No. 1-24-0282
IN THE APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

STEVEN DANIEL ANDERSON, CHARLES J. HOLLEY, JACK L. HICKMAN, RALPH E. CINTRON, and DARRYL P. BAKER, Petitioners-Appellees, v. DONALD J. TRUMP, Respondent-Appellant, and 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, other Respondents below.	)	Appeal from the Circuit Court of Cook County, Illinois, County Department, County Division Circuit Court No.: 2024 COEL 13 Hon. Tracie R. Porter, Judge Presiding

NOTICE OF FILING

To:

HUGHES SOCOL PIERS RESNICK & DYM, LTD.
Matthew Piers
Caryn Lederer
70 W. Madison St., Ste. 4000
Chicago, IL 60602
Matthew J. Piers
MPiers@hsplegal.com
clederer@hsplegal.com

Sarah Newman
State of Illinois Assistant Attorney General
100 W. Randolph Street, 13th Floor
Chicago, Illinois 60601
Sarah.Newman@ilag.gov

FREE SPEECH FOR PEOPLE
Ronald Fein (pro hac vice)
Amira Mattar (pro hac vice)
Courtney Hostetler (pro hac vice)
John Bonifaz (pro hac vice)
Ben Clements (pro hac vice)
1320 Centre St. #405
Newton, MA 02459
rfein@freespeechforpeople.org
amira@freespeechforpeople.org
chostetler@freespeechforpeople.org
jbonifaz@freespeechforpeople.org
bclements@freespeechforpeople.org

MULLEN LAW FIRM
Ed Mullen (ARDC: 6286924)

1505 W. Morse Ave.
Chicago, IL 60626
ed_mullen@mac.com

PLEASE TAKE NOTICE that on February 9, 2024, the undersigned filed RESPONDENT-APPELLANT DONALD J. TRUMP'S EMERGENCY MOTION TO STAY CIRCUIT COURT PROCEEDINGS PENDING APPEAL with the Clerk of the Illinois Appellate Court, First District, a copy of which is attached and hereby served upon you.

Dated: February 9, 2024

Respectfully submitted,

RESPONDENT-APPELLANT DONALD J. TRUMP

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

Scott E. Gessler
GESSLER BLUE LLC
7350 E. Progress Place, Ste. 100
Greenwood Village, CO 80111
720-839-6637
sgessler@gesslerblue.com

Adam P. Merrill (6229850)
WATERSHED LAW LLC (No. 64892)
55 W. Monroe, Suite 3200
Chicago, Illinois 60603
312.368.5932
AMerrill@Watershed-Law.com

Nicholas J. Nelson (pro hac vice)
CROSS CASTLE PLLC
333 Washington Ave. N.,
STE 300-9078
Minneapolis, MN 55401
612.429.8100
nicholas.nelson@crosscastle.com

E-FILED
Transaction ID: 1-24-0282
File Date: 2/9/2024 12:12 PM
Thomas D. Palella
Clerk of the Appellate Court
APPELLATE COURT 1ST DISTRICT

No. 1-24-0282
IN THE APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

STEVEN DANIEL ANDERSON, CHARLES J. HOLLEY, JACK L. HICKMAN, RALPH E. CINTRON, and DARRYL P. BAKER, Petitioners-Appellees, v. DONALD J. TRUMP, Respondent-Appellant, and 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, other Respondents below.	Appeal from the Circuit Court of Cook County, Illinois, County Department, County Division Circuit Court No.: 2024 COEL 13 Hon. Tracie R. Porter, Judge Presiding

RESPONDENT-APPELLANT DONALD J. TRUMP'S EMERGENCY MOTION TO STAY CIRCUIT COURT PROCEEDINGS PENDING APPEAL

Pursuant to Illinois Supreme Court Rules, including Rules 307(a)(1), and 361, and Illinois Appellate Court First District Rules 4, 4(j), and 12,[1] Respondent-Appellant Donald J. Trump ("President Trump" or the "Candidate") moves on an emergency basis to stay proceedings in the Circuit Court while the Candidate's appeal of the Circuit Court's February 7, 2024 decision denying President Trump's motion to stay proceedings is pending before this Court. Notably, the Circuit Court's February 7, 2024 ruling, as reflected in two Orders dated February 8, 2024 (attached as Exhibit B and Exhibit C): (a) requires the Candidate to respond to the Petition for Judicial Review

[1] Separately, Respondent-Appellant will be moving for leave to file a supporting record pursuant to Rule 328.

of Petitioners-Appellees ("Petitioners" or "Objectors") by Tuesday, February 13, 2024 and (b) set Objectors' Petition For Judicial Review for a merits hearing on Friday, February 16, 2024, at 10:00 a.m. (*See* 2/8/2024 Affidavit of Adam Merrill ("Merrill Aff.") (attached as Exhibit A) ¶ 2.) President Trump respectfully requests that this Court decide this emergency motion for a stay as pending appeal as soon as possible, but no later than Monday, February 12, 2024, to minimize the time and expense of litigating issues that the U.S. Supreme Court is poised to decide in *Trump v. Anderson*, No. 23-719, 2024 WL 61814 (U.S. Jan. 5, 2024) (the "Colorado Case").[2] Notably, the Colorado Case has been expedited by the U.S. Supreme Court, is fully briefed, has been argued, and is awaiting what is expected to be a prompt decision. (Merrill Aff. ¶ 3.)

INTRODUCTION

This Court's immediate intervention, in the form of a stay order, is required to prevent the Objectors in this case from using the Illinois courts to stage a wasteful, controