COMMONWEALTH OF MASSACHUSETTS
SUPREME JUDICIAL COURT

No. SJC-13549

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

Appellants,

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 ("MASS GOP"),

Appellees.

APPELLANTS' NOTICE OF SUPPLEMENTAL AUTHORITY

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February 28, 2024

I. Notice of supplemental authority pursuant to Mass. R. A. P. 16(l).

Bruce Chaffee, Kim Janey, Mark Brodin, Elizabeth Bartholet, Augusta McKusick, Michael S. Robertson, Jr., Kevin Batt, Theresa Mason, and Stephanie Sanchez ("Appellants") hereby submit this notice of a decision issued by Illinois Circuit Court Judge Tracie R. Porter in *Anderson et al v. Trump et al.*, 2024 COEL 00013 (Feb. 28, 2024), attached as Exhibit A. In *Anderson*, as relevant to this case, Judge Porter concluded that Donald J. Trump is disqualified from the office of the Presidency under Section 3 of the Fourteenth Amendment for engaging in an insurrection against the United States Constitution, *id.* at *31, and that Illinois possessed the authority to enforce its state law ballot access requirements to prevent Donald J. Trump from appearing on the presidential primary ballot, *id.* at *36. Accordingly, Judge Porter ordered the Illinois State Board of Elections to "remove Donald J. Trump from the ballot for the General Primary Election on March 19, 2024, or cause any votes for him to be suppressed, according to the procedures within their administrative authority." *Id.* at *38.

Respectfully submitted,

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

By their attorneys and authorized representatives,

Date: February 28, 2024

/s/ Shannon Liss-Riordan

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CERTIFICATE OF SERVICE

I, Shannon Liss-Riordan, a member of the bar of this Court, hereby certify that on this day, February 28, 2024, the foregoing notice was served by email on the State Ballot Law Commission and Secretary of the Commonwealth and on Donald John Trump and the Massachusetts Republican Party through their representatives as follows:

Counsel for the Massachusetts State Ballot Law Commission and Secretary of the Commonwealth William Francis Galvin:
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February 28, 2024

/s/ Shannon Liss-Riordan
Shannon Liss-Riordan

Exhibit A

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, COUNTY DIVISION

STEVEN DANIEL ANDERSON, CHARLES J. HOLLEY, JACK L. HICKMAN, RALPH E. CINTRON, and DARRYL P. BAKER **Petitioners-Objectors,** **v.** **DONALD J. TRUMP, the Candidate, the ILLINOIS STATE BOARD OF ELECTIONS sitting as the State Officers Electoral Board, and its Members, CASSANDRA B. WATSON, LAURA K. DONAHUE, JENNIFER M. BALLARD CROFT, CRISTINA D. CRAY, TONYA L. GENOVESE, CATHERINE S. MCCRORY, RICK S. TERVIN, SR., and JACK VRETT,** **Respondent-Candidates.**	**2024 COEL 000013** **Judge Tracie R. Porter** **Calendar 9**

MEMORANDUM OF JUDGMENT AND ORDER

This matter comes before the Court for Judicial Review of Petitioners-Objectors', Steven Daniel Anderson, Charles J. Holley, Jack L. Hickman, Ralph E. Cintron, and Darryl P. Baker, ("Petitioners-Objectors"), Petition for Judicial Review ("Petition") and Motion to Grant Petition for Judicial Review, and their Reply Brief. The Respondent-Candidate, Donald J. Trump, ("Respondent-Candidate") filed his Response Brief in this matter.

This Court having considered the oral arguments on February 16, 2024 on Petitioners-Objectors' Motion to Grant Petition for Judicial Review, which lasted almost four hours, reviewed the voluminous motions and briefs of the parties (herein Petitioners-Objectors and Respondent-Candidate referred to as "Parties") with their accompanying exhibits, the Electoral Board's

Common Law Record which consisted of 12 volumes and approximately 6,302 pages filed with the Circuit Court of Cook County, the 267 pages of transcripts of the Report of Proceedings of the Hearing Officer's hearing held on January 26, 2024 and for the hearing held by the Electoral Board on January 30, 2024 filed with the Circuit Court of Cook County, and other relevant case authority and exhibits presented by the Parties in support of their briefs, this Court's findings and conclusions are as follows:

Jurisdiction

On January 30, 2024, Petitioners-Objectors filed this appeal for judicial review to the Circuit Court of Cook County of the Electoral Board's denial of its objections and granting the Respondent-Candidate's motion to dismiss their Objection Petition. On February 5, 2024, the Electoral Board complied with the Illinois Election Code ("Election Code") by filing a record of its proceedings in twelve separate filings, totaling over 6,000 pages ("Record"). 10 ILCS 10-10.1(a); Court Record, Jan. 5, 2024.

Section 10 ILCS 10-10.1 of the Election Code provides that an "objector aggrieved by the decision of an electoral board may secure judicial review of such decision in the circuit court of the county in which the hearing of the electoral board was held."

There is no challenge or question that the Petitioners-Objectors timely filed their appeal for judicial review or that their Objection Petition does not comply with the Election Code. 10 ILCS 5/10-10.1, 5/10-8. Therefore, this Court will not go into a lengthy discussion of its jurisdiction in this matter. The Court finds based on the filings in the records of the Circuit Court of Cook County and the Electoral Board Record that the Petitioners-Objectors have complied with Section 10-10.1 of the Election Code. Thus, this matter is properly before this Court.

Relevant Legal and Secondary Authorities

There are several United States and Illinois Supreme Court cases, United States and Illinois constitutional provisions, Illinois Election Code provisions, common law from other jurisdictions, United States congressional records, and secondary sources cited to or relied upon in this case either in the Electoral Board's Record or pleadings that this Court considered and will discuss in this decision.

The Court sets forth the relevant provisions of these authorities, which are later referenced to support its legal analysis and application of the relevant and determinative factual findings under review in the Electoral Board's Record.

I. U.S. Constitution:

Fourteenth Amendment, Section 3, ("Disqualification Clause"):

> "No person shall be a Senator or Representative in Congress, or elector (Electoral College) of President and Vice-President, or hold any office, civil or military, under the United States, or under any state, who, having 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, [an oath] to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same [United States or any State], or given aid or comfort to the enemies thereof But Congress may by a vote of two-thirds of each House, remove such disability."

Article II, Section 1, Clause 2 ("Electors"):

> "Each State shall appoint, in such Manner as the Legislature thereof may direct, a Number of Electors, equal to the whole Number of Senators and Representatives to which the State may be entitled in the Congress: but no Senator or Representative, or Person holding an Office of Trust or Profit under the United States, shall be appointed an Elector."

Article II, Section 1, Clause 5, ("Qualifications Clause for President"):

> "No Person except a natural born Citizen, or a Citizen of the United States, at the time of the Adoption of this Constitution, shall be eligible to the Office of President; neither shall any Person be eligible to that Office who shall not have attained to the

Age of thirty-five Years, and been fourteen Years a Resident within the United States."

Article II, Section 1, Clause 8, ("Presidential Oath of Office"):

"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, and will to the best of my Ability, preserve, protect and defend the Constitution of the United States."

Article IV, Section 1, ("Full Faith & Credit Clause"):

"Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof." [1]

II. U.S. Supreme Court Precedent:

United States v. United States Gypsum, 333 US 364 (1948).

Illinois State Bd. of Elections v. Socialist Workers Party, 440 U.S. 173 (1979).

Burdick v. Takushi, 504 U.S. 428 (1992).

U.S. Term Limits v. Thornton, 514 U.S. 779 (1995).

III. Illinois Constitution:

Article III, Section 5, ("Board of Elections"):

"A State Board of Elections shall have general supervision over the administration of the registration and election laws throughout the State. The General Assembly by law shall determine the size, manner of selection and compensation of the Board. No political party shall have a majority of members of the Board."

IV. Illinois Election Code:

10 ILCS 5/7-10, in relevant parts at issue in this case:

"Sec. 7-10. Form of petition for nomination. The name of no candidate for nomination, or State central committeeperson, or township committeeperson, or

[1] Constitution Annotated, at FN 5 ("The Clause also requires states to give Full Faith and Credit to the Records[ ] and judicial Proceedings of every other State."), https://constitution.congress.gov/browse/essay/artIV-S1-1/ALDE_00013015/, (accessed Feb. 25, 2024).

precinct committeeperson, or ward committeeperson or candidate for delegate or alternate delegate to national nominating conventions, shall be printed upon the primary ballot unless a petition for nomination has been filed in his behalf as provided in this Article in substantially the following form:

. . .

Each sheet of the petition other than the statement of candidacy and candidate's statement shall be of uniform size and shall contain above the space for signatures an appropriate heading giving the information as to name of candidate or candidates, in whose behalf such petition is signed; the office, the political party represented and place of residence; and the heading of each sheet shall be the same."

10 ILCS 5/10-5, in relevant parts at issue in this case:

"All petitions for nomination shall, besides containing the names of candidates, specify as to each:

1. The office or offices to which such candidate or candidates shall be nominated.... Such certificate of nomination or nomination papers in addition shall include as a part thereof, the oath required by Section 7-10.1 of this Act and must include a statement of candidacy for each of the candidates named therein, except candidates for electors for President and Vice-President of the United States. Each such statement shall set out the address of such candidate, the office for which he is a candidate, shall state that the candidate is qualified for the office specified and has filed (or will file before the close of the petition filing period) a statement of economic interests as required by the Illinois Governmental Ethics Act, shall request that the candidate's name be placed upon the official ballot and shall be subscribed and sworn to by such candidate before some officer authorized to take acknowledgments of deeds in this State, and may be in substantially the following form:

. . .

State of Illinois)
) SS.
County of.....)

I, ... being first duly sworn, say that I reside at.... street, in the city (or village) of.... in the county of.... State of Illinois; and that I am a qualified voter therein; that I am a candidate for election to the office of.... to be voted upon at the election to be held on the.... day of....,.....; and that I am legally qualified to hold such office and that I have filed (or will file before the close of the petition filing period) a statement of economic interests as required by the Illinois Governmental Ethics Act, and I hereby request that my name be printed upon the official ballot for election to such office.

Signed.....

Subscribed and sworn to (or affirmed) before me by.... who is to me personally known, this.... day of....,.....

Signed.....
(Official Character)
(Seal, if officer has one.)"

10 ILCS 5/10-10, in relevant parts at issue in this case:

"The electoral board shall take up the question as to whether or not the certificate of nomination or nomination papers or petitions are in proper form, and whether or not they were filed within the time and under the conditions required by law, and whether or not they are the genuine certificate of nomination or nomination papers or petitions which they purport to be, and whether or not in the case of the certificate of nomination in question it represents accurately the decision of the caucus or convention issuing it, and in general 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. A copy of the decision shall be served upon the parties to the proceedings in open proceedings before the electoral board. If a party does not appear for receipt of the decision, the decision shall be deemed to have been served on the absent party on the date when a copy of the decision is personally delivered or on the date when a copy of the decision is deposited in the United States mail, in a sealed envelope or package, with postage prepaid, addressed to each party affected by the decision or to such party's attorney of record, if any, at the address on record for such person in the files of the electoral board."

...

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."

V. Illinois Code of Civil Procedure:

735 ILCS 5/8-1003:

"Common law and statutes. Every court of this state shall take judicial notice of the common law and statutes of every state, territory, and other jurisdictions of the United States."

VI. Illinois Precedent:

Goodman v. Ward, 241 Ill. 2d 398 (2011).

Cinkus v. Stickney Mun. Officers Electoral Bd., 228 Ill. 2d 200 (2008).

Delgado v. Bd. Of Election Comm'rs, 224 Ill. 2d 481 (2007).

City of Belvidere v. Illinois State Labor Relations Bd., 181 Ill. 2d 191 (1998).

Geer v. Kadera, 173 Ill. 2d 398 (1996).

Welch v. Johnson, 147 Ill. 2d 40 (1992).

Delay v. Bd. of Election Comm'rs of City of Chicago, 312 Ill. App. 3d 206 (1st Dist. 2000).[2]

Lawlor v. Municipal Officer Electoral Bd., 28 Ill. App. 3d 823 (5th Dist. 1975).

AFM Messenger Service, Inc. v. Dep't of Employment Security, 198 Ill. 2d 380 (2001).

Chicago Patrolmen Ass'n Dep't of Rev., 171 Ill. 2d 263 (1996).

VII. Illinois State Board of Elections Decisions:

Graham v. Rubio, 16 SOEB GP 528 (Feb. 1, 2016).

Freeman v. Obama, 12 SOEB GP 103 (Feb. 2, 2012).

Jackson v. Obama, 12 SOEB GP 104 (Feb. 2, 2012).

VIII. U.S. Congressional Authority:

H.R. Rep. No. 117-663 (12/22/2022).[3]

IX. Other Jurisdictional Authority:

Andrews v. Griswold, 2023 CO 63 (2023).

Andrews v. Griswold, 2023 CV 32577 (Dist. Ct. Nov. 17, 2023).

X. Secondary Authority:

Illinois Institute for Continuing Legal Education ("IICLE"), Election Law, Sec. 1.3 (2020 Edition).

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[2] The Election Code does not authorize an electoral board to raise its own objections to nominating papers sua sponte. See *Delay v. Bd. of Election Comm'rs of City of Chicago*, 312 Ill. App. 3d 206 (1st Dist. 2000). The electoral board is there to adjudicate; it may not take on additional roles better suited to a party. *Id.*

[3] This report was used as admissible evidence by the court. 2023 CO at 88, ¶162.

Procedural History of the Case

On January 4, 2024, Respondent-Candidate filed Nomination Papers and a Statement of Candidacy to appear on the ballot for the March 19, 2024, General Primary Election, as a candidate for the Republican Nomination for the office of President of the United States with the Illinois State Board of Elections. (Petition for Judicial Review, ¶5).

That same day, on January 4, 2024, Petitioners-Objectors filed their Petition to Remove the Candidate Donald J. Trump from the ballot for the office of the President of the United States, on the basis that the candidate was disqualified from holding the office he sought. ("Objection Petition"). (EB Record C-6706 V12; Hearing Officer Report and Recommended Decision, Case No. 24 SOEB GP 517, p. 1). Petitioners-Objectors' basis for the Respondent-Candidate's disqualification was that Section 3 of the Fourteenth Amendment of the United States Constitution disqualified him from holding the office of the President of the United States "for having 'engaged in insurrection or rebellion against the [United States Constitution], or given aid or comfort to the enemies thereof' after having sworn an oath to support the Constitution." (Petition, ¶7). In their Petition, Petitioners-Objectors sought a hearing and determination as to whether the Respondent-Candidate's Nomination Papers were legally and factually insufficient based on Section 3 of the Fourteenth Amendment of the United States Constitution and 10 ILCS 5/7-10 of the Illinois Election Code. *Id.*

The Electoral Board convened and appointed a Hearing Officer to hear the Petitioners-Objectors' Objection Petition to the Respondent-Candidate's Nominating Papers.[4]

[4] The Electoral Board members consisted of Cassandra B. Watson (Chair), Laura K. Donahue (Vice-Chair), Jennifer M. Ballard Croft, Cristina D. Cray, Tonya Genovese, Catherine S. McCrory, Rick S. Tervin, Sr., Jack Vrett. The Hearing Officer appointed by the Electoral Board was Judge Clark Erickson (Ret.), respectively referred to as "Hearing Officer Judge Erickson."

On January 19, 2024, Respondent-Candidate filed a Motion to Dismiss Petitioners-Objectors' Objection Petition. That same day, Petitioners-Objectors filed a Motion to Grant their Objection Petition or, in the alternative, for summary judgment. The parties filed briefs in support of their motions, presented written and audio evidence, and presented oral arguments before the Hearing Officer on January 26, 2024.

In lieu of live witnesses or presenting evidence outside of what the parties had presented in the Colorado District Court trial (that addressed the same issue before this Court), the Parties agreed to the entry of a Stipulated Order Regarding Trial Transcripts and Exhibits from the Colorado Action, dated January 24, 2024 ("Stipulated Order").[5] The Stipulated Order sets forth "that because Petitioners-Objectors filed a motion for summary judgment, both parties "believe circumstances exist that make it desirable and in the interest of justice and efficiency to minimize unnecessary or duplicative testimony, streamline the process for presenting exhibits in support of or opposition to Objectors' motion for summary judgment, and avoid the need for any contested evidentiary hearing." *Id.* The Stipulated Order included trial witness testimony, and written and video exhibits.

The Stipulated Order in relevant parts agreed to the following evidence to be considered by the Hearing Officer in this case:

> " 1. Any transcripts containing trial witness testimony in the Colorado action[6] constitutes former testimony and falls within the hearsay exception to hearsay rule set forth and Ill. Evid. R. 804(b)(a).
> 2. Except as specified herein, all trial exhibits admitted in the Colorado Action are authentic within the meaning of Ill. Evid. R. 901 and 902. This stipulation of authenticity, however, does not apply to Colorado trial exhibits Nos. P21, P92, P94, P109, and P166."

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[5] The Stipulated Order is in the Electoral Board Record, but is unsigned by the Hearing Officer. No party has disputed the unsigned Order. (Electoral Board Record, Index of Exhibits, C-361 V2).

[6] Specifically, the Colorado case of Anderson v. Griswold, 2023 CV32577 (2023) before the district court. The testimony from witnesses in that case were from October 30, 2023 through November 2, 2023. (See Electoral Board Record, Vols. 5-7.).

(A copy of the Stipulated Order is attached to this Court's Decision as ***Appendix A***).

The Parties further indicated in the Stipulated Order that all objections before the court in the Colorado Action were preserved. (Stipulated Order, p. 2).

On January 26, 2024, Hearing Officer Judge Erickson held the hearing on the parties' Motions. On January 27, 2024, Hearing Officer Judge Erickson issued a Hearing Officer Report and Recommended Decision[7] ("Hearing Officer Decision") recommending that the Electoral Board deny Objectors' Motion for Summary Judgment because "The Hearing Officer finds that there are numerous disputed material facts in this case, as well wide range of disagreement on material constitutional interpretations." (Hearing Officer Decision, p. 8). He also recommended that the Electoral Board grant Respondent-Candidate's Motion to Dismiss because the "Hearing Officer finds that there is a legal basis for granting the Candidate's Motion to Dismiss the Objectors' Petition." *Id.* at 15 (a copy of the Hearing Officer's Decision is attached to this Court's Decision as ***Appendix B***).

Hearing Officer Judge Erickson concluded that "In the event the Board decides not to follow the Hearing Officer's recommendation to grant the Candidate's Motion to Dismiss, the Hearing Officer recommends that the Board find that the evidence presented at the hearing on January 26, 2024 proves by a preponderance of the evidence that President Trump engaged in insurrection, within the meaning of Section 3 of the Fourteenth Amendment, and should have his name removed from the March, 2024 primary ballot in Illinois." (Hearing Officer Decision, p. 17).

[7] The Decision is in the Electoral Board Record at page but is unsigned and undated by the Hearing Officer. No party has disputed the unsigned Decision. (Electoral Board Record, C-6537 V12).

On January 30, 2024, the Electoral Board held a hearing. The Electoral Board considered the written recommendations of the Hearing Officer and its General Counsel.[8] In its January 30, 2024 written Decision, the Election Board ordered that: (a) Objectors' Motion for Summary Judgment be denied; (b) Candidate's Motion to Dismiss was granted in part[9]; (c) the Objection filed by the Objectors to the Nomination Papers of Donald J. Trump, Republican Party Candidate for the office of President of the United States was overruled based on findings contained in Paragraph 10(A)-(G) of its Decision; and (d) the name of the candidate, Donald J. Trump, shall be certified for the March 19, 2024, General Primary Election ballot. (Decision of Electoral Board, January 30, 2024); (a copy of the Electoral Board's Decision is attached to this Court's Decision as ***Appendix C)***.[10]

On January 30, 2024, Petitioners-Objectors filed their Petition for Judicial Review before this Court.

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[8] Objections are limited to the arguments raised in the Objection Petition. The General Counsel added a legal argument that Petitioners-Objectors did not raise in their Objection Petition. The legal argument was whether Respondent-Candidate had to "knowingly lie" when he filed his nomination papers and statement of candidacy, that he was not qualified for the office he sought. This Court finds that the General Counsel's recommendation is contrary to existing Illinois law, and that nothing in the Electoral Board's hearing transcript or Decision dated January 30,2024, indicates that they relied upon or made a decision on this argument raised by the General Counsel. This Court further rejects the assertion that the *Welch v. Johnson* decision supports such an argument. 147 Ill. 2d 40, 56 (1992) (the court explicitly noted that "our decision is limited to the circumstances of this case," and the case involved statements of economic interest not statements of candidacy).

[9] The "in part" was on the Candidate's ground that the Electoral Board lack jurisdiction to decide whether Section 3 of the Fourteenth Amendment to the U.S. Constitution operates to bar Candidate from the ballot in Illinois. The Electoral Board also stated at the January 30, 2024 hearing that: "But Section 10-10 simply does not give the Board the authority to weigh in to complicated federal constitutional issues." (Electoral Board Hearing Transcript, R-195, Lines 3-6).

[10] The Hearing Officer set forth a summary of the arguments in the Candidates Motion to Dismiss and the Objectors' Motion for Summary Judgment in his Report and Recommended Decision. Those arguments have not been repeated in full in this decision.

PREAMBLE

This case is riddled with issues of state and federal statutory and constitutional questions of interpretation. It also presents a novel application and interpretation of Section 3 of the Fourteenth Amendment of the U.S. Constitution before the Electoral Board can determine the qualifications of a candidate for the office of President of the United States, beyond the previously prescribed requirements of age, citizenship, and natural-born qualifications under Article II of the U.S. Constitution.

There are just under 7,000 pages of written materials, of which some have been admitted into evidence, and at least 100 separate videos and images dating prior to and on January 6, 2021, including Twitter posts, as exhibits submitted by the parties directly to this Court. Despite this historical and mammoth size of the information, including a surge of pleadings, findings of facts, and recommendations, both from Hearing Officer Judge Erickson and the Electoral Board's own General Counsel, this Court cannot lose sight of the forest for the trees.

The Election Code under Section 10–10.1 limits this Court's judicial review to just the factual findings of the record before the Electoral Board. This Court does not to conduct its own fact-finding. 10 ILCS 5/10-10.1. This Court is aware that as a circuit court sitting as only one of three reviewing courts of the Electoral Board's Decision, that its decision could not be the ultimate outcome. Nonetheless, under Section 10-10.1 of the Election Code, this Court must review the Electoral Board's Decision, based on its Report of Proceedings, the Common Law Record (herein Report of Proceedings and Common Law Record as "Record") and the evidence therein to determine, if its decision should be upheld or reversed. Therefore, in order to determine whether the Electoral Board's Decision should be affirmed, overruled, or even remanded, this Court will

review the Electoral Board's Decision based on the factual findings and conclusions of law that led to its decision.

In conducting this review, this Court will first consider the objections filed by Petitioners-Objectors before the Electoral Board, and then will review the Electoral Board's basis for dismissing the Petitioners-Objectors' objections under the applicable standard of review.

QUESTIONS PRESENTED

In their Objection Petition filed on January 4, 2024, Petitioners-Objectors challenged the legal and factual sufficiency of the Nomination Papers of Respondent-Candidate as a candidate for the Republican Nomination for the office of President of the United States. (Objectors Petition, Jan. 4, 2024, EB Record C-274 V2, p. 1).

The basis of Petitioners-Objectors' challenge is that Section 3 of the Fourteenth Amendment of the U.S. Constitution disqualifies the Respondent-Candidate from being placed on the ballot because he engaged in insurrection on January 6, 2021 and, due to his disqualification, his name should not be placed on the ballot for the March 19, 2024, General Primary Election. (Objector's Petition, Jan. 4, 2024, EB Record C-274 V2, p. 2).

The Petitioners-Objectors further challenge the validity of Respondent-Candidate's Nomination Papers because they allege that he falsely swore in his Statement of Candidacy that he was "legally qualified" for the office of presidency, as required by 10 ILCS 5/7-10 (sic).[11] (Objector's Petition, dated January 4, 2024, EB Record C-274 V2, p. 2, ¶8).

[11] The Court takes notice that 10 ILCS 5/10-5 specifically governs the Statement of Candidacy, not 5/7-10 (covering Nominating Petitions). (Objector's Petition, dated January 4, 2024, EB Record C-274 V2, p. 2, ¶8)

This Court asserts that the imperative questions to consider in review of the Electoral Board's decision are as follows:[12]

1. Whether the Electoral Board's decision to effectively dismiss Petitioners-Objectors' Objection Petition, by granting Respondent-Candidate's Motion to Dismiss, was proper under the grounds that it lacked jurisdiction to conduct a constitutional analysis to determine if Respondent-Candidate was disqualified from being on the ballot was proper.
2. And if the Electoral Board's actions were not proper, whether Petitioners-Objectors have met their burden of proving by a preponderance of the evidence[13] that Respondent-Candidate's Statement of Candidacy is falsely sworn in violation of Section 10 ILCS 5/7-10 of the Election Code, based on his disqualification under Section 3 of the Fourteenth Amendment, and thus not meeting the minimum requirements of Section 7-10.
3. Ultimately, whether Respondent-Candidate's name shall remain on or be removed from the ballot for the March 19, 2024, General Primary Election as a candidate for the Republican Nomination for the Office of President of the United States.

Before this Court can proceed on the questions presented, it must first determine the proper standard, or standards, of review, in which to review the Electoral Board's decision.

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[12] The Court rejects the argument that the Board created a new "knowingly lied" standard that it must consider in determining if the candidate falsely swore in the Statement of Candidacy that the candidate is legally qualified. The Court comes to this conclusion based on reading the Electoral Board's Decision dated January 30, 2024, and the transcript of the Election Board's hearing in this matter on January 30, 2024 of which neither make reference that their decisions are based on a "knowingly lied" standard set forth in the parties' brief and argued before the Court on February 17, 2024. (EB Record C-6716 V12; EB Hearing on Jan. 30 2024 Transcript, R-167 through R-209). General Counsel may have recommended such a standard but there is no language or reference by the Electoral Board that a "knowingly lied" standard was a basis for their decision to either grant Respondent-Candidate's Motion to Dismiss or find Petitioners-Objectors had not met their burden of proving by a preponderance of the evidence that the Candidate's Statement of Candidacy was falsely sworn. (EB Decision, EB Record, C-6716-C6719 V12).

[13] See Rules of Procedure Adopted by the State Board of Elections, dated January 17, 2024. (EB Record, II.(b) Argument at C-3582-83 V7).

STANDARD OF REVIEW

A reviewing court determines the standard of review by looking to the factual evidence and legal authority previously submitted in the record before and relied upon by the Electoral Board that governs the issues before this Court.[14] As the Illinois Supreme Court has noted, the distinction between the standards of review is not always easy to determine until the Court determines what is at dispute—the facts, the law, or a mixed question of fact and law. *Goodman v. Ward,* 241 Ill. 2d 398, 405 hn5 (2011), citing *Cinkus v. Stickney Mun. Officers Electoral Bd.*, 228 Ill. 2d 200, 211 (2008) ("We acknowledge that the distinction between these three different standards of review has not always been apparent in our case law subsequent to *AFM Messenger.*"); see *AFM Messenger* Service, *Inc. v. Department of Employment Security.* 198 *Ill.* 2d 380, 391-95 (2001).

The court reviews the Electoral Board's decision as an administrative agency established by statute, pursuant to 10 ILCS 5/10-10.1. *Cinkus v. Stickney Mun. Officers Electoral Bd.*, 228 Ill. 2d at 209. The Illinois Supreme Court in *City of Belvidere v. Illinois State Labor Relations Board,* identified three types of questions that a court may encounter on administrative review of an agency decision: questions of fact, questions of law, and mixed questions of fact and law. 181 Ill. 2d 191, 204-05 (1998).

As to questions of fact, an administrative agency's findings and conclusions on questions of facts are deemed *prima facie* true and correct. *Cinkus*, at 210. In examining the Electoral Board's factual findings, a reviewing court does not weigh the evidence or substitute its judgment for that of the agency. *Id.* at 210. The reviewing court is, however, limited to ascertaining whether such

[14] By giving a circuit court judicial review under Section 10 ILCS 5/10-10.1, the legislature did not intend to vest the circuit court with jurisdiction to conduct a de novo hearing into the validity of a candidate's nomination papers. *Cinkus v. Stickney Mun. Officers Electoral Bd.*, 228 Ill. 2d at 209.

findings of fact are against the manifest weight of the evidence if the opposite conclusion is clearly evident. *Id.* at 211; *City of Belvidere*, 181 Ill. at 204.

In contrast, an agency's decision on a question of law is not binding on a reviewing court. *Cinkus v. Stickney Mun. Officers Electoral Bd.*, 228 Ill. 2d at 210-11. The Electoral Board's interpretation of the meaning of the language of a statute constitutes a pure question of law, allowing the reviewing court to make an independent review without deference to the Electoral Board's decision. Cinkus at 210-11. Where the facts are undisputed and the legal result of those facts is purely a question of law, then the standard of review is de novo. *Id,* citing *Chicago Patrolmen's Ass'n v. Dept. of Rev.,* 171 Ill. 2d 263, 271 (1996).

The Illinois Supreme Court's analysis and holding in its *City of Belvidere* decision is instructive to determining the standard of review for a mixed question of fact and law. 181 Ill. 2d 191. In *City of Belvidere*, the Court found that the Board's finding was, in part, factual because it involved considering whether the facts in the case before it supported a finding that the City's decision affected employment hours, wages and working conditions. 181 Ill. 2d at 205. The Board's finding also concerned a question of law because the phrase "wages, hours and other conditions of employment" was a legal term that requires interpretation. *Id.* at 205. Consequently, when a case involves an examination of the legal effect of a given set of facts, it involves a mixed question of fact and law. *Id.* at 205.

Thus, when a Board's decision is of a mixed nature, the facts would be determined under the manifest weight of the evidence, and the legal question would be reviewed de novo, resulting in the application of a clearly erroneous standard of review as the appropriate standard to examine the Board's decision. *City of Belvidere*, 181 Ill. 2d at 205; *Goodman*, 241 Ill. 2d at 406; *Cinkus*, 228 Ill. 2d at 211; see also *AFM Messenger*, 198 Ill. 2d at 391-95 (An administrative agency

decision is deemed clearly erroneous when the reviewing court is left with the "definite and firm conviction that a mistake has been committed."), (quoting, *United States v. United States Gypsum Co.*, 333 U.S. 364, 395 (1948)).[15]

In the instant case, this Court must review a mixed question of fact and law similar to the factual analysis in the *City of Belvidere* decision. *City of Belvidere*, 181 Ill. 2d at 205.

First, the Electoral Board's decision is, in part, relied up factual basis because the issues involve considering whether the factual findings made by the Hearing Officer, and adopted by the Board,[16] supported the Board's conclusion that Petitioners-Objectors had not met their burden by a preponderance of the evidence that Respondent-Candidate falsely swore on his Statement of Candidacy that he was legally qualified to hold the office he was seeking. In *City of Belvedere,* the Board's finding was also, in part, factual because it involved considering whether the facts in this case supported a finding that the City's decision affected employment hours, wages and working conditions. *City of Belvidere*, 181 Ill. 2d at 205.

Second, the Electoral Board's decision also concerns a question of law, particularly whether the interpretation of Section 3 of the Fourteenth Amendment of the U.S. Constitution applies to a former President of the United States who has taken an oath to "preserve, protect and defend the Constitution of the United States",[17] but who then engages in insurrection, which is a

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[15] The court has also described mixed questions of fact and law, as there exist questions in which (a) the historical facts are admitted or established, (b) the rule of law is undisputed, and (c) the issue is whether the facts satisfy the statutory standard. *Goodman*, 228 Ill. 2d at 210; citing *City of Belvidere*, 181 Ill. 2d at 205.
[16] The Board made exceptions and did not adopt the Hearing Officer's findings, conclusions and recommendations in Paragraph 10(A) "factual issues remain that preclude the Board from granting Objector's Motion for Summary Judgment, and Paragraph 10(G) no factual determinations were made regarding the events of January 6, 2021. (EB Decision, C-6718 V12). While the Board did not make any factual determinations on this issue, the Hearing Officer did, and concluded from the evidence presented at the hearing on January 26, 2024 that the events of January 6, 2021 were an insurrection and that by a preponderance of the evidence the Candidate engaged in an insurrection. (HO Decision, Appendix B).
[17] U.S. Constitution, Article II, Section 1, Clause 8.

conduct that disqualifies him from holding the office of President of the United States, and, thereby, prevents his name from being place on the primary election ballot. Because the Electoral Board in the case at-bar determined it lacked jurisdiction to make such a determination, the issue becomes a question of law related to whether it fulfilled its duties under the Election Code to qualify candidate for the presidency, because Section 3 of the Fourteenth Amendment requires some interpretation before it can be applied to the Respondent-Candidate in this case. In *City of Belvidere*, the Board's finding also concerned a question of law because the phrase "wages, hours and other conditions of employment" was a legal term requires interpretation. *Id.*

In the instant case, this Court examined the legally significant facts in the record before the Electoral Board, particularly the Stipulated Facts, including evidentiary testimony, and written and video exhibits. In examining the significant legal facts, the Court determines that both state statutory and federal constitutional legal interpretation is needed to determine the legal effects of from the facts asserted by Petitioners-Objectors which would potentially disqualify Respondent-Candidate from being placed on the upcoming general primary election ballot. Consequently, when a case involves an examination of the legal effect of a given set of facts, it involves a mixed question of fact and law. *Id.*

Thus, the Electoral Board's decision is a mixed question of law and facts and, as such, the Court determines that the clearly erroneous standard of review is the appropriate standard to examine the Electoral Board's decision in this case.

ANALYSIS

I. Constitutional Application of Section 3 of the Fourteenth Amendment as a Qualification Standard for the Office of President of the United States

Pursuant to Article II, Section 5 of the Illinois Constitution, the State Board of Elections, [also known as the Electoral Board], shall have general supervision over the administration of the registration and election laws throughout the State. This authority includes the Electoral Board oversight of the qualification of candidates for office. See *Goodman*, 241 Ill. 2d at 412. The Electoral Board's authority includes determining the qualification for candidates for the office of the President of the United States. *See Graham v. Rubio*, 16 SOEB GP 528 (Feb. 1, 2016) (EB Record, at C-602 V2); *Freeman v. Obama*, 12 SOEB GP 103 and *Jackson v. Obama*, 12 SOEB GP 104 (Feb. 2, 2012).

The U.S. Supreme Court has recognized that "voting is of the most fundamental significance under our constitutional structure." *Illinois State Bd. of Elections v. Socialist Workers Party*, 440 U.S. 173, 173 (1979); see IICLE Sec. 1.3. The rights of candidates and voters are inescapably intertwined because candidates have a fundamental right to associate with their political beliefs and voters have a right to be given the means to vote effectively. *Id.* It is both common sense as well as constitutional law that compels substantial regulation of elections if they are to be fair and honest, including limiting ballot access even if it affects which candidate one can vote for in the election. *Burdick v. Takushi*, 504 U.S. 428, 433, 440 n.10 (1974).

To that end, qualifications of candidates are governed by both state and federal statutory and constitutional law. These qualifications assure that candidates are well-suited for the office they seek and assure voters that only qualified candidates under the law will be placed on the ballot when they vote. See generally, *Id.*; see *Geer v. Kadera*, 173 Ill. 2d 398 (1996); *U.S. Term Limits*

v. Thorton, 514 U.S. 779, 837 (1995). When constitutional requirements are not met, voters are restricted from voting for whom they may wish. Term limits, age, natural-born citizenship, residency qualifications, and now, in the instant case, a disqualification assessment based on Section 3 of the Fourteenth Amendment is required by the Constitution, for the office of the President of the United States President that Respondent-Candidate seeks.

Under Article II, Section 1, Clause 5, also referred to as the Qualifications Clause, the language requires a candidate for President to be a natural-born citizen, at least thirty-five years of age, and a resident of the United States for at least fourteen years. This Electoral Board determined past cases involving natural-born citizenship. *Freeman v. Obama*, 12 SOEB GP 103 and *Jackson v. Obama*, 12 SOEB GP 104 (Feb. 2, 2012) (EB Record, at C-590 V2); *Graham v. Rubio*, 16 SOEB GP 528 (Feb. 1, 2016) (EB Record, at C-596 V2); (determining whether the candidate was natural born because his parents were immigrants). So while the Electoral Board can make and has made determinations of whether a candidate for the office of President of the United States has met the requirements under the Qualifications Clause, it has not done so without interpreting the language and applying that interpretation of law to the present facts proving or disproving whether the Candidate was qualified.

The Illinois Supreme Court made it unequivocal that the Electoral Board may not engage in statutory or constitutional interpretation. *Goodman*, 241 Ill. 2d at 412. It is the Electoral Board's reliance on this legal precedent that caused it to determine that it lacked jurisdiction to interpret Section 3 of the Fourteenth Amendment and could not proceed to review Petitioners-Objectors' disqualification objection as raised in their Objection Petition. (EB Record, EB Decision Jan. 30, 2024 at C-6716 V12, p. 3).

Therefore, this Court must consider whether the Electoral Board's decision to effectively dismiss Petitioners-Objectors' Objection Petition, by granting Respondent-Candidate's Motion to Dismiss, on the grounds that it lacked jurisdiction to conduct a constitutional analysis to determine if Respondent-Candidate was disqualified from being on the ballot was proper. Consequently, the Electoral Board could not reach the question of disqualification of Respondent-Candidate for the office of President of the United States without looking at the facts in the Common Law Record in relation to what conduct or activity would legally amount to disqualifying the Respondent-Candidate under Section 3 of the Fourteenth Amendment, without some interpretative analysis thereof.

Illinois Supreme Court authority provides the seminal holding that the Electoral Board is prohibited from conducting constitutional analysis. *Goodman*, 241 Ill. 2d at 411; *Delgado v. Bd. Of Election Comm'rs*, 224 Ill. 2d 481, 484-85 (2007). In *Goodman v. Ward*, the Supreme Court held that election boards are not entitled to assess the constitutionality of the Election Code when considering objections to nominating papers. 241 Ill. 2d at 410-11 (it actually disregarded the constitutional residency requirement and deemed the provision unconstitutional, without any analysis). When an objection is filed to a candidate's nominating papers, the Electoral Board determines whether state and federal constitutional requirements are met to overrule the objection. In *Goodman v. Ward*, the Illinois constitutional requirement for the candidate was based on residency. *Id.* This Court notes that residency, age, and natural-born citizenship requirements are readily provable with a proof of address or birth certificates, thus, requiring no constitutional analysis or interpretation by the Electoral Board, only verification.

In the instant case, factual findings and legally relevant statutory and constitutional provisions would require the Electoral Board to do more than just verify qualifications with

objective evidence, such as government issued documents proving age, citizenship or residency. The Electoral Board would have to engage in an analysis of statutory and/or constitutional construction principles to interpret the qualifications as well as whether the constitutional standard applies to the specific qualifications, such as Section 3 of the Fourteenth Amendment of the U.S. Constitution. It is undisputed that the Electoral Board cannot conduct this type of constitutional analysis, any more than it could declare a provision of the Election Code or Illinois Constitution unconstitutional. While the Electoral Board could not conduct constitutional analysis of Section 3 of the Fourteenth Amendment to determine whether Respondent-Candidate was disqualified for the office of President, this Court may do so.

Therefore, an interpretation of Section 3 of the Fourteenth Amendment is required to determine whether Respondent-Candidate is disqualified from the general primary election ballot. This Court finds that the question of law in this case is subject to contradictory and controversial interpretation,[18] which is why the *Anderson v. Griswold* decision from the Colorado Supreme Court, in a 4-3 decision, is pending before the U.S. Supreme Court. *Anderson v. Griswold*, 2023 CO 63 (2023). The Colorado Supreme Court, however, is the only jurisdiction that has interpreted Section 3 of the Fourteenth Amendment to the qualification consideration of Respondent-Candidate for the office of President of the United States, and has disqualified him based on their interpretation of the U.S. Constitution. *Id.* Until the U.S. Supreme Court renders a decision in the *Anderson v. Griswold* case, now pending before it, reviewing courts are still under a constitutional

[18] The proceeding before the Maine Secretary of State is not a court proceeding. Decided on December 28, 2023, the Secretary of State disqualified the Respondent-Candidate based on Section 3 of the Fourteenth Amendment. (Electoral Board Record, C552, V2). The Secretary of State found that the Respondent-Candidate engaged in insurrection and swore an oath to uphold the Constitution. It also found that the evidence demonstrated an attack on the Capital and government officials, and the rule of law, on January 6, 2021 that occurred "at the behest of, and with the knowledge and support of, the outgoing President." That the Challengers had met their burden, and the primary petition of Mr. Trump is invalid.

obligation to apply and interpret the law, and especially, continue the momentum of the electoral process in light of the March general primary elections. *Trump v. Anderson, et al.*, U.S. Sup. Ct. – Docket No. 23-719 (Jan. 4, 2024) (oral arguments held on Feb. 8, 2024).

JUDICIAL NOTICE

The Colorado Supreme Court's ruling in *Anderson v. Griswold*, decided on December 23, 2024, is not binding precedent, but rather persuasive law. Thus, this Court may consider the *Anderson v. Griswold* decision as precedent on the issues under review by this Court, and may recognize or take into consideration its holding for the purpose of determining, whether Respondent-Candidate qualifies for the office of President of the United States under the U.S. constitutional requirements, and whether he should be placed on the general primary ballot in Illinois. See Section 735 ILCS 5/8-1003[19]; United States Constitution, Article IV, Section 1.[20]

LEGAL INTERPRETATION

In *Anderson v. Griswold*, the Colorado Supreme Court was presented with the issue of whether former President Donald J. Trump may appear on the Colorado Republican presidential primary ballot in 2024. 2023 CO 63, 63 (Dec. 23, 2023). The issue in the instant case is similar, but not identical. The Colorado Supreme Court reviewed the District Court Judge's decision, not

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[19] 735 ILCS 5/8-1003, reads as follows: "Common law and statutes. Every court of this state shall take ***judicial notice of the common law and statutes of every state***, territory, and other jurisdictions of the United States." (Emphasis added).

[20] United States Constitution, Article IV, Section 1, reads as follows:
"Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof." Constitution Annotated, FN 5 ("The Clause also requires states to give Full Faith and Credit to the Records[ ] and judicial Proceedings of every other State.") https://constitution.congress.gov/browse/essay/artIV-S1-1/ALDE_00013015/ (accessed Feb. 25, 2024).

an electoral board's decision. *Id.* In Colorado, electors initiated proceedings against the Secretary of State in the Denver District Court under Sections 1-4-1204(4), 1-1-113(1), 13-51-105, C.R.S. (2023), and C.R.C.P. 57(a) challenging its authority to list President Trump as a candidate on the 2023 Republican president primary election. Id. The basis for the objections in Colorado are the same as those in the instant case, which is based on the U.S. constitutional disqualification of Respondent-Candidate.

The Colorado District Court Judge could conduct a constitutional analysis of the objectors' claims that Section 3 of the Fourteenth Amendment disqualified the former president from the ballot because he engaged in insurrection of January 6, 2021, after swearing an oath as President to support the U.S. Constitution without factual findings and constitutional interpretation. *Id.* The Colorado District Court held that Respondent-Candidate had engaged in insurrection, but was not disqualified from the ballot under Section 3. The Colorado Supreme Court heard the case on appeal and conducted its own factual and legal analysis of this issue in reaching its decision.[21]

This Court will proceed with its analysis relying on the Colorado Supreme Court decision because this Court finds the majority's opinion well-articulated, rationale and established in historical context, and assessing the construction and meaning of legal principles, such the Section 3 of the Fourteenth Amendment. See generally, *Anderson v. Griswold*, 2023 CO 63 (2023).

First, this Court's consideration of the Electoral Board's decision to grant Respondent-Candidate's Motion to Dismiss, ultimately, dismissing the Petitioners-Objectors' request to

[21] The Colorado District Court denied Respondent-Candidate's Fourteenth Amendment Motion to Dismiss in its case because, unlike the Illinois Electoral Board, it had original jurisdiction over the case by statute and, most importantly, could engage in a constitutional analysis of whether Section 3 was self-executing, applied to the former President, and whether he engaged in insurrection to determine if he would be disqualified from the ballot. 2023 CO at 13, ¶21. The Illinois Electoral Board only has original jurisdiction so its obligation stopped there when the unsettled constitutional questions arose.

disqualify the candidate and remove his name from the ballot requires a consideration of the language under the Fourteenth Amendment, Section 3 which states as follows:

> "No person shall be a Senator or Representative in Congress, or elector (Electoral College) of President and Vice-President, or hold any office, civil or military, under the United States, or under any state, who, having 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, [an oath] to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same [United States or any State], or given aid or comfort to the enemies thereof But Congress may by a vote of two-thirds of each House, remove such disability."

This Court will consider pertinent applicable provisions of the Colorado Supreme Court's decision and its factual findings[22] for the purpose of interpreting and applying Section 3 of the Fourteenth Amendment to the instant case.

On appeal, the Colorado Supreme Court reviewed the District Court's ruling[23] that Section 3 of the Fourteenth Amendment did not apply to Donald J. Trump. *Anderson v. Griswold*, 2023 CV 32577 (Nov. 17, 2023).[24] In its 4-3 decision, the Colorado Supreme Court reversed the District Court's decision and held that "President Trump is disqualified from holding the office of President under Section 3, it would be a wrongful act under the Election Code for the Secretary [of State] to list President Trump as a candidate on the presidential primary ballot." The Court then

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[22] This Court takes as judicial notice the Background facts related to the candidate, January 6, 2021 and other related facts relied upon by the Court in its determination, as set forth in the decision. *Anderson v. Griswold*, 2023 CO 63, at 9.
This Court does not need to restate the mountainous facts from the Colorado Supreme Court decision, the Colorado District Court Decision, the 6,000 plus pages of written evidentiary exhibits in the Electoral Board Record filed in 12 Volumes in this case, of which all factual findings are almost, if not completely, identical from this Court's assessment.

[23] The Colorado Supreme Court reviewed the Colorado District Court's decision de novo. 2023 CO 62, at 19. This reviewing court, however, is only review the Electoral Board's decision and must do so under a mixed question of law as stated herein.

[24] The Colorado District Court held a 5 days trial and it is the trial testimony of that case that the parties agreed to the Stipulated Order entered into the Hearing Officer Judge Erickson in this case. *Anderson*, 2023 CO at 7.

stayed its ruling until January 4, 2024, and President Trump appealed the decision to the U.S. Supreme Court. *Anderson v. Griswold*, 2023 CO 63, ¶¶132-33 (Dec. 19, 2023).

First, as to the interpretation of Section 3 of the Fourteenth Amendment, this Court looked at the Colorado Supreme Court's factual determinations and the rationale that led it to the conclusion that former President Trump engaged in conduct disqualifying him from holding the office of President of the United States by engaging in insurrection. The Colorado Supreme Court goes through an exhaustive analysis of the factual and evidentiary records that the District Court considered during a 5-day evidentiary trial, and a substantial amount of those facts are also established as evidence in the instant case in the Electoral Board Record. This Court will not go through the exhaustive list of facts but refers to the Stipulated Order in the Record and the Colorado Supreme Court which relied on the factual determinations.

The District Court in *Anderson v. Griswold* found by clear and convincing evidence that President Trump engaged in insurrection as those terms are used in Section 3 of the Fourteenth Amendment. 2023 CO at 7. Based on that evidence, the Colorado Supreme Court also concluded that the former president engaged in insurrection on January 6, 2021. The Colorado Supreme Court also held that the District Court did not abuse its discretion in admitting portions of Congress' January 6 Report into evidence at trial. Congress's January 6 Report, fifteen sworn witness testimonies from the 5-day evidentiary trial, and 96 evidentiary exhibits both written, visual and auditory, are the same, or almost same, evidence this Court reviewed in determining if Section 3 when applied to evidence results in the Respondent-Candidate being disqualified from the Illinois ballot for the General Primary Election March 19, 2024. 2023 CO at 47, ¶84.

The burden of proof applied by the Colorado District Court was a clear and convincing evidence standard. 2023 CO at 14, ¶22. This is a higher standard than that applied by the Illinois

Electoral Board under its Rules of Procedures adopted by the Electoral Board on January 17, 2024, which only requires Objectors to prove "by a preponderance of the relevant and admissible evidence that the objections are true and that the petition is invalid." EB Record at C-3583 V7. Considering the Hearing Officer's factual findings from the January 6 Report, this Court concludes that the 17 paragraphs in the Hearing Officer's summary of the January 6 Report attached to the Hearing Officer's Decision are admissible. The Hearing Officer correctly considered in his conclusions and recommendations all the factual findings of the January 6 Report. This Court finds that the January 6 Report in the Electoral Board's Common Law Record satisfies the public records hearsay exception under Illinois Supreme Court Rule 803(8), because the report was the result of a legally authorized investigation by the U.S. House of Representatives. Ill. Sup. Ct. Rule, 803(8) (2023). Even if the Electoral Board refused to make any factually findings about the event of January 6, 2021, the evidence before the Electoral Board cannot be ignored and, as such, affirms the Hearing Officer's recommendations regarding the constitutional disqualification of Respondent-Candidate.

By just relying on the factual findings by the Hearing Officer and relying on the Colorado Supreme Court's same factual findings that led it to its conclusion that the events of January 6, 2021 constituted an insurrection, and that President Trump engaged in that insurrection, and that Section 3 of the Fourteenth Amendment applies to and disqualifies him from being certified to the Illinois ballot, this Court finds that the Petitioners-Objectors have met their burden of proof by a preponderance of the evidence in the Electoral Board Record which the Electoral Board should have recognized and relied upon in its Decision.

This Court adopts the factual determinations before the Electoral Board in their totality, (which are very much the same ones that were presented as evidence before the Colorado District

Court), under the standard of review of clearly erroneous, with mixed questions of law and fact. In so doing, this Court applies those facts to the clearly erroneous standard of review and finds the facts in this Record before the Electoral Board would establish that Respondent-Candidate was disqualified by engaging in insurrection, and should not be placed on the ballot for the office President of the United States for the March 19, 2024, General Primary Election based on Section 3 of the Fourteenth Amendment.

Second, this Court considered the analysis of the Colorado Supreme Court's interpretation of Section 3 of the Fourteenth Amendment as applied to a former President now seeking to hold office for a second term. This Court takes judicial notice of Colorado Supreme Court's holding, and finds its rationale compelling that even as a former President of the United States, Respondent-Candidate is a covered person who engaged in insurrection under section 3 of the Fourteenth Amendment.

This Court finds it imperative to the interpretative analysis of Section 3 of the Fourteenth Amendment to consider the historical relevance of the Civil War and the Reconstruction Era, in relation to the ratification of Section 3 of the Fourteenth Amendment. The Colorado Supreme Court noted the concern of post-Civil War, "what to do with those individuals who held positions of political power before the [civil] war, fought on the side of the Confederacy, and then sought to return to those positions." 2023 CO at 16.[25] Looking historically as to whether the Fourteenth Amendment was self-executing without ancillary legislative action by Congress and, after an examination of the self-executing intent of the Thirteenth, Fourteenth, and Fifteenth Amendments,

[25] Respondent-Candidate argues violence by him was needed to "engage" in insurrection. (EB Record C-6689 V12). This Court rejects this argument. President Jefferson Davis did not actually fight in the Civil War because he was responsible for the political and administrative management of the war efforts, and he was still disqualified under Section 3 of the Fourteenth Amendment for engaging in insurrection. United States Senate, Jefferson Davis: A Featured Biography, https://www.senate.gov/senators/FeaturedBios (accessed last Feb. 9, 2024).

referred to as the "Reconstruction Amendments", intended by the framers, the conclusion is that it is self-executing, and does not require an act of Congress, much like the Thirteenth and Fifteenth Amendments. 2023 CO at 50-54. Looking at acts passed by Congress like the Insurrection Act enacted prior to the Fourteenth Amendment, and the Amnesty Act enacted after passage of the Section 3 of the Fourteenth Amendment, Congress only act was to remove the disqualification, not pass legislation to activate it.

This Court notes that language of "shall" is present in all three Reconstruction Amendments, and based on the plain and ordinary meanings of all Reconstruction Amendments takes in relation to one another, how can just Section 3 of the Fourteenth Amendment be the only amendment that is treated as not being self-executing. See *Anderson v. Griswold,* 2023 CO at 54, ¶96, fn. 12. This Court also took note of the opposing arguments to the self-executing argument, but this Court finds the self-executing argument more compelling based on the purpose and circumstances in which the Section 3 was enacted, the other Reconstruction Amendments viewed in their totality, and the intended consequences for violation with a method to cure a disqualification by acts of Congress, under Section 3 itself or Section 5 of the Fourteenth Amendment.

In considering whether Section 3 applied to the Respondent-Candidate as former President of the United States, this Court applies that normal and ordinary usage of the phrases in Section 3, as did the Colorado Supreme Court, by using dictionaries from the time of the Fourteenth

Amendment, examining the meanings of the words "office,"[26] "officers,"[27] "insurrection,"[28] "engaged"[29] and "oath"[30] and, thereby, concludes that the plain language and plain meanings of Section 3, applies to the former president now seeking to hold office again as the President of the United States. See *Anderson v. Griswold*, 2023 CO at 79, ¶143; 84, ¶152; 87, ¶158.

In *U.S. Term Limits v. Thornton*, the U.S. Supreme Court stated that the U.S. Constitution's "provisions governing elections reveal the Framers' understanding that powers over the election of federal officers had to be delegated to, rather than reserved by, the states." 514 U.S. at 804. The U.S. Supreme Court recognized that federal elections is one of the few areas in which the constitution expressly requires actions by the states, with respect to federal elections. Id. As previously identified, qualifications of candidates for federal offices are conducted by the states, not Congress, based on the U.S. constitution, and application of Section 3 of the Fourteenth Amendment should not be an exception.

Based on the comparable rationale for interpreting Section 3 of the Fourteenth Amendment and finding that it applies to Respondent-Candidate, as made by the Colorado Supreme Court, this

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[26] The Colorado Supreme Court found that the U.S. Constitution refers to the Presidency as an "office" twenty-five times. *Anderson v. Griswold*, 2023 CO at 72, ¶133; U.*S. Term Limits v. Thornton*, 514 U.S. at 861 ("qualifications for the office of President" is stated twice by the High Court.

[27] See U.*S. Term Limits v. Thornton*, 514 U.S. 779, 803 (1995) (recognized that "Representatives and Senators are as much officers of the entire union as the President."

[28] Justice Boatright, dissenting, drew the conclusion that a conviction was necessary for an insurrection, but this Court notes that there is no such language in Section 3. *Anderson v. Griswold*, 2023 CO at 11 (dissent).

[29] Respondent-Candidate cites to an "overt, voluntary act' being required. 12 Op. Att'y Gen. 141, 164 (1867). He then provides a dictionary meaning of "to be involved, or have contact, with someone or something." (EB Record, C-6691 V12). He does not refuted that he gave a speech on January 6 at the Ellipse Rally, that he sent out tweets entitled, "Stop the Steal", Storm or Invade or Take the Capital, and to disburse or be peaceful (but only after violence had occurred almost 3 hours prior). These facts alone created by a preponderance of the evidence using the Respondent-Candidate's own definition that by his conduct he engaged with the crowd, deemed to be engaging in insurrection. (EB Record C-6691 V12, C-6694 V12); Colorado Trial Exhibit Nos. 49, 68 and 148.

[30] Oath of the President of the United States effectively is language that can be interpreted as supporting the U.S. Constitution and the peaceful transfer of power. Art. II, Sec. 1, cl. 8 ("preserve, protect and defend")

Court finds the historical perspectives and interpretation of the language compelling, the analytical reasonings used as language construction tools to be sound, and recognizes that a common sense approach that the President of the United States must be included in the language given the events of the Civil War era and, therefore, determines that Section 3 applies to a candidate for office of President of the United States.

This Court appreciated and shares the Colorado Supreme Court's goal to ascertain the legitimate operation of Section 3 and to effectuate the drafters' intent by looking to the "plain language giving its terms in their ordinary and popular meanings." *Anderson v. Griswold*, 2023 CO 63 (2023). This Court concludes that the goal of determining the meaning and application of Section 3 excludes from office as a punishment to leaders who swore an oath to protect, defend and uphold the constitution, that such provision is self-executing, and that Section 3 is a qualification requirement used to consider disqualify a candidate for the office of President of the United States.

This Court shares the Colorado Supreme Court's sentiments that did not reach its conclusions lightly. This Court also realizes the magnitude of this decision and it impact on the upcoming primary Illinois elections. See *Anderson v. Griswold*, 2023 CO 63 (2023).

This Court's final determination on this issue is that the Respondent-Candidate fails to meet the Section 3 of the Fourteenth Amendment's disqualification provision based on engaging in insurrection on January 6, 2021, and his name should be removed from the ballot.

II. Disqualification under the Illinois Election Code for falsely swearing candidate is legally qualified on the Statement of Candidacy accompanying the Nomination Papers

This Court now reviews the Electoral Board's dismissal of the Petitioners-Objectors' objection based on Petitioners-Objectors failure to meet their burden of proof by a preponderance of the evidence[31] that Respondent-Candidate's Statement of Candidacy is falsely sworn in violation of sections 10 ILCS 5/7-10 and 5/10-5 of the Election Code the Respondent-Candidate was not legally qualified to hold the office of President of the United States.

Looking at the Election Code Section 5/7-10 is essential to the Court's review. The applicable relevant sections read as follows:

> "The name of no candidate for nomination, or State central committeeperson, or township committeeperson, or precinct committeeperson, or ward committeeperson or candidate for delegate or alternate delegate to national nominating conventions, shall be printed upon the primary ballot unless a petition for nomination has been filed in his behalf as provided in this Article . . . Each sheet of the petition other than the statement of candidacy and candidate's statement . . ."
> Section 5/10-5, reads in relevant parts:
> 1. The office or offices to which such candidate or candidates shall be nominated.
> ..
> Such certificate of nomination or nomination papers in addition shall include as a part thereof, the oath required by Section 7-10.1 [referred to as the Loyalty Oath] of this Act and ***must include a statement of candidacy*** for each of the candidates named therein, . . .
> . . .
> State of Illinois)
>) SS.
> County of.....)
> I,...., ***being first duly sworn***, say that I reside at.... street, in the city (or village) of.... in the county of.... State of Illinois; and that I am a qualified voter therein; that I am a candidate for election to the office of.... to be voted upon at the election to be held on the.... day of....,.....; and that ***I am legally qualified*** to hold such office and that I have filed (or will file before the close of the petition filing period) a statement of economic interests as required by the Illinois Governmental Ethics Act, and I hereby request that my name be printed upon the official ballot for election to such office." (Emphasis added).

[31] See Rules of Procedure Adopted by the State Board of Elections, dated January 17, 2024. (Electoral Board Record, II. Argument(b) at C-3582-83 V7).

The statutory requirement governing statements of candidacy and oaths are mandatory. *Goodman*, 241 Ill. 2d at 409, citing *Cinkus*, 228 Ill. 2d at 219. Therefore, Sections 7-10 and 10-5 require that if the candidate's statement of candidacy does not substantially comply with the statute, then the candidate is not entitled to have his or her name appear on the primary ballot. *Goodman*, 241 Ill. 2d at 409-10, (citing *Lawlor v. Municipal Officer Electoral Board*, 28 Ill. App. 3d 823, 829-30 (1975)).

In this case, Respondent-Candidate filed his Nomination Papers and Statement of Candidacy with the Illinois State Board of Elections on January 4, 2024. Petitioners-Objectors timely filed their objections to Respondent-Candidate's Nomination papers and statement of candidacy on January 4, 2024. Respondent-Candidate executed the sworn statement of candidacy in which he stated, "I, Donald J. Trump, ….I am legally qualified to hold the office of President of the United States." (a copy of Respondent-Candidate Sworn Statement of Candidacy is attached hereto as ***Appendix D***). On December 23, 20232, the Colorado Supreme Court upheld the ruling of the Colorado District Court that Respondent-Candidate has engaged in insurrection on January 6, 2021 and was disqualified from the ballot for the office of President of the United States based on Section 3 of the Fourteenth Amendment. Therefore, Petitioners-Objectors objections allege that Respondent-Candidate falsely swore that he was legally qualified on his January 4, 2024 Statement of Candidacy because of the ruling by the Colorado Supreme Court that he was not qualified.

The interpretation of the "legally qualified" language of the statement of candidacy is well-established law in Illinois.[32] In *Goodman v. Ward*, the Illinois Supreme Court addressed the very

[32] As this Court previously referenced, the Electoral Board's General Counsel's recommendation raising a scienter requirement under Section 5/7-10 of the Election Code to determine the candidate's qualification to be on the ballot is without basis and contrary to existing Illinois law, due to lack of legislative language and/or court precedent requiring scienter as under 5/7-10.

issue regarding the "I am legally qualified" language in a statement of candidacy. *Goodman*, 241 Ill. 2d at 407. In that case, the candidate sought office of Circuit Court judge in a judicial subcircuit which required candidates must be a resident of the subcircuit in which office is sought at the time he or she submits a petition for nomination to office and his or her Statement of Candidacy. 241 Ill. 2d at 400 (The Supreme Court's analysis was made under the public interest exception which permits a court to reach the merits of a case which would otherwise be moot.) The candidate for Judge in the 4th subcircuit was not a resident of the district at the time he filed his Statement of Candidacy. *Id.* at 407-08.

In looking at the statutory requirement for petitions for nomination under 10 ILCS 5-10 and 5/7-10,[33] the Supreme Court employed the basic principles of statutory construction to the Election Code in construing the legislative intent of the statute. *Id.* at 408. The best indication of legislative intent is the plain and unambiguous language employed by the General Assembly, which must be given its plain and ordinary meaning, without resort to aids of statutory construction. *Id.* at 408.

The Illinois Supreme Court interpreted what constituted "legally qualified" when a candidate swore to a Statement of Candidacy. Goodman, at 407. Second, the Supreme Court analyzed when a candidate must be "legally qualified" at the time he or she files nomination petitions and statement of candidacy.

As to what "legally qualified" means, the Illinois Supreme Court found that the residency requirement was established under the Illinois Constitution, Section Art. VI, Section 11. Under the

---

[33] The Statement of Candidacy is filed with their nomination papers. *Goodman*, at 408. ("No principle of English grammar or statutory construction permits an interpretation of the law which would allow candidates to defer meeting the qualifications of the office until some later date."); citing *Cinkus v. Village of Stickney Municipal Officers Electoral Board*, 228 Ill. 2d 200, 212 (2008.)

clear and unambiguous language in the constitution, a person must meet the residency requirement to hold office. At the time the candidate in *Goodman v. Ward* filed his Statement of Candidacy, he was not a resident of the subcircuit in which he sought office. Therefore, his statement that he was legally qualified was latently false, the objections were sustained, and the candidate's name was not printed on the ballot for the primary election. *Id.* 241 Ill. 2d at 410.

The Illinois Supreme Court, undertook a compelling analysis of both the words "is" and "am" preceding the words "legally qualified" in the sworn statement of candidacy required to be included with the candidate's nomination petition filed under Section 7-10 of the Election Code. In its analysis of the plain meaning of the words in relation to the sworn statement of candidacy, the Supreme Court held that is clear that under the Illinois Constitution a candidate for judicial office must meet the requirements for office, in that case residency, before the candidate's name may appear on the ballot for the primary election. *Id.*, 241 Ill. 2d at 408, 412 (both words "is" in the Illinois Constitution and "am" indicate a present tense in the statement of candidacy).[34] The legislature's use of the present tense of the words evinces an intent to require the candidates to meet the qualifications for the office they seek, not at a later date, but at the time they submit the nomination papers and statement of candidacy. *Id.*

This Court finds the analysis by the Illinois Supreme Court in the *Goodman v. Ward* case on point in determining the issues in this case about whether the Respondent-Candidate's Statement of Candidacy was falsely sworn.

Like the Illinois Supreme Court's ruling in *Goodman v. Ward*, where the Court found that the residency requirement had to be established at the time the candidate filed its statement of

[34] In Illinois, the statement of candidacy qualification must exist when it is filed, therefore, Respondent-Candidate's argument that "running for" and "holding" office is not consistent with Illinois law. See Candidate-Respondent's various filed pleadings.

candidacy, in this instant case, the Respondent-Candidate must be "legally qualified" at the time he signed his Statement of Candidacy based on the qualifications for candidate for the President of the United States. Historically, such a candidate only had to meet the Article II qualifications, including, the age, residency and citizenship requirements which the Electoral Board has assessed and ruled on in past cases. The instant case presents the novel issue for Illinois courts in that Petitioners-Objectors raise Section 3 of the Fourteenth Amendment as additional U.S. constitutional consideration, not as a qualification, but a disqualification of candidacy that if established makes the Respondent-Candidate's sworn Statement of Candidacy invalid.

On January 4, 2024 when Respondent-Candidate filed his Statement of Candidacy in Illinois, he had been found to engage in insurrection[35] by the Colorado Supreme Court under Section 3 of the Fourteenth Amendment. He was to be removed from the ballot in Colorado even though the Colorado Supreme Court stayed its ruling until January 4, 2024 pending appeal to the U.S. Supreme Court. *Anderson v. Griswold*, 2023 CO at 8.

Given the conclusions by this Court that Section 3 disqualifies Respondent-Candidate, which are supported by the factual findings in the Electoral Board's Record, this Court concludes that Respondent-Candidate falsely swore in his Statement of Candidacy filed on January 4, 2024 that he was "legally qualified" for the office he sought.[36]

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[35] Findings made by Colorado District Court on November 17, 2023. Findings by the Colorado Supreme Court on December 23, 2023 was based on clear and convincing evidence. The Colorado Supreme Court also relied on the January 6 Report by the U.S. House of Representatives as evidence to support its findings. Electoral Board Record, Vols. 1-12. Hearing Office Judge Erickson also determined and recommended to the Electoral Board that Respondent-Candidate has engaged in insurrection by a preponderance of the evidence presented at the hearing on January 26, 2024, and that he should have his name removed from the March, 2024 primary ballot in Illinois. See Electoral Board Record. Of note, the Electoral Board's refusal to find any factual determinations regarding the events of January 6, 2021was shocking given the evidentiary records; however, the members of the Electoral Board, in this Court's summation, made is clear from the hearing transcript that they wanted to get as far away from this case as possible, likely given its notoriety. EB Hearing, R-167 to R-209.

[36] This Court also notes that while the Respondent-Candidate could have cured the disqualification under Section 3 of the Fourteenth Amendment, although highly improbable, between the time of the ruling by the

Therefore, this Court finds that the Electoral Board's Decision on January 30, 2024 that Respondent-Candidate shall remain on the ballot as a candidate for the office of President of the United States is overruled.

CONCLUSION

Wherefore, this Court finds and orders, after a review of the Elector Board's Decision on January 30, 2024, that:

a) The Petitioners-Objectors' Objections Petition should have been granted, as they have met their burden by preponderance of the evidence that Respondent-Candidate's name should be removed from the ballot for the March, 2024 general primary election.

b) The Electoral Board's Decision was clearly erroneous in denying Petitioners-Objectors' Objection Petition, and their Motion for Summary Judgment, and in granting the Respondent-Candidate's Motion to Dismiss.

c) The Electoral Board's Decision was clearly erroneous in finding that the Respondent-Candidate's Nominations Papers, including his Statement of Candidacy was valid.

d) The Electoral Board's Decision that Respondent-Candidate, Donald J. Trump, as Republican Party candidate for the office of the President of the United States is reversed.

Colorado Supreme Court's decision on December 23, 2023 and by the time he filed his Statement of Candidacy on January 4, 2024 with the Electoral Board, but he has not provided support that the disqualification under the Section 3 was cured by congressional act. On October 17, 1978, President Jimmy Carter signed a bill presented by Congress that restored American citizenship to Jefferson David, former President of the Confederacy because President Jefferson David was not pardoned by the Amnesty Act of 1876. See S.J. Res. 16, Public Law 95-466, approved October 17, 1978.

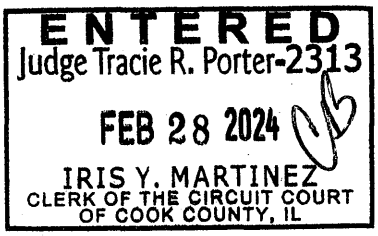
e) The Illinois State Board of Election shall remove Donald J. Trump from the ballot for the General Primary Election on March 19, 2024, or cause any votes cast for him to be suppressed, according to the procedures within their administrative authority.

f) This Order is stayed until March 1, 2024 in anticipation of an appeal to the Illinois Appellate Court, First District, or the Illinois Supreme Court. This Order is further stayed if the United States Supreme Court in *Anderson v. Griswold* enters a decision inconsistent with this Order.

So Order, this 28th day of February, 2024.

2313

The Honorable Tracie R. Porter
Circuit Court Judge



*The Court thanks and acknowledges Law Clerk Dana Jabri in the research and editing of this opinion.

APPENDIX A

Stipulated Order Regarding Trial Transcripts and Exhibits from the Colorado Action January 24, 2024

BEFORE THE ILLLINOIS STATE BOARD OF ELECTIONS
SITTING *EX-OFFICIO* AS THE STATE OFFICERS ELECTORAL BOARD

STEVEN DANIEL ANDERSON, CHARLES J. HOLLEY, JACK L. HICKMAN, RALPH E. CINTRON, AND DARRYL P. BAKER,	)	No. 24 SOEB GP 517
Petitioners-Objectors,	)	
v.	)	
DONALD J. TRUMP,	)	Hearing Officer Clark Erickson
Respondent-Candidate.	)	

STIPULATED ORDER REGARDING TRIAL TRANSCRIPTS AND EXHIBITS FROM THE COLORADO ACTION

WHEREAS, Petitioners-Objectors have filed a motion for summary judgment, to which Respondent-Candidate will be responding;

WHEREAS, numerous witnesses previously testified and numerous exhibits were previously introduced in a Colorado state court proceeding captioned: *Anderson v. Griswold*, District Court, City and County of Denver, No. 23CV32577 (the "Colorado Action"); and

WHEREAS, counsel for Petitioners-Objectors and Respondent-Candidate believe circumstances exist that make it desirable and in the interests of justice and efficiency to minimize unnecessary or duplicative testimony, streamline the process for presenting exhibits in support of or opposition to Objectors' motion for summary judgment, and avoid the need for a contested evidentiary hearing;

THEREFORE, the parties to this proceeding, by and through their counsel, hereby stipulate (and the Hearing Officer so orders) as follows:

1. Any transcripts containing trial witness testimony in the Colorado Action constitutes "former testimony" and falls within the "former testimony" exception to the hearsay rule set forth in Ill. Evid. R. 804(b)(1).

2. Except as specified herein, all trial exhibits admitted in the Colorado Action are authentic within the meaning of Ill. Evid. R. 901 or 902. This stipulation of authenticity, however, does not apply to Colorado trial exhibit Nos. P21, P92, P94, P109, and P166.

3. Notwithstanding paragraphs 1-2 of this Stipulated Order, all other objections as to trial testimony and exhibits from the Colorado Action are preserved and may be made by any party as part of the briefing of or argument on Objectors' motion for summary judgment to be resolved by the Hearing Officer, as needed, in the course of rendering a decision on Objectors' motion for summary judgment, or on the Objection itself. Objections preserved include objections based on the U.S. Constitution, Illinois Constitution, applicable U.S. or Illinois statutes, Illinois Supreme Court Rules, Illinois Evidence Rules, the Illinois Code of Civil Procedure, the Rules of Procedure adopted by the State Officers Electoral Board on January 17, 2024, or applicable caselaw.

Dated: January 24, 2024

SO STIPULATED:

STEVEN DANIEL ANDERSON, CHARLES J. HOLLEY, JACK L. HICKMAN, RALPH E. CINTRON, AND DARRYL P. BAKER,

By: /s/ Caryn C. Lederer
One of their attorneys

Matthew Piers (2206161)
Caryn Lederer (ARDC: 6304495)
HUGHES SOCOL PIERS RESNIC & DYM, LTD.
70 W. Madison St., Ste. 4000
Chicago, IL 60602

DONALD J. TRUMP

By: /s/ Adam P. Merrill
One of his attorneys

Adam P. Merrill (6229850)
WATERSHED LAW LLC
55 W. Monroe, Suite 3200
Chicago, IL 60603

ENTERED:

Hearing Officer Clark Erickson

From:	Adam Merrill
To:	Caryn C. Lederer; Nicholas J. Nelson (Other)
Cc:	clark erickson; Alex Michael; Ron Fein; John Bonifaz; Ben Clements; Amira Mattar; Justin Tresnowski; Ed Mullen; Matthew J. Piers
Subject:	RE: Anderson et al. v. Trump (24 SOEB GP 517) - Objectors" Exhibit List
Date:	Wednesday, January 24, 2024 9:26:04 AM
Attachments:	2024.01.24--Anderson v Trump--Stipulated Order re CO Trial Trs, Exs--FINAL.pdf image003.png image004.png image005.png

Judge Erickson,

The parties are pleased to report they have reached an agreement with respect to transcripts and admitted exhibits from the recently tried Colorado action involving similar objections. Given this stipulation, neither Objectors nor the Candidate will be calling live witnesses or presenting evidence (beyond what is already in the record) at tomorrow's hearing. Attached please find the stipulation, which the parties respectfully request be entered by Your Honor.

Adam P. Merrill
Watershed Law LLC
312.368.5932

From: Caryn C. Lederer <clederer@HSPLEGAL.COM>
Sent: Wednesday, January 24, 2024 8:39 AM
To: Adam Merrill <AMerrill@watershed-law.com>; Nicholas J. Nelson (Other) <nicholas.nelson@crosscastle.com>
Cc: clark erickson <ceead48@icloud.com>; Alex Michael <amichaellaw1@gmail.com>; Ron Fein <rfein@freespeechforpeople.org>; John Bonifaz <jbonifaz@freespeechforpeople.org>; Ben Clements <bclements@freespeechforpeople.org>; Amira Mattar <amira@freespeechforpeople.org>; Justin Tresnowski <jtresnowski@HSPLEGAL.COM>; Ed Mullen <ed_mullen@mac.com>; Matthew J. Piers <MPiers@HSPLEGAL.COM>
Subject: Anderson et al. v. Trump (24 SOEB GP 517) - Objectors' Exhibit List

Dear Counsel,

Pursuant to Judge Erickson's January 17, 2024 order, I am attaching Objectors' Exhibit List and links to the corresponding files. As we have discussed, these materials are documents and videos that have been previously produced to the Candidate along with Objectors' filings and Objectors will not call witnesses at the hearing.

Objectors' Exhibit List & Documents.pdf
Colorado Trial Video Exhibits

Please let us know if you have any questions.

Thank you,
Caryn

Exhibit B

Caryn C. Lederer, *Shareholder*
HUGHES SOCOL PIERS RESNICK & DYM, LTD.
70 W. Madison St., Suite 4000
Chicago, IL 60602
Dir: **312.604.2622** Fax: **312.604.2623**
Pronouns: she/her/hers
Click to send me files.

APPENDIX B

Hearing Officer Report and Recommended Decision
January 27, 2024

BEFORE THE ILLLINOIS STATE BOARD OF ELECTIONS
SITTING EX-OFFICIO AS THE STATE OFFICERS ELECTORAL BOARD

STEVEN DANIEL ANDERSON, CHARLES J. HOLLEY, JACK L. HICKMAN, RALPH E. CINTRON, AND DARRYL P. BAKER,	)	
Petitioners-Objectors,	)	No. 24 SOEB GP 517
v.	)	
DONALD J. TRUMP,	)	
Respondent-Candidate.	)	

HEARING OFFICER REPORT AND RECOMMENDED DECISION

Background of the Case

This matter commenced with the Objector's filing of a Petition to Remove the Candidate, Donald J. Trump from the ballot on January 4, 2024. In summary, the Objector's Petition, and the corresponding voluminous exhibits in support thereof, seek a hearing and determination that Candidate Trump's Nomination Papers are legally and factually insufficient based on Section 3 of the 14th Amendment and based on 10 ILCS 5/7-10 of the Illinois Election Code. The crux of these allegations center around the violent incidents of January 6, 2021 at the United States Capitol building in Washington D.C. and what Candidate Trump's involvement and/or participation in those violent events was. The Petition alleges "Candidate's nomination papers are not valid because when he swore in his Statement of Candidacy that he is "qualified" for the office of the presidency as required by 10 ILCS 5/7-10, he did so falsely" based on his participation in the January 6, 2021, events. [See Page 2, Paragraph 8 of Objector's Petition].

The Petition further asks this Board to determine that President Trump is disqualified under Article 3 of the Fourteenth Amendment which states in relevant part that ""No person shall . . . hold any office, civil or military, under the United States, . . . who, having previously taken an oath, . . . as an officer of the United States, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof."

The factual determination before the Board therefore is first, whether those January 6, 2021, events amount to an insurrection. Next, if those events do constitute an insurrection, the question that requires addressing is whether the Candidate's actions leading up to, and on January 6, 2021, amounts to having "engaged" or "given aid" or "comfort" as delineated under Section 3 of the 14th Amendment. However, before the Hearing Officer addresses the factual

determination on the merits, the procedural issues, including the Motions that were filed, must be addressed.

Procedural History

Following the filing of the Petition on January 4, 2024, an Initial Case Management Conference was conducted on January 17, 2024. At the Initial Case Management Conference, the Parties were provided an Initial Case Management Order with corresponding deadlines for certain motions. As part of these proceedings, and in compliance with the Case Management Order, the Candidate filed a timely Motion to Dismiss on January 19, 2024. The Objectors also filed a timely Motion for Summary Judgment. Responses to those Motions were timely filed by the parties on January 23, 2024. Replies to the respective Motions were filed by the parties. Candidate sought a brief extension to file his Reply. The extension was unopposed by the Objectors. The extension was granted without objection and is considered timely. A link to the filings and exhibits is found here for the Board's convenience.

https://1drv.ms/f/s!AiUfM7KmKopbifBCDf_deqdCAMAgrg?e=xhUj5i

The Hearing Officer heard argument on the matter on January 26, 2024. Each party was provided with one hour for their argument. The Hearing Officer commends the attorneys for both Objectors and the Candidate for their cooperation and professionalism. Each of these motions, as well as the merits of the case are addressed in turn. For procedural reasons, we first begin with the Motion to Dismiss. The Hearing Officer further notes that the sufficiency, quality, quantify, and nature of the signatures on the Petition is not challenged and therefore the signatures are deemed sufficient.

