is authorized to entertain and resolve the validity of objections following the submission of the electoral votes."); *Jordan v. Secretary of State Sam Reed,* No. 12-2-01763-5, 2012 WL 4739216, at *1 (Wash. Super. Aug. 29, 2012) ("I conclude that this court lacks subject matter jurisdiction. The primacy of congress to resolve issues of a candidate's qualifications to serve as president is established in the U.S. Constitution.").

policy and political values. These are fundamentally legislative exercises that are properly suited for Congressional resolution.

The open, legislative nature of these choices makes contradictory pronouncements by various jurisdictions inevitable. Indeed, this is already happening with respect to President Trump. The Secretary of State of Maine claimed authority to assess President Trump's qualifications and purported to disqualify him from the primary ballot, while the Secretaries of State of California, Oregon, and New Hampshire determined they lacked authority to do so. The Colorado Supreme Court claimed authority to disqualify President Trump from the primary ballot, while the Supreme Courts of Minnesota and Michigan declined to do so.

The chaos that results from divergent standards and determinations is particularly problematic in presidential elections. As the United States Supreme Court has recognized, "in the context of a Presidential election, state-imposed restrictions implicate a uniquely important national interest" because "the President and the Vice President of the United States are the only elected officials who represent all the voters in the Nation" and "the impact of the votes cast in each State is affected by the votes cast for the various candidates in other States." *Anderson v. Celebrezze*, 460 U.S. 780, 796 (1983) (footnotes and citations omitted). Particularly with respect to the President, there is a need for a single national decision, which can only come from Congress.

Finally, the courts cannot adjudicate whether President Trump is disqualified under Section Three without expressing a profound lack of respect for Congress in general and the United States Senate in particular. First, Congress considered legislation to provide a civil enforcement mechanism to enforce Section Three. It declined to adopt it. Having done so, states and courts cannot now claim they had the authority inside of them all along without expressing disrespect for the choices made by Congress.

Second, the House of Representatives impeached President Trump, citing Section Three and claiming that President Trump "incit[ed] [] insurrection" on January 6, 2021. *See See* Impeaching Donald John Trump, President of the United States, for high crimes and misdemeanors, H. 24, 117th Cong. (2021). The House Resolution explicitly asked to disqualify President Trump from holding office under the United States. Indeed, since President Trump had already left office by the time the House adopted its impeachment resolution, the *only* tangible consequence of impeachment could be the disqualification from holding office in the future. The Senate declined to do so, acquitting President Trump. https://www.senate.gov/legislative/LIS/roll_call_votes/vote1171/vote_117_1_00059.htm. The only way to disqualify President Trump is to effectively overrule the considered judgment of the United States Senate on the very question, a process that expresses a deep disrespect for the Senate as an institution.

These issues have not passed unnoticed by the courts. For example, two substantially similar decisions issued by the Michigan Court of Claims, which also noted that *Baker* "factors 2, 4, 5, and 6 apply to the instant case."[12] The Michigan court noted that the sheer number of cases concerning presidential qualifications "presents the risk of completely opposite and potentially confusing opinions and outcomes, which will certainly 'expose the political life of the country to months, or perhaps years, of chaos,'" "there is no 'limited and precise rationale' to guide this Court and others that is also 'clear, manageable, and politically neutral,'" and "[b]ecause the cases involve the office of the President, such confusion and lack of finality will be more pronounced."[13]

It would be beyond absurd—particularly in light of the Fourteenth Amendment's enlargement of federal authority—that this issue would be nonjusticiable by federal courts yet properly heard and decided by courts in fifty-one jurisdictions, let alone state election officials, acting unilaterally, in fifty-one jurisdictions. The election of the President of the United States is a national matter, with national implications, that arises solely under the federal

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[12] *LaBrant v. Benson*, Case No. 23-000137-MZ at 15 (Mich. Ct. Cl. Nov. 14, 2023) (attached as **Exhibit 8**), *aff' on other grounds* Case No. 368628 (Mich. Ct. App. Dec. 14, 2023) (per curiam);*Trump v. Benson*, Case No. 23-000151-MZ at 19 (Mich. Ct. Cl. Nov. 14, 2023) (attached as **Exhibit 9**).*LaBrant et. al. v. Benson*, Case No. 23-000137-MZ (November 14, 2023), at 15; *Trump* at 19.

[13] *LaBrant* at 18-19; *Trump* at 23 (citations omitted).

Constitution and does not implicate the inherent or retained authority of the states.[14]

If the Commission or this Court were to exclude President Trump from the ballot, it will have usurped Congress' authority. "[T]he states can exercise no powers whatsoever, which exclusively spring out of the existence of the national government, which the constitution does not delegate to them."[15] Otherwise, states could add their own qualifications to individuals running for President, creating a chaotic environment of conflicting qualifications.[16] While states are delegated some power to impose procedural requirements, such as requiring candidates to "muster a preliminary showing of support" before appearing on the ballot, they cannot add new substantive requirements,[17] even if recast as procedural ballot access conditions.[18] The Commission (and this Court) lacks authority to remove President Trump from the ballot under the federal Constitution.

B. Section Three is not self-enforcing and requires implementing legislation.

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[14] *See generally Cook,* 531 U.S. at 552 ("It is no original prerogative of state power to appoint a representative, a senator, or a president for the union.").

[15] *U.S. Term Limits,* 514 U.S. at 802 (citation omitted).

[16] *Id.* at 805 (states do not have authority to add qualifications).

[17] *Schaefer v. Townsend*, 215 F.3d 1031, 1038 (9th Cir. 2000).

[18] *Term Limits*, 514 U.S. at 829-35; *Schaefer*, 215 F.3d at 1037-39.

Section Three is not self-executing and thus may not be enforced by state officials or private actors because there is no congressional civil enforcement legislation currently in existence.[19] The Supreme Court has repeatedly held that Section Five of the Fourteenth Amendment confers exclusive power on Congress to determine "whether and what legislation is needed to" enforce it.[20] "Congress is authorized to enforce the prohibitions by appropriate legislation. Some legislation is contemplated to make the amendments fully effective."[21] Thus, absent enforcement legislation—none of which is currently in effect—Section Three allows no state enforcement or private actions.

And it is well-established that the states do not have this same authority to enforce the Fourteenth Amendment. Federal courts have long held that Congress creates exclusive constitutional remedies: The Fifth Circuit held that 42 U.S.C. §1983 is the appropriate vehicle for asserting violations of

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[19] 18 U.S.C. § 2383 provides for disqualification from holding office under the United States upon a *criminal* conviction for engaging in rebellion or insurrection.

[20] *Katzenbach v. Morgan*, 384 U.S. 641, 651 (1966); *Pacific Mut. Life Ins. Co. v. Haslip*, 499 U.S. 1, 33 (1991) (Scalia, J., concurring) ("It cannot rightly be said that the Fourteenth "Congress is authorized to enforce the prohibitions by appropriate legislation. Some Amendment furnishes a universal and self-executing remedy. Its function is negative, not affirmative, and it carries no mandate for particular measures of reform.").

[21] *Ex parte Va.*, 100 U.S. 339, 345 (1879); *Ownbey v. Morgan*, 256 U.S. 94, 112 (1921) ("[T]he Fourteenth Amendment [does not] furnishe[] a universal and self-executing remedy.").

constitutional rights;[22] the Sixth Circuit ruled "we have long held that § 1983 provides the exclusive remedy for constitutional violations;"[23] the Eighth Circuit stated that Congress intended 42 U.S.C. §1983 as an exclusive remedy for municipal constitutional violations and "no reason exists to imply a direct cause of action (for such violations) under the fourteenth amendment,"[24] and the Ninth Circuit has found ruled that "a litigant complaining of a violation of a constitutional right must utilize 42 U.S.C. §1983."[25]

Section Three's history confirms that enforcement legislation was required before any disqualification could be enforced. In *Griffin's Case*, issued only months after the passage of the Fourteenth Amendment, Chief Justice Salmon Chase, sitting as circuit judge for Virginia, held that only Congress can provide the means to enforce Section Three.[26] He cogently explained why federal legislation was required to implement Section Three's disqualification provision:

> For, in the very nature of things, it must be ascertained what particular individuals are embraced by the definition, before any sentence of exclusion can be made to operate. To accomplish this ascertainment and ensure effective results, proceedings,

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[22] *Burns-Toole v. Byrne*, 11 F.3d 1270, 1273 n.3 (5th Cir. 1994).

[23] *Foster v. Michigan*, 573 F. App'x. 377, 391 (6th Cir. 2014).

[24] *Cedar-Riverside Assocs. v. City of Minneapolis*, 606 F.2d 254 (8th Cir. 1979).

[25] *Azul-Pacifico, Inc. v. City of Los Angeles*, 973 F.2d 704, 705 (9thCir. 1992).

[26] *Griffin's Case*, 11 F. Cas. 7, 22 (C.C.D. Va. 1869).

> evidence, decisions, and enforcements of decisions, more or less formal, are indispensable; *and these can only be provided for by congress.*
>
> Now, the necessity of this is recognized by the amendment itself, in its fifth and final section, which declares that 'congress shall have power to enforce, by appropriate legislation, the provision of this article.'
>
> There are, indeed, other sections than the third, to the enforcement of which legislation is necessary; *but there is no one which more clearly requires legislation in order to give effect to it.* The fifth section qualifies the third to the same extent as it would if the whole amendment consisted of these two sections. *And the final clause of the third section itself is significant. It gives to congress absolute control of the whole operation of the amendment.* These are its words: 'But congress may, by a vote of two-thirds of each house, remove such disability.' Taking the third section then, in its completeness with this final clause, it seems to put beyond reasonable question the conclusion that the intention of the people of the United States, in adopting the fourteenth amendment, was to create a disability, to be removed in proper cases by a two-thirds vote, and to be made operative in other cases by the legislation of congress in its ordinary course.[27]

That case has never been overruled. And it has been affirmed repeatedly.[28]

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[27] *Id.* at 26 (emphasis added).

[28] *See In re Brosnahan*, 18 F. 62, 81 n.73 (C.C.W.D. Mo. 1883) (McCrary, J., concurring); *Hansen v. Finchem*, 2022 Ariz. Super. LEXIS 5 (Maricopa Cnty. Sup.Ct. 2022) ("Plaintiffs have no private right of action to assert claims under the Disqualification Clause"), *aff'd on other grounds*, 2022 Ariz. LEXIS 168 (Ariz. S.Ct. May 9, 2022); *Rothermel v. Meyerle*, 136 Pa. 250, 254 (1890) (citing *Griffin's Case*, 11 F. Cas. at 26) ("[T]he fourteenth amendment, as indeed is shown by the provision made in its fifth section, did not execute itself."); *State v. Buckley*, 54 Ala. 599, 616 (Ala. 1875) (same); *Cale v. Covington*, 586 F.2d 311, 316–17 (4thCir. 1978) (no implied cause of action under Fourteenth Amendment because it is not self-executing).

And it was not questioned by Congress, which promptly enacted the Enforcement Act, granting federal prosecutors (but not state election officials) authority to enforce Section Three by seeking writs of *quo warranto* from federal (not state) courts. They immediately started doing so, until the Amnesty Act of 1898 removed all Section Three disabilities.

There is no civil authorization statute currently in force. The Enforcement Act was codified as 13 Judiciary ch. 3, sec. 563 and later recodified into 28 Judicial Code 41. But in 1948, Congress repealed 28 U.S.C. § 41 in its entirety.[29] In 2021, legislation to create a cause of action to enforce Section Three, failed.[30] Thus, Congress has not enacted any method for enforcing Section Three. In the absence of a civil enforcement statute, there is no authority for Petitioners to enforce Section Three through the Commission or this Court.

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[29] *See* Act of June 25, 1948, ch. 646, §39, 62 Stat. 869, 993; Act of June 25, 1948, ch. 645, §2383, 62 Stat. 683, 808.

[30] H.R. 1405, 117th Cong. (2021).

C. Section Three does not apply to the presidency, which is not an "office under the United States," nor President Trump, who never took an oath or served as an "officer of the United States."

i. Section Three does not apply to the Presidency because that position is not an "Office Under the United States."

Section Three begins "[n]o person shall be a Senator or Representative in Congress, or elector of President and Vice-President, or hold any office, civil or military, under the United States, or under any State . . ." It does not list the presidency. Moreover, it lists offices in descending order, beginning with the highest federal officers and progressing to the catch-all term "any office, civil or military, under the United States." Thus, to find that Section Three includes the presidency, one must conclude that the drafters decided to bury the most visible and prominent national office in a catch-all term that includes low ranking military officers, while choosing to explicitly reference presidential electors. This reading defies common sense and is not correct.

The Constitution creates five positions: President, Vice-President, Senator, Representative, and Presidential Elector; but the plain text of Section Three excludes the President and Vice-President. This omission is controlling. "The expression of one thing implies the exclusion of others."[31]

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[31] Bryan A. Garner & Antonin Scalia, Reading Law, 96-98 (West, 2012).

Next, Section Three uses the disjunctive "or" to create two distinct, separate prohibitions; one may not "be" a Senator, Representative or Elector. Or one may not "hold" any office "under the United States, or a State." The first category identifies specific Constitutional positions. The second refers to offices one "holds." "[N]othing is to be added to what the text states or reasonably implies."[32] The exclusion of the President from the first category cannot imply the opposite—that the most important elected, Constitutional position is implicitly (and silently) included in a generalized, catch-all phrase. To the contrary, the Supreme Court has "often remarked that Congress does not hide elephants in mouseholes by altering the fundamental details of a regulatory scheme in vague terms or ancillary provisions."[33]

Section Three also lists disqualified positions in descending order from the weightiest Constitutional position (Senator) to the lowest (state officers). It is wholly illogical to exclude the most important Constitutional offices in the enumerated list while including them in a general catch-all focused on less important offices.

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[32] *Id.* at 87-91.

[33] *Whitman v. American Trucking Assns., Inc.*, 531 U. S. 457, 468 (2001) (cleaned up); *Sackett v. EPA*, 143 S. Ct. 1322, 1340 (2023).

Legislative history demonstrates that drafters rejected inclusion of the Presidency.[34] Courts properly infer legislative intent by comparing committee drafts to the final language.[35] The first draft began: "No person shall be qualified or shall hold the office of *President or Vice-President* of the United States, Senator or Representative in the national congress."[36] Congress consciously removed the office of the President from this list, substituting instead presidential Electors.

Any other inference is speculation. The phrase "any office now held under appointment from the President of the United States, requiring the confirmation of the Senate" was broadened to explicitly include lesser federal offices not subject to Senate consent, and state offices. The counterintuitive inference that the catch-all simultaneously included the higher office of

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[34] *See* Brief of Amicus Curiae Professor Kurt T. Lash in support of Respondent-Appellee and Intervenors-Appellees, *Anderson v. Griswold*, Case No. 2023SA00300 (Colo. 2023).

[35] *See Nixon v. United States*, 506 U.S. 224, 231-232 (1993) (rejecting second to last draft and relying on the plain textual language); *Lee v. Weisman*, 505 U.S. 577, 613 (1992) (Souter, J., concurring)(looking to sequence of amendments); *Utah v. Evans*, 536 U.S. 452, 474 (2002) (reviewing previous drafts); *District of Columbia v. Heller*, 554 U.S. 570, 604 (2008) (analysis of precursors to amendment); *Id.* at 590n. 12 (Stevens, J. dissenting)(relying on previous draft); *Students for Fair Admissions, Inc. v. President & Fellows of Harv. Coll.*, 143 S. Ct. 2141, 2180-2181 (2023) (analyzing Thaddeus Stevens' introduced version of the Fourteenth Amendment); *Evenwel v. Abbott*, 578 U.S. 54, 66 (2016) (same).

[36] Cong. Globe 39th Cong., 1stSess. 919 (1866) (emphasis supplied).

President cannot overcome the decision to remove explicit language identifying the President.

Moreover, to interpret "office under the United States" to include any generic "officer" would mean that the phrase "office under the United States" would also swallow Senators and Representatives. Both are considered generic "officers" in the generic sense, as a matter of binding precedent,[37] as referenced by the Constitution,[38] and as the term is commonly used.[39] Indeed, people commonly refer to Senators and Representatives as "officeholders" and one commonly contacts a Senator's or Representative's "office," which is run by an "officer."