Candidate's Motion to Dismiss

The Candidate's Motion to Dismiss states it raises five grounds, but in actuality the Hearing Officer, from the Brief, recognizes six separate arguments raised for dismissal. Those grounds argued by Candidate are as follows:

1. Illinois law does not authorize the SOEB to resolve complex factual issues of federal constitutional law like those presented by the Objectors, especially in light of the United States Supreme Court considering the same issues on an expedited basis.
2. Political questions are to be decided by Congress and the electoral process—not courts or administrative agencies.
3. Whether someone is disqualified under Section Three of the Fourteenth Amendment, is a question that can be addressed only in procedures prescribed by Congress, not by the SOEB.
4. Whether Section Three of the Fourteenth Amendment bars holding office, rather than running for office, and that states cannot constitutionally enlarge the disqualification from the "holding of office stage" to the earlier stage of "running for office."

5. That "officer of the United States," under Section 3 of the Fourteenth Amendment excludes the office of the President.
6. Lastly, even if Section Three of the Fourteenth Amendment applied here and the Board was empowered to apply it, Candidate argues that Objectors have not alleged facts sufficient to find that President Trump "engaged in insurrection."

Candidate's First Ground

Candidate first argues that "Illinois law does not authorize the [Illinois State Officer's Electoral Board] SOEB to resolve complex factual issues of federal constitutional law like those presented by the Objections." Candidate argues that "[10 ILCS 5] Section 10-10 [Of the Illinois Election Code] (and relevant caselaw) makes clear the SOEB's role is to evaluate the form, timeliness and genuineness of the nominating papers and that the SOEB is not authorized to conduct a broad-ranging inquiry into a candidate's qualifications under the U.S. Constitution." [See Candidate's Motion to Dismiss, Page 4].

Section 10 ILCS 5/10-10, in relevant part, states as follows:

> "The electoral board shall take up the question as to whether or not the certificate of nomination or nomination papers or petitions are in proper form, and whether or not they were filed within the time and under the conditions required by law, and whether or not they are the genuine certificate of nomination or nomination papers or petitions which they purport to be, and whether or not in the case of the certificate of nomination in question it represents accurately the decision of the caucus or convention issuing it, and in general 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."

The Candidate argues that the SOEB does not have the authority to reach such complex issues of fact and law. Specifically, he argues that the questions of whether an insurrection happened, and constitutional application of Section 3 of the Fourteenth Amendment are beyond the purview of the power authorized to the SOEB in Section 10-10. Candidates' argument is that this is a fact intensive issue, and without proper vehicles of discovery the procedures afforded by the SOEB "are wholly inadequate for the kind of full-scale trial litigation and complex evidentiary presentation." [See Candidate's Motion to Dismiss, Pages 5-6].

Objectors, in response to this contention, argue that "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." [See Objector's Response, Page 5]. Objectors also rely on Section 10-10 citing specifically to the language from the statute that the SOEB "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." Objector further cites to *Goodman v. Ward*, 241 Ill. 2d 398 (2011) claiming that "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."

Candidate's Second Ground

Candidate next argues that this matter is a political question, for which the Courts must decide. The Candidate contends 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."

The political question doctrine bars courts from adjudicating issues that are "entrusted to one of the political branches or involve no judicially enforceable rights." *Vieth v. Jubelirer*, 541 U.S. 267, 277 (2004). In *Baker v. Carr*, 369 U.S. 186, 217 (1962) the Supreme Court described six circumstances that can give rise to a political question:

> "[1] a textually demonstrable constitutional commitment of the issue to a coordinate political department; or [2] a lack of judicially discoverable and manageable standards for resolving it; or [3] the impossibility of deciding without an initial policy determination of a kind clearly for nonjudicial discretion; or [4] the impossibility of a court's undertaking independent resolution without expressing lack of the respect due coordinate branches of government; or [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." *Id.*

The *Baker* Court held that, "[u]nless one of these formulations is inextricable from the case at bar, there should be no dismissal for non-justiciability on the ground of a political question's presence. *Castro v. New Hampshire Sec'y of State*, 2023 WL 7110390, at *7. The question therefore becomes, whether the issue before the SOEB, falls into one of these six categories. More recent United States Supreme Court precedent has seemingly narrowed this to two factors. See *Zivotofsky ex rel. Zivotofsky v. Clinton*, 566 U.S. 189, 195, 132 S. Ct. 1421, 1427, 182 L. Ed. 2d 423 (2012) holding that "we have explained that a controversy "involves a political question ... where there is 'a textually demonstrable constitutional commitment of the issue to a coordinate political department; or a lack of judicially discoverable and manageable standards for resolving it."

Candidate offers precedent that is directly on point. In particular, *Castro*, the United States District Court for the District of New Hampshire, presiding over a nomination issue involving the same candidate, and the same claim for insurrection, found that this is a nonjusticiable political question barring the Courts from intervening. In so determining, the *Castro* Court recognized prior precedent from *Grinols v. Electoral Coll.*, 2013 WL 2294885, at

*6 (E.D. Cal. May 23, 2013) that held "the Twelfth Amendment, Twentieth Amendment, Twenty-Fifth Amendment, and the Article I impeachment clauses, "make it clear that the Constitution assigns to Congress, and not the Courts, the responsibility of determining whether a person is qualified to serve as President. As such, the question presented by Plaintiffs in this case…is a political question that the Court may not answer." *Castro* at 8.

In response to the precedent cited by Candidate, Objectors contend that the cases involved do not involve a section 3 constitutional challenge. In response, Objectors contend that:

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.
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.

In conflict with *Castro*, is the recent Colorado Supreme Court decision, *Anderson v. Griswold*, 2023 WL 8770111 (Cob. Dec. 19, 2023). The *Anderson* Court "perceive[d] no constitutional provision that reflects a textually demonstrable commitment to Congress of the authority to assess presidential candidate qualifications." Id at ¶ 112. The decision further notes that state legislatures have developed comprehensive and complex election codes involving the selection and qualification of candidates. See also *Storer v. Brown*, 415 U.S. 724, 730, 94 S. Ct. 1274, 1279, 39 L. Ed. 2d 714 (1974). The *Anderson* decision further finds that "Section Three's text is fully consistent with our conclusion that the Constitution has not committed the matter of presidential candidate qualifications to Congress…although Section Three requires a "vote of two-thirds of each House" to remove the disqualification set forth in Section Three, it says nothing about who or which branch should determine disqualification in the first place."

Candidate's Third Ground

Candidate next argues that the determination of an insurrection can only be made by Congress. In support of this argument, Candidate relies on *In re Griffin*, 11 F Cas 7 (C.C.D. Va. 1869). The *Griffin* Court found that enforcement of Section 3 is limited to Congress. Objectors argue *Anderson v. Griswold* rejected this argument and that the *Griffin* case is wrongly decided.

Candidate's Fourth Ground

Candidate next argues that Section 3 of the Fourteenth Amendment bars holding office, not running for office. In support of this argument Candidate relies on *Smith v. Moore*, 90 Ind. 294,

303 (1883) which allowed Congress to remove disabilities after they were elected. Candidate further argues the Constitution prohibits States from accelerating qualifications for elected office to an earlier time than the Constitution specifies. Candidate gives the example of Schaefer *v. Townsend*, 215 F.3d 1031, 1038 (9th Cir. 2000). In *Shaefer* California once tried to require congressional candidates to be residents of the state at the time when they were issued their nomination papers—rather than "when elected," as the Constitution says. Candidate also cites *US Term Limits, Inc v Thornton*, 514 US 779, 827, 115 S Ct 1842, 1866 (1995) (States do not "possess the power to supplement the exclusive qualifications set forth in the text of the Constitution.").

Objectors argue that the cases relied upon by Candidate are inapplicable. Objectors argue that a Candidate can control and can promise that he or she will be a resident of the state for the position that he is running for in the future.

Candidate's Fifth Ground

Candidate includes the fifth ground within his fourth ground, but this appears to be a separate challenge. Here Candidate argues that the president is not an officer of the United States under the constitution. The Objectors disagree. Both sides cite a litany of sources, including Judges and the Constitution itself in support of their respective positions. This Hearing Officer has no doubt that given infinite resources, even more sources could be found to support both positions.

Candidate's Sixth Ground

The Candidate's final argument is that insufficient facts have been pled to amount to an insurrection. Although the section is not mentioned, this is the functional equivalent of a 735 ILCS 5/2-615 or Federal Rule of Civil Procedure 12(b)(6) argument. The Hearing Officer treats it as such. Under this section, Candidate puts forth sub-arguments. First, he contends that an insurrection has not been alleged. Candidate puts forth that "Dictionaries of the time confirm that "insurrection" meant a "rebellion of citizens or subjects of a country against its government," and "rebellion" as "taking up arms traitorously against the government.

Candidate next argues that he did not engage in the insurrection. Within this argument he says pure speech cannot amount to engaging in an insurrection. Candidate says that incitement alone cannot equal engagement. Both parties concede that Trump himself did not act with violence., The question therefore becomes whether words alone can amount to engaging in an insurrection.

Objectors' Motion for Summary Judgment

The Hearing Officer now turns his attention to the Motion for Summary Judgment, which also asks for the Petition to be Granted. The request for a ruling on the merits will be addressed separately. First, the Motion for Summary Judgment must be addressed.

In support of the Motion for Summary Judgment, Objectors cite a series of what they claim are undisputed facts. A summary recitation of those facts is warranted. It is clearly undisputed that Candidate Trump took an oath to preserve and protect the Constitution of the United States. It is also clearly undisputed that Candidate Trump ran for re-election. Further, it is alleged that Candidate Trump refused in a September 2020 press conference to acknowledge a peaceful transfer of power if he lost. It is further alleged that Candidate Trump regularly tweeted that if he lost it would be a result of election fraud, and that after he lost, he continued to claim election fraud. It is alleged that Candidate Trump's lawful means of contesting the election results failed. It is alleged that Candidate Trump attempted to convince the Department of Justice to adopt his narrative and failed. It is alleged that Candidate Trump was made aware of plans for violence on January 6, 2021, that despite this information, Trump went ahead with his rally. It is alleged that Candidate Trump had reason to know or believe prior to January 6, that the January 6, 2021, protests would be violent. It is alleged that on January 6, Candidate Trump began to call out Vice-President Pence' s name at the demonstration and ask him to reject the election results or that Trump will be "very disappointed in [him]." It is alleged that attacks began on the Capitol, and that Candidate Trump was aware of the attacks taking place on the Capitol. It is alleged that Candidate Trump tweeted, among other things, that "Mike Pence didn't have the courage to do what should have been done to protect our Country and our Constitution." It is alleged that Candidate Trump tweeted this while the attacks were ongoing and knew that the attacks were ongoing, and that this tweet led to increased violence. It is alleged that Candidate Trump subsequently tweeted "Stay peaceful." It is alleged that Candidate Trump did not call the National Guard despite what was happening. Objector's narrative of facts is quite lengthy, and significantly more detailed than what is laid out here. This is not meant to be an exhaustive retelling of the narrative, but rather a quick synopsis.

As Objector's point out, summary judgment is appropriate where "the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." 735 ILCS 5/2-1005(c).

Recommendations on Dispositive Motions

A. Objectors' Motion for Summary Judgment.

The Hearing Officer finds that there are numerous disputed material facts in this case, as well wide range of disagreement on material constitutional interpretations. **Hearing Officer recommends that the Board deny the Objectors' Motion for Summary Judgment.**

B. Candidate's Motion to Dismiss.

Candidate argues in his Motion to Dismiss that the Objector's Petition should be dismissed for several reasons. One of particular interest to the Electoral Board is the argument that "As a creature of statute, the Election Board possesses only those powers conferred upon it by law" and "[a]ny power or authority [the Election Board] exercises must find its source within the law pursuant to which it was created." *Delgado v. Bd. of Election Comm'rs*, 224 Ill. 2d 481,485 (Ill. 2007). Candidate's Motion to Dismiss Objector's Petition, page 5.

In *Delgado*, the Illinois Supreme Court found that the Election Board (City of Chicago) exceeded its authority when it overruled the Hearing Officer's recommendation and concluded that a provision of the Illinois Municipal Code was unconstitutional: "Administrative agencies such as the Election Board have no authority to declare a statute unconstitutional or even to question its validity. (Cites omitted). In ruling as it did, the Election Board therefore clearly exceeded its authority." *Id., at 485.*

A more recent decision of the Illinois Supreme Court, *Goodman v. Ward*, 241 Ill.2d 398 (2011), further illustrates the limits that the Court places upon an Election Board. In *Goodman,* Chris Ward, an attorney licensed to practice law in Illinois, filed a petition with the Will County Officers electoral board to have his name placed on the primary ballot as a candidate for circuit judge. At the time he filed his petition, Ward was not a resident of the subcircuit he wished to run in. Two of the three officers of the electoral board decided that Ward could appear on the ballot because governing provisions of the Illinois Constitution were "arguably ambiguous and uncertain." The Court affirmed the lower court's reversal of the electoral board, holding, " ... the electoral board overstepped its authority when it undertook this constitutional analysis. It should have confined its inquiry to whether Ward's nominating papers complied with the governing provisions of the Election Code." *Goodman, at 414-415.*

The Illinois Supreme Court in these two decisions has clearly placed a limit upon what an electoral board can consider when ruling on an objection. In *Delgado,* the Court makes it clear that an electoral board may not, in performing its responsibilities in ruling on an objection, go so far as to even question the constitutionality of what it considers to be a relevant statute. The language in *Goodman* extends this prohibition when it uses the language of "constitutional analysis." Thus, an electoral board goes too far not just when it holds a statute unconstitutional but also goes too far when it enters the realm of constitutional analysis. Instead, as the Court wrote, "It should have confined its inquiry to whether Ward's nominating papers complied with the governing provisions of the Election Code." *Id., at 414-415.*

The question, then, is whether the Board can decide whether candidate Trump is disqualified by Section 3 of the Fourteenth Amendment, without embarking upon constitutional analysis.

The clear answer is that it cannot.

It is impossible to imagine the Board deciding whether Candidate Trump is disqualified by Section 3 without the Board engaging in significant and sophisticated constitutional analysis.

Section 3 of the Fourteenth Amendment reads as follows:

> Section 3. No 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, who, having 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, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

Much of the language in Section 3, which is part of the United States Constitution, is the subject of great dispute, giving rise to several separate constitutional issues. These issues are being raised in the case now before the Board, even as these issues in dispute are now pending before the United States Supreme Court, Case No.23-719, Donald J. Trump, Petitioner v. Norma Anderson, et al., Respondents.

A breakdown, by issue, makes clear how the issues in dispute in this case are constitutional issues currently before the United States Supreme Court:

Counsel for Candidate in this case, No. 24 SOEB GP 517, argue in their Motion to Dismiss the Objectors' Petition that Section 3 does not bar President Trump running for office. In their petition in support of their position they argue that Section 3 applies to holding office, not running for office.

That very issue is before the United States Supreme Court: "... section 3 cannot be used to deny President Trump (or anyone else) access to the ballot, as section 3 prohibits individuals only from *holding* office, not from *seeking* or *winning election* to office.

Counsel for Candidate in this case, No. 24 SOEB GP 517, argue in their Motion to Dismiss the Objectors' Petition that the constitutional phrase "officers of the United States" excludes the President.