The use of "office under the United States" in Article I refers to appointed federal offices, not the presidency. That clause prohibits a person from first being elected Senator or Representative and then subsequently being appointed federal office at the same time, or likewise holding an office

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[37] U.S. *Term Limits*, 514 U.S. at 804-805 n.17 ("Constitution treats both the President and Members of Congress as federal officers").

[38] *Art. I* § 2 ("[t]he House of Representatives shall chuse their Speaker and other Officers"); Art. I, §3, cl. 5 ("[t]he Senate shall chuse their other Officers, and also a President pro tempore").

[39] *Roudebush v. Hartke*, 405 U.S. 15, 28 (1972) (Senators take an "oath of office"); *Powell v. McCormack*, 395 U.S. 486, 570 (1969) (Stewart, J. dissenting) (Representatives take an "oath of office"); *McGrain v Daugherty*, 273 U.S. 135, 156 (1927) (congressional members protected by "oath of office"); *Shaffer v. Jordan*, 213 F.2d 393, 394 (9th Cir. 1954) ("office of Representative in Congress").

and subsequently becoming a Senator or Representative. Thus, "holding any office under the United States" parallels "being appointed to any civil Office under the Authority of the United States" and properly refers to an office, not an elected President or Vice-President. And the Framers never considered that a person might hold two federal offices simultaneously.

Section Three responded to the Civil War. Purposeful removal of the Presidency from Section Three was not an error, but entirely rational. The framers had little concern that a former confederate could become President, based on the restrictions on Presidential Electors, the large Northern population base, and the expected voting strength of emancipated slaves. History proves their views correct. Section Three does not restrict the presidency.

ii. Section Three does not apply to President Trump because he has never served as an "Officer of the United States" and has never taken an Article VI "Oath to Support the Constitution."

Similarly, Section Three's disqualification can apply only to those who have "previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States."[40] It is undisputed that President Trump never took such an oath as a

[40] U.S. Const. amend. XIV, § 3.

member of Congress, as a state legislator, or as a state executive or judicial officer.

The Constitution's text and structure make clear that the president is not an "officer of the United States."[41] The phrase "officer of the United States" appears in three constitutional provisions apart from Section Three, and in each of these constitutional provisions the president is excluded from the meaning of this phrase. The Appointments Clause requires the president to appoint ambassadors, public ministers and consuls, justices of the Supreme Court, and "all other Officers of the United States, whose Appointments are not herein otherwise provided for, and which shall be established by Law."[42] The Commissions Clause similarly requires the President to "Commission all the Officers of the United States."[43] The president does not (and cannot) appoint or Commission himself, and he cannot qualify as an "officer of the United States" when the Constitution draws a clear distinction between the "officers of the United States" and the president who appoints and Commissions them.

The Impeachment Clause further confirms that the president is not an "officer of the United States." It states: "The President, Vice President and all

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[41] *See* Brief submitted by Professor Seth Barrett Tillman as amicus curiae in support of Intervenor-Appellee/Cross-Appellee Donald J. Trump, *Anderson v. Griswold*, Case No. 2023SA00300 (Colo. 2023) (**Exhibit E**).

[42] U.S. Const. art. II, § 2, cl. 2 (emphasis added).

[43] U.S. Const. art. II, § 3 (emphasis added).

civil Officers of the United States, shall be removed from Office on Impeachment for, and Conviction of, Treason, Bribery, or other high Crimes and Misdemeanors."[44] The clause treats President and Vice President separately from "all civil Officers of the United States." There would be no basis to separately list the president and vice president as permissible targets of impeachment if they were to fall with-in the "civil Officers of the United States." If that phrase were to encompasses the president and vice president, then the Impeachment Clause would say that the "President, Vice President and all other civil Officers of the United States" are subject to impeachment and removal.

In *United States v. Smith,* 124 U.S. 525 (1888), a unanimous Supreme Court definitively held that the phrase "officer of the United States," as it was used in the Constitution in existence as of 1888 (including the 14th Amendment) encompassed only appointed officials. Specifically, the court held that:

> An officer of the United States can only be appointed by the President, by and with the advice and consent of the Senate, or by a court of law or the head of a department. A person in the service of the government who does not derive his position from one of these sources is not an officer of the United States *in the sense of the Constitution.* This subject was considered and determined in *United States v. Germaine,* 99 U.S. 508 [(1878)], and in the recent case of *United States v. Mouat, ante,* 124 U.S. [303 (1888)]. What we have here said is but a repetition of what was there *authoritatively declared.*

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[44] U.S. Const. art. II, § 4 (emphasis added).

Smith, 124 U.S. at 531-32 (emphases added).

In addition, there is the textual requirement that Section Three applies only to those who took an oath to "support" the Constitution of the United States—the oath required by Article VI.[45] The president swears a different oath set forth in Article II, in which he promises to "preserve, protect, and defend the Constitution of the United States"—and in which the word "support" is nowhere to be found.[46] The argument that an oath to "preserve, protect, and defend" is just another way of promising to "support" fails, because the drafters of Section Three had before them both the Article VI and Article II oaths, and chose to apply Section Three only to those who took Article VI oaths. And conflating the two oaths would create ambiguity and contradiction, because the president was not understood to be included as an "officer of the United States."

D. Petitioners' claim is not ripe because Section Three bars individuals from *holding* office, not from *being elected* to office.

Section Three of the Fourteenth Amendment prohibits individuals only from *holding* office: "No person shall *be* a Senator or Representative in Congress, or elector of President and Vice-President, or *hold* any office, civil or

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[45] *See* U.S. Const. art. VI, § 3 ("The Senators and Representatives before mentioned, and the Members of the several State Legislatures, and all executive and judicial Officers, both of the United States and of the several States, shall be bound by Oath or Affirmation, to support this Constitution" (emphasis added)).

[46] *See* U.S. Const. art. II ¶ 8.

military, under the United States . . ."[47] It does not prevent anyone from *running* for office, or from *being elected* to office, because Congress can remove a Section Three disqualification at any time—and Congress can remove that disability after a candidate is elected but before his term begins.[48]

Similarly, "[u]nder [Section Three Congress has admitted] persons ... who were ineligible at the date of the election, but whose disabilities had been subsequently removed."[49] Moreover, this distinction is reinforced by the Twentieth Amendment, which provides the procedures to identify the President if that disability is not removed.

The Ninth Circuit decision in *Schaefer v. Townsend* illustrates this point. The court evaluated California law requiring Congressional candidates to reside in California when filing nomination papers and declared that provision unconstitutional because it added qualifications not found in the Constitution. Namely, that an individual must be an inhabitant of the state "when elected,"[50]

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[47] U.S. Const. amend. XIV, § 3 (emphasis added).

[48] *See Id.* ("But Congress may by a vote of two-thirds of each House, remove such disability.").

[49] *Smith v. Moore*, 90 Ind. 294, 303 (1883); *see also Privett v. Bickford*, 26 Kan. 52, 58 (1881) (analogizing to Section Three, concluding that voters can vote for ineligible candidates who can only take office once the disability is removed); *Sublett v. Bedwell*, 47 Miss. 266, 274 (1872) ("The practical interpretation put upon [Section Three] has been, that it is a personal disability to 'hold office,' and if that be removed before the term begins... the person may take the office.").

[50] *Schaefer*, 215 F.3d at 1034.

which differs from "when nominated" because nonresident candidates can "inhabit" a state after nomination, but before election.[51]

"[T]he states can exercise no powers whatsoever, which exclusively spring out of the existence of the national government, which the constitution does not delegate to them."[52] Otherwise, states could add their own qualifications to individuals running for President, creating a chaotic environment of conflicting qualifications.[53] Just like the manner of counting electoral college votes is dictated by federal statute and the Constitution, so too with presidential qualifications. Federal law must reign supreme; states may not add additional qualifications beyond those listed in the Constitution.[54] No precedent permits a lone state to adjudicate the qualifications of a presidential candidate or a president-elect. That is Congress's role.

E. President Trump did not "engage" in "insurrection."

In his Motion to Dismiss, President Trump specifically requested a hearing and reserved the right to argue that he did not "engage" in an "insurrection."

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[51] *Id.* at 1036-37; *accord Greene v. Secretary of State for Georgia*, 52 F.4th 907, 913–16 (11th Cir. 2022) (Branch, J., concurring) ("[B]y requiring Rep. Greene to adjudicate her eligibility under § 3 to run for office through a state administrative process without a chance of congressional override, the State imposed a qualification in direct conflict with the procedure in § 3—which provides a prohibition on being a Representative and an escape hatch.").