That issue is also before the United States Supreme Court: "The Court should reverse the Colorado decision because President Trump is not even subject to section 3, as the President is not an "officer of the United States" under the Constitution."

Counsel for Candidate in this case, No. 24 SOEB GP 517, argue that Section 3 of the Fourteenth Amendment Can Be Enforced Only as Prescribed by Congress.

That issue is also before the United States Supreme Court: "...state courts should have regarded congressional enforcement legislation as the exclusive means for enforcing section 3, as Chief Justice Chase held in *In re Griffin*, 11 F. Cas. 7, 26 (C.C.D. Va. 1869) (*Griffin's Case*).

Counsel for Candidate in this case, No. 24 SOEB GP 517, argue that President Trump did not engage in insurrection within the meaning of Section Three.

That issue is also before the United States Supreme Court: "And even if President Trump were subject to section 3 he did not "engage in" anything that qualifies as "insurrection."

There is wisdom in the Illinois Supreme Court fashioning decisions which prohibit electoral boards from engaging in constitutional analysis. As the Candidate argues in his Motion to Dismiss, "The Board can and does resolve disputes about nominations and qualifications on records that are undisputed or (in the Board's estimation) not materially disputed. It does not and cannot hold lengthy and complex evidentiary proceedings of the kind that would be needed to assess objections like these."

The Rules of Procedure adopted by the State Board of Elections provides the following schedule for filing of briefs and motions within a time period between January 19, 2024 and January 25, 2024:

Schedule of Brief and Motion Filing
Candidate's Motion to Strike and/or Dismiss or other similar motion (MTD)
Objector's Motion for Summary Judgment or other similar motion (MSJ)
Must be filed no later than 5:00 p.m. on the second business day, **Friday, January 19, 2024,** following the date of the Initial Meeting of the Board, unless extended by the Board or Hearing Officer for good cause shown.
Objector's Response to Candidate's MTD
Candidate's Response to Objector's MSJ
Must be filed no later than 5:00 p.m. on the second business day following the due date of the Candidate's MTD or Objector's MSJ, **Tuesday, January 23, 2024,** unless extended by the Board or Hearing Officer for good cause shown.
Candidate's Reply to Objector's Response to Candidate's MTD
Objector's Reply to Candidate's Response to Objector's MSJ
Must be filed no later than 5:00 p.m. on the second business day following the due date of the Objector's Response to the Candidate's MTD or the Candidate's Response to the Objector's MSJ, **Thursday, January 25, 2024,** unless extended by the Board or Hearing Officer for good cause shown.

Any memorandum of law in support of any of the above pleadings shall accompany such pleading.
Briefs on any issue(s) shall be filed as directed by the Board or the Hearing Officer.
(APPENDIX A to Rules)

The Rules, as if it were even necessary to do, make it clear to all parties that the hearings are handled in an expedited manner:

1. **EXPEDITED PROCEEDINGS**
   a. Timing. On all hearing dates set by the Board or its designated Hearing Officer (other than
   the Initial Meeting), the objector and the candidate shall be prepared to proceed with the hearing of their case. Due to statutory time constraints, the Board must proceed as expeditiously as possible to resolve the objections. Therefore, there will be no continuances or resetting of the Initial Meeting or future hearings except for good cause shown.
   (Rule 1a.)

The Rules provide for very little discovery, although Rule 8 does allow for request of subpoenas:

Rule 8 provides a procedure for subpoenas:

a. Procedure and deadlines for general subpoenas.

1. Any party desiring the issuance of a subpoena shall submit a written request to the Hearing Officer. Such request for subpoena may seek the attendance of witnesses at a deposition (evidentiary or discovery; however, in objection proceedings, all depositions may be used for evidentiary purposes) or hearing and/or subpoenas *duces tecum* requiring the production of such books, papers, records, and documents as may relate to any matter under inquiry before the Board.

2. The request for a subpoena must be filed no later than **5:00 p.m. on Friday, January 19, 2024,** and shall include a copy of the subpoena itself and a detailed basis upon which the request is based. A copy of the request shall be given to the opposing party at the same time it is submitted to the Hearing Officer. The Hearing Officer shall submit the same to the Board (via General Counsel) no later than **5:00 p.m. on Monday, January 22, 2024.** The Chair and Vice Chair shall consider the request and the request shall only be granted by the Chair and Vice Chair.

3. The opposing party may submit a response to the subpoena request; however, any such response shall be given to the Hearing Officer no later than **4:00 p.m. on Monday, January 22, 2024,** who shall then transmit it to the Chair and Vice Chair (through the General Counsel's office) with the subpoena request. The Hearing Officer shall issue a recommendation on whether the subpoena request should be granted no later than **5:00**

p.m. on Wednesday, January 24, 2024. The Chair and Vice Chair may limit or modify the subpoena based on the pleadings of the parties or on their own initiative.

4. Any subpoena request, other than a Rule 9 subpoena request, received subsequent to **5:00 p.m. on Friday, January 19, 2024,** will not be considered without good cause shown.

5. If approved, the party requesting the subpoena shall be responsible for proper service thereof and the payment of any fees required by Illinois Supreme Court Rule or the Circuit Courts Act. *See* 10 ILCS 5/10-10; S. Ct. Rule 204, 208, and 237; 705 ILCS 35/4.3.

This subpoena procedure leaves little time to serve a person. In addition, there is no room for continuances, as the Board rules on the objections on January 30, the Tuesday following the hearing set on January 26.

All in all, attempting to resolve a constitutional issue within the expedited schedule of an election board hearing is somewhat akin to scheduling a two-minute round between heavyweight boxers in a telephone booth.

It is clear from the Election Code and the Rules of Procedure that the intent is for the Board to handle matters quickly and efficiently to resolve ballot objections so that the voting process will not be delayed as a result of protracted litigation. With the rules guaranteeing an expedited handling of cases, the Election Code is simply not suited for issues involving constitutional analysis. Those issues belong in the Courts.

Objectors point to the decision of the Colorado Supreme Court (now before the United States Supreme Court), and the Maine Secretary of State, both of which did resolve the candidate challenges in favor of the objectors and ordered the name of Donald J. Trump removed from the primary ballot.

It is worth taking a closer look at the Colorado opinion. (The Maine decision relied heavily on that opinion, which was announced during its proceeding.)

In *Anderson v Griswold*, 2023 CO 63, the Colorado Supreme Court case which is the subject of the United States Supreme Court appeal, the Colorado Court concluded "that because President Trump is disqualified from holding the office of President under Section Three, it would be a wrongful act under the Election Code for the Secretary to list President Trump as a candidate on the presidential primary ballot." In doing so, the Court upheld the rulings of the trial court, but reversed the trial court's decision that Section 3 did not apply to President Trump.

In their brief, the Objectors in 24 SOEB GP 517 argue that the opinion of the Colorado Supreme Court is a well-reasoned 133-page opinion. What the Objectors fail to say is that the opinion is a four to three decision, with three lengthy dissents.

The Colorado Supreme Court ("The Court") approved the decision by the trial judge to allow into evidence thirty-one findings from the report drafted by the House Select Committee to Investigate the January 6th Attack on the United States Capitol ("The Report"). The Court based its ruling on Federal Rule of Evidence 803(8) and its mirror rule in the Colorado Rules of Evidence. The Illinois Rules of Evidence contain the same rule in its own 803(8).

The Court found that the expedited proceedings in an election challenge provided adequate due process for the litigants: "... the district court admirably—and swiftly—discharged its duty to adjudicate this complex section 1-1-113 action, substantially complying with statutory deadlines." *Anderson*, at 85. (reference is to paragraph, not page). Whether there was substantial compliance is a matter of debate- one dissenting justice wrote that "if there was substantial compliance in this case, then that means substantial compliance includes no compliance." See discussion below.

On the issue of whether Section 3 of the Fourteenth Amendment is self-executing, the Court found that it was: "In summary, based on Section Three'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.

In arriving at their decision, the Court was required to analyze the *In re Griffin,* 11 F. Cas. 7 (C.C.D. Va. 1869) (No. 5,815) ("*Griffin's Case*"). *Griffin's Case* is a non-binding opinion written by Chief Justice Salmon Chase while he was riding circuit. Caesar Griffin challenged his criminal conviction because the judge who convicted him had previously served in Virginia's Confederate government. Chief Justice Chase concluded that Section 3 could be applied to disqualify only if Congress provided legislation describing who is subject to disqualification as well as the process for removal from office. Thus, Chief Justice Chase concluded that Section Three was not self-executing. *Griffin's Case,* at 26. Caesar Griffin's conviction and sentence were ordered to stand. Nonetheless, the Court concluded that congressional action was only one means of disqualification, and that Colorado's election process provided another, equally valid, method of determining whether a candidate for office was disqualified under Section 3. *Id.* at 105. That alternative to Congressional action is an election challenge hearing.

The Court went on to address each of the Constitutional issues raised by Candidate Trump, deciding each in favor of the objectors.

For example, the Court, found that "the record amply established 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. Under any viable definition, this constituted an insurrection." *Anderson,* at 189.

The Court concluded that the "record fully supported the district court's finding that President Trump engaged in insurrection within the meaning of Section Three," *Id.* at 225, and ordered that President Trumps' name not be placed on the 2024 presidential primary ballot.

Three justices wrote dissenting opinions.

Justice Boatright described in detail that the complexity of the Electors' claims cannot be squared with section 1-1-113's truncated timeline for adjudication. *Id.* at 264-268. He noted that under Colorado election law, a hearing is to be held within five days; in this case, however, it took nearly two months for a hearing to be held, a fact he argues is proof that the election procedures are inadequate for complex constitutional objections. *Id.* at 266.

Justice Samour argued in his opinion Section 3 was not self-executing; further, that the Colorado procedures dictating expedited proceedings denied President Trump due process.

Hearing Officer's Findings and Recommendation re Candidate's Motion to Dismiss

1. While the timeline for conducting a hearing and issuing findings is similar in both the Illinois election code and the Colorado election code, there are substantial differences, at least in terms of handling identical objections involving Section 3 of the Fourteenth Amendment;

2. In Colorado a trial judge hears evidence at a hearing while in Illinois, the Board conducts the hearing, typically through an appointed hearing officer;

3. The instant Illinois case, 24 SOEB GP 517, was called on January 18, 2024, the same day a hearing officer was appointed to handle the case. with hearing set on January 26, 2024. As described in Appendix A, above, a mad scramble of motions, responses and replies then took place, between January 19 and January 25. The hearing was held on the 26th, with an opinion expected to be filed by the hearing officer in advance of the Election Board hearing set for January 30th. There was no opportunity for meaningful discovery or subpoena of witnesses;

4. The Colorado hearing did not take place for nearly two months following the initial filing of the objection. The hearing lasted more than a week, with a full week devoted to taking testimony. At the hearing, several witnesses testified, including an expert witness in Constitutional law by each party; thereafter, closing arguments were held and a decision was rendered several days later;

5. Illinois law, including the Supreme Court decisions of *Goodman* and *Delgado* prohibit the Election Board from addressing issues involving constitutional analysis.

Recommendation on Candidate's Motion to Dismiss

The Hearing Officer finds that there is a legal basis for granting the Candidate's Motion to Dismiss the Objectors' Petition and **recommends** to the Board that the Motion to Dismiss be **granted.**

Hearing Officer's Findings and Recommendation Regarding the Objector's Petition

1. It is a unique feature of the Rules of Procedure that the final decision on dispositive motions, such as the Motion to Dismiss, are to be made by the Board. Inasmuch as the Board may decline to follow the Hearing Officer's recommendation, and that evidence has been received on the Objector's Petition, it is incumbent upon the hearing officer that he makes findings on the evidence received at the hearing and make a **recommendation** to the Board regarding a decision based on the evidence.

2. The Hearing Officer has received into evidence for consideration numerous exhibits. This evidence also includes the trial testimony heard in the case of *Anderson v. Griswold*, 2023 Co 63 (2023).

3. The Hearing Officer, pursuant to the Stipulated Order Regarding Trial Transcripts and Exhibits from the Colorado Action, has reviewed the entire transcript, consisting of several hundred pages, and finds while the hearing/trial did not afford all the benefits of a criminal trial, (e.g., right to trial by jury; proponent bearing a burden of beyond a reasonable doubt), the proceedings was conducted in a fashion that guaranteed due process for President Trump: parties had the benefit of competent counsel, the right to subpoena witnesses and the right to cross-examine witnesses. The proceeding was conducted in an open and fair manner, with no undue time restrictions that would effect the length of testimony on direct or cross. The parties clearly took advantage of the fact that they were not constrained by the typical expedited manner in which election challenges are normally carried out in Colorado. In fact, one dissenting justice on the Supreme Court commented on the greatly relaxed time frame, in response to the majority claim that the hearing was held in substantial compliance with the statute, by stating that if what the majority claimed was substantial compliance, then that

meant that substantial compliance included no compliance at all. In comparison to the Illinois procedure, the parties had several weeks to prepare for hearing. The result was that the witnesses included two constitutional law professors, with specialty in the history of the Fourteenth Amendment. Further, the lead investigator for the House Select Committee investigating the January 6 Attack upon the United States Capitol testified. A signed copy of the stipulation regarding testimony taken at the Coloado hearing has been transmitted to the General Counsel.

4. Hearing Officer finds that the January 6 Report, including its findings, may properly be considered as evidence, as it was by the Colorado trial court, based on Illinois Rule of Evidence 803(8), as well as the relaxed rules of evidence at an administrative hearing. Hearing Officer further finds, after reviewing the Report, that it is a trustworthy report, the result of months of investigation conducted by professional investigators and a staff of attorneys, many of whom with substantial experience in federal law enforcement. The findings of the Report are attached to this opinion.

5. Ultimately, even when giving the Candidate the benefit of the doubt wherever possible, in the context of the events and circumstances of January 6, 2024, the Hearing Officer recommends that the Board find in favor of the Objectors on the merits by a preponderance of the evidence. While the Candidate's tweets to stay peaceful may give the candidate plausible deniability, the Hearing Officer does not find that denial credible in light of the circumstances. Dr. Simi's testimony in the Colorado trial court provides a basis for finding that the language used by the candidate was recognizable to elements attending the January 6 rally at the ellipse as a call for violence upon the United States Capitol, the express purpose of the violence being the furtherance of the President's plan to disrupt the electoral count taking place before the joint meeting of Congress.

6. The evidence shows that President Trump understood the divided political climate in the United States. He understood and exploited that climate for his own political gain by falsely and publicly claiming the election was stolen from him, even though every single piece of evidence demonstrated that his claim was demonstrably false. He used these false claims to garner further political support for his own benefit by inflaming the emotions of his supporters to convince them that the election was stolen from him and that American democracy was being undermined. He understood the context of the events of January 6, 2021 because he created the climate. At the same time he engaged in an elaborate plan to provide lists of fraudulent electors to Vice President Pence for the express purpose of disrupting the peaceful transfer of power following an election.
7. Even though the Candidate may not have intended for violence to break out on January 6, 2021, he does not dispute that he received reports that violence was a likely possibility on January 6, 2021. Candidate does not dispute that he knew violence was occurring at the capitol.. He understood that people were there to support him. Which makes one single piece of evidence, in this context, absolutely damning to his denial of his participation: the tweet regarding Mike Pence's lack of courage while Candidate knew the attacks were going on is inexplicable. Candidate knew the attacks were

occurring because the attackers believed the election was stolen, and this tweet could not possibly have had any other intended purpose besides to fan the flames. While it is true that subsequently, but not immediately afterwards, Candidate tweeted calls to peace, he did so only after he had fanned the flames. The Hearing Officer determines that these calls to peace via social media, coming after an inflammatory tweet, are the product of trying to give himself plausible deniability. Perhaps he realized just how far he had gone, and that the effort to steal the election had failed because Vice President Pence had refused to accept the bag of fraudulent electors. It was time to retreat, with a final tweet telling the nation that he loved those who had assembled and attacked the caitol.