[52] *U.S. Term Limits, Inc.*, 514 U.S. at 802 (citation omitted).

[53] *Id.* at 805.

[54] *Id.*

Contrary to Petitioners' suggestions, these factual questions cannot be outsourced to deeply flawed processes in other jurisdictions. President Trump vociferously contests Petitioners' claims that the events of January 6, 2021, were an "insurrection" and that President Trump's conduct amounted to "engaging" in any of the disorder on that day. These are issues that require a hearing to fully evaluate the applicable standards of review, assess the relevant facts, and properly apply the facts to the law. These tasks cannot be delegated to the Colorado state court nor the Maine Secretary of State, and thus cannot be resolved on the papers before this Court.

II. Any further proceedings should be stayed pending the Supreme Court's decision in *Trump v. Anderson*

For the reasons set forth above, the Commission correctly determined that it lacks jurisdiction to hear Petitioners' objections. Should this Court disagree with the Commission, it need not wade into the thorny and hotly disputed questions of federal constitutional law raised above. Instead, it can and should stay any further proceedings pending resolution of President Trump's appeal of the Colorado Supreme Court decision in *Anderson*.

On January 3, 2024, President Trump filed a petition for a writ of certiorari seeking review of the Colorado Supreme Court decision in *Anderson*. Two days later, on January 5, 2024, the Supreme Court granted the writ and set a highly expedited schedule for briefing and argument, with oral argument scheduled for February 8, 2024.

The Supreme Court's decision in *Anderson* is likely to be highly relevant to the questions raised by Petitioners. The same federal issues raised above are at issue in *Anderson*. For example, the *Anderson* petition argued that the Court should reverse the Colorado Supreme Court's order excluding President Trump from the ballot under Section 3 of the Fourteenth Amendment did not apply to President Trump because; (1) the Presidency is not an Office under the United States, (2) the President is not an officer of the United States, (3) President Trump did not take the Article VI oath to "support" the Constitution, and (4) Section 3 does not apply to candidates running for office, only those who "hold" office. In addition, President Trump argued in the Petition that the events of January 6, 2021, did not constitute "insurrection" and that President Trump did not "engage" in "insurrection." Finally, Section Three is not self-executing, enforcement of Section 3 is a nonjusticiable political question, and state enforcement of Section 3 would constitute an additional qualification for office, in violation of U.S. Const. Art. II. In other words, many of the same issues raised above and in President Trump's Motion to Dismiss before the Commission.

Resolution of any one of these federal issues in President Trump's favor will dispose of the current matter. In many ways, the current litigation is wholly unnecessary, unless President Trump is unsuccessful on all issues raised in the U.S. Supreme Court. Even it does not, *Anderson* will likely resolve one or more federal issues that bear directly on this Court's proceedings. Indeed, at a

minimum the Court will provide standards to adjudicate the Article II and Due Process claims in this Court.

Proceeding in this matter at this time is contrary to principles of judicial economy. The resolution of these issues by the U.S. Supreme Court is highly likely to supersede any determination by this Court in this matter, potentially reversing the determination of this Court and/or necessitating further, duplicative judicial process here.

In Maine, the Superior Court remanded similar questions to the Secretary of State to resolve in light of the eventual Supreme Court ruling in *Anderson*.[55] Should this Court find that there is jurisdiction to hear Petitioners' objections, it should likewise pause further proceedings pending resolution of *Anderson* by the United States Supreme Court.

[55] *See Trump v. Bellows*, Civ. Action Docket No. AP-24-01 (Me. Super. Ct. Jan. 17, 2024); *see also Trump v. Secretary of State, et al.*, 2024 ME 5 (Jan. 24, 2024) (dismissing interlocutory appeal of the Superior Court's remand).

Respectfully submitted this 25th day of January 2024.

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CERTIFICATE OF SERVICE

I, Marc R. Salinas, do hereby certify that on this 25th day of January 2024, I served a true copy of the within document via first-class mail, postage pre-paid, to the following counsel of record and interested parties:

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