CONCLUSION

In the event that the Board decides to not follow the Hearing Officer's recommendation to grant the Candidate's Motion to Dismiss, the Hearing Officer recommends that the Board find that the evidence presented at the hearing on January 26, 2024 proves by a preponderance of the evidence that President Trump engaged in insurrection, within the meaning of Section 3 of the Fourteenth Amendment, and should have his name removed from the March, 2024 primary ballot in Illinois.

Submitted by

Clark Erickson

Hearing Officer

Date _____

FINDINGS OF THE JANUARY 6 HOUSE SELECT COMMITTEE REPORT

This Report supplies an immense volume of information and testimony assembled through the Select Committee's investigation, including information obtained following litigation in Federal district and appellate courts, as well as in the U.S. Supreme Court. Based upon this assembled evidence, the Committee has reached a series of specific findings,[19] including the following:

1. Beginning election night and continuing through January 6th and thereafter, Donald Trump purposely disseminated false allegations of fraud related to the 2020 Presidential election in order to aid his effort to overturn the election and for purposes of soliciting contributions. These false claims provoked his supporters to violence on January 6th.

2. Knowing that he and his supporters had lost dozens of election lawsuits, and despite his own senior advisors refuting his election fraud claims and urging him to concede his election loss, Donald Trump refused to accept the lawful result of the 2020 election. Rather than honor his constitutional obligation to "take Care that the Laws be faithfully executed," President Trump instead plotted to overturn the election outcome.

3. Despite knowing that such an action would be illegal, and that no State had or would submit an altered electoral slate, Donald Trump corruptly pressured Vice President Mike Pence to refuse to count electoral votes during Congress's joint session on January 6th.

4. Donald Trump sought to corrupt the U.S. Department of Justice by attempting to enlist Department officials to make purposely false statements and thereby aid his effort to overturn the Presidential election. After that effort failed, Donald Trump offered the position of Acting Attorney General to Jeff Clark knowing that Clark intended to disseminate false information aimed at overturning the election.

5. Without any evidentiary basis and contrary to State and Federal law, Donald Trump unlawfully pressured State officials and legislators to change the results of the election in their States.

6. Donald Trump oversaw an effort to obtain and transmit false electoral certificates to Congress and the National Archives.

7. Donald Trump pressured Members of Congress to object to valid slates of electors from several States.

8. Donald Trump purposely verified false information filed in Federal court.

9. Based on false allegations that the election was stolen, Donald Trump summoned tens of thousands of supporters to Washington for January 6th. Although these supporters were angry and some were armed, Donald Trump instructed them to march to the Capitol on January 6th to "take back" their country.

10. Knowing that a violent attack on the Capitol was underway and knowing that his words would incite further violence, Donald Trump purposely sent a social media message publicly condemning Vice President Pence at 2:24 p.m. on January 6th.

11. Knowing that violence was underway at the Capitol, and despite his duty to ensure that the laws are faithfully executed, Donald Trump refused repeated requests over a multiple hour period that he instruct his violent supporters to disperse and leave the Capitol, and instead watched the violent attack unfold on television. This failure to act perpetuated the violence at the Capitol and obstructed Congress's proceeding to count electoral votes.

12. Each of these actions by Donald Trump was taken in support of a multi-part conspiracy to overturn the lawful results of the 2020 Presidential election.

13. The intelligence community and law enforcement agencies did successfully detect the planning for potential violence on January 6th, including planning specifically by the Proud Boys and Oath Keeper militia groups who ultimately led the attack on the Capitol. As January 6th approached, the intelligence specifically identified the potential for violence at the U.S. Capitol. This intelligence was shared within the executive branch, including with the Secret Service and the President's National Security Council.

14. Intelligence gathered in advance of January 6th did not support a conclusion that Antifa or other left-wing groups would likely engage in a violent counter-demonstration, or attack Trump supporters on January 6th. Indeed, intelligence from January 5th indicated that some left-wing groups were instructing their members to "stay at home" and not attend on January 6th.[20] Ultimately, none of these groups was involved to any material extent with the attack on the Capitol on January 6th.

15. Neither the intelligence community nor law enforcement obtained intelligence in advance of January 6th on the full extent of the ongoing planning by President Trump, John Eastman, Rudolph Giuliani and their associates to overturn the certified election results. Such agencies apparently did not (and potentially could not) anticipate the provocation President Trump would offer the crowd in his Ellipse speech, that President Trump would "spontaneously" instruct the crowd to march to the Capitol, that President Trump would exacerbate the violent riot by sending his 2:24 p.m. tweet condemning Vice President Pence, or the full scale of the violence and lawlessness that would ensue. Nor did law enforcement anticipate that

President Trump would refuse to direct his supporters to leave the Capitol once violence began. No intelligence community advance analysis predicted exactly how President Trump would behave; no such analysis recognized the full scale and extent of the threat to the Capitol on January 6th.

16. Hundreds of Capitol and DC Metropolitan police officers performed their duties bravely on January 6th, and America owes those individuals immense gratitude for their courage in the defense of Congress and our Constitution. Without their bravery, January 6th would have been far worse. Although certain members of the Capitol Police leadership regarded their approach to January 6th as "all hands on deck," the Capitol Police leadership did not have sufficient assets in place to address the violent and lawless crowd.[21] Capitol Police leadership did not anticipate the scale of the violence that would ensue after President Trump instructed tens of thousands of his supporters in the Ellipse crowd to march to the Capitol, and then tweeted at 2:24 p.m. Although Chief Steven Sund raised the idea of National Guard support, the Capitol Police Board did not request Guard assistance prior to January 6th. The Metropolitan Police took an even more proactive approach to January 6th, and deployed roughly 800 officers, including responding to the emergency calls for help at the Capitol. Rioters still managed to break their line in certain locations, when the crowd surged forward in the immediate aftermath of Donald Trump's 2:24 p.m. tweet. The Department of Justice readied a group of Federal agents at Quantico and in the District of Columbia, anticipating that January 6th could become violent, and then deployed those agents once it became clear that police at the Capitol were overwhelmed. Agents from the Department of Homeland Security were also deployed to assist.

17. President Trump had authority and responsibility to direct deployment of the National Guard in the District of Columbia, but never gave any order to deploy the National Guard on January 6th or on any other day. Nor did he instruct any Federal law enforcement agency to assist. Because the authority to deploy the National Guard had been delegated to the Department of Defense, the Secretary of Defense could, and ultimately did deploy the Guard. Although evidence identifies a likely miscommunication between members of the civilian leadership in the Department of Defense impacting the timing of deployment, the Committee has found no evidence that the Department of Defense intentionally delayed deployment of the National Guard. The Select Committee recognizes that some at the Department had genuine concerns, counseling caution, that President Trump might give an illegal order to use the military in support of his efforts to overturn the election.

* * *

APPENDIX C

Electoral Board Decision
January 30, 2024

STATE OF ILLINOIS)
) ss
COUNTY OF COOK)

BEFORE THE STATE BOARD OF ELECTIONS SITTING AS THE STATE OFFICERS ELECTORAL BOARD
FOR THE HEARING AND PASSING UPON OF OBJECTIONS
TO NOMINATION PAPERS OF CANDIDATES FOR THE MARCH 19, 2024, GENERAL PRIMARY

IN THE MATTER OF OBJECTIONS BY	)	
	)	
Steven Daniel Anderson, Charles J. Holley,	)	
Jack L. Hickman, Ralph E. Cintron, and Darryl P. Baker,	)	
Objectors,	)	
v.	)	**No. 24 SOEB GP 517**
	)	
Donald J. Trump,	)	
Candidate.	)	

DECISION

The State Board of Elections, sitting as the duly constituted State Officers Electoral Board, and having convened on January 30, 2024, at 69 W. Washington, Chicago, Illinois, and via videoconference at 2329 S. MacArthur Blvd., Springfield, Illinois and having heard and considered the objections filed in the above-titled matter, hereby determines and finds that:

1. The State Board of Elections has been duly and legally constituted as the State Officers Electoral Board pursuant to Sections 10-9 and 10-10 of the Election Code (10 ILCS 5/10-9 and 5/10-10) for the purpose of hearing and passing upon the objections filed in this matter and as such, has jurisdiction in this matter, except as specifically noted in Paragraph 10 below.

2. On January 4, 2024, Steven Daniel Anderson, Charles J. Holley, Jack L. Hickman, Ralph E. Cintron, and Darryl P. Baker, timely filed an objection to the nomination papers of Donald J. Trump, Republican Party candidate for the office of President of the United States.

3. A call for the hearing on said objection was duly issued and was served upon the Members of the Board, the Objectors, and the Candidate by registered mail as provided by statute unless waived.

4. On January 17, 2024, the State Officers Electoral Board voted to adopt the Rules of Procedure, and a hearing officer was assigned to consider arguments and evidence in this matter.

5. On January 19, 2024, Candidate filed a Motion to Dismiss Objectors' Petition ("Motion to Dismiss"). On January 23, 2024, Objectors filed a Response to Candidate's Motion to Dismiss Objectors' Petition. On January 25, 2024, Candidate filed a Reply in Support of his Motion to Dismiss.

6. On January 19, 2024, Objectors filed a Motion to Grant Objectors' Petition or, in the Alternative, for Summary Judgment ("Motion for Summary Judgment"). On January 23, 2024, Candidate filed Candidate's Opposition to Objectors' Motion for Summary Judgment. On January 25, 2024, Objectors filed Objectors' Reply in Support of their Motion to Grant Objectors' Petition or, in the Alternative, for Summary Judgment.

7. On January 24, 2024, a Stipulated Order Regarding Trial Transcripts and Exhibits ("Stipulated Order") was entered. Under this Stipulated Order, the parties stipulated to the authenticity of certain exhibits admitted in *Anderson v. Griswold*, District Court, City and County of Denver, No. 23CV32577, as well as transcripts in that proceeding.

8. On January 26, 2024, a hearing was held before the Hearing Officer. During the hearing, the parties utilized certain pieces of evidence encompassed by the Stipulated Order and made oral arguments to the Hearing Officer.

9. The Board's appointed Hearing Officer issued a recommended decision in this matter after reviewing all matters in the record, including arguments and/or evidence tendered by the parties.

10. Upon consideration of this matter, the Board adopts the findings of fact, conclusions of law, and recommendations of the Hearing Officer, except as set forth below, and adopts the conclusions of law and recommendations of the General Counsel and finds that:

    A. Factual issues remain that preclude the Board from granting Objectors' Motion for Summary Judgment.

    B. Paragraph 1 of this Decision is incorporated by reference.

C. Objectors have not met their burden of proving by a preponderance of the evidence that Candidate's Statement of Candidacy is falsely sworn in violation of Section 7-10 of the Election Code, 10 ILCS 5/7-10, as alleged by their objection petition.

D. In the alternative, and to the extent the Election Code authorizes the Board to consider whether Section 3 of the 14th Amendment to the U.S. Constitution operates to bar Candidate from the ballot in Illinois, under the Illinois Supreme Court's decisions in *Goodman v. Ward*, 241 Ill.2d 398 (2011), and *Delgado v. Board of Election Commissioners*, 224 Ill.2d 482 (2007), the Board lacks jurisdiction to perform the constitutional analysis necessary to render that decision.

E. Candidate's Motion to Dismiss should be granted as to Candidate's argument that the Board lacks jurisdiction to decide whether Section 3 of the 14th Amendment to the U.S. Constitution operates to bar Candidate from the ballot in Illinois. The remaining grounds for dismissal argued in the Motion to Dismiss were not reached by the Board and are now moot.

F. Candidate's nomination papers, including his Statement of Candidacy, are valid.

G. No factual determinations were made regarding the events of January 6, 2021.

IT IS HEREBY ORDERED that Objector's Motion for Summary Judgment is DENIED, Candidate's Motion to Dismiss is GRANTED in part, and the objection of Steven Daniel Anderson, Charles J. Holley, Jack L. Hickman, Ralph E. Cintron, and Darryl P. Baker, to the nomination papers of Donald J. Trump, Republican Party candidate for the office of President of the United States, is OVERRULED based on the findings contained in Paragraph 10 above, and the name of the Candidate, Donald J. Trump, SHALL be certified for the March 19, 2024, General Primary Election ballot.

DATED: 01/30/2024

Casandra B. Watson, Chair

CERTIFICATE OF SERVICE

The undersigned certifies that on January 30, 2024, the foregoing order was served upon the Objector(s) or their attorney(s) by:

☐ Via email to the address(es) listed below:

Caryn C. Lederer
clederer@hsplegal.com

Matthew J. Piers
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Anna Mattar
amira@freespeechforpeople.org

☐ Hand delivery at:
- ☐ 2329 S. MacArthur Blvd., Springfield, IL 62704
- ☐ 69 W. Washington St, Chicago, IL 60602

And on January 30, 2024, served upon the Candidate(s) or their attorney(s) by:

☐ Via email to the address(es) indicated below:

Adam P. Merrill
amichaellaw1@gmail.com

Scott Gessler
sgessler@gesslerblue.com

Nicholas J. Nelson
nicholas.nelson@crosscastle.com

☐ Hand delivery at:
- ☐ 2329 S. MacArthur Blvd., Springfield, IL 62704
- ☐ 69 W. Washington St, Chicago, IL 60602

Jordan Andrew
Deputy General Counsel
Illinois State Board of Elections

APPENDIX D

Statement of Candidacy,
Donald J. Trump
December 13, 2023

10 ILCS 5/7-10 ATTACH TO PETITION Suggested Revised March 2020 SBE No. P-1

STATEMENT OF CANDIDACY

NAME: DONALD J. TRUMP	OFFICE: PRESIDENT OF THE UNITED STATES OF AMERICA
ADDRESS – ZIP CODE: 1100 S. OCEAN BOULEVARD PALM BEACH, FLORIDA 33480	A Full Term is sought, unless an unexpired term is stated here: _____ year unexpired term
	DISTRICT: N/A
	PARTY: REPUBLICAN

If required pursuant to 10 ILCS 5/7-10.2, 8-8.1 or 10-5.1, complete the following (this information will appear on the ballot)

FORMERLY KNOWN AS _____ (List all names during last 3 years) UNTIL NAME CHANGED ON _____ (List date of each name change)

STATE OF ~~ILLINOIS~~ FLORIDA)
) SS.
County of PALM BEACH)

I, DONALD J. TRUMP (Name of Candidate) being first duly sworn (or affirmed), say that I reside at 1100 S. OCEAN BOULEVARD, in the City, Village, Unincorporated Area of PALM BEACH (if unincorporated, list municipality that provides postal service) Zip Code 33480, in the County of PALM BEACH, State of FL; that I am a qualified voter therein and am a qualified Primary voter of the REPUBLICAN Party; that I am a candidate for (Nomination)/Election to the office of PRESIDENT OF THE UNITED STATES OF AMERICA in the N/A District, to be voted upon at the primary election to be held on MARCH 19, 2024 (date of election) and that I am legally qualified (including being the holder of any license that may be an eligibility requirement for the office to which I seek the nomination) to hold such office and that I have filed (or I will file before the close of the petition filing period) a Statement of Economic Interests as required by the Illinois Governmental Ethics Act and I hereby request that my name be printed upon the official REPUBLICAN (Name of Party) Primary ballot for Nomination/Election for such office.

STATE BOARD OF ELECTIONS
Springfield, Illinois
FILED January 4, 2024 8:00 AM

(Signature of Candidate)

Signed and sworn to (or affirmed) by Donald J. Trump (Name of Candidate) before me, on December 13, 2023 (Insert month, day, year)

CHAMBERLAIN HARRIS
Public ... of Florida
... 372771
... Expires
March 13, 2027

(SEAL)

(Notary Public's Signature)

CHAMBERLAIN HARRIS
Notary Public-State of Florida
Commission # HH 372771
My Commission Expires
March 13, 2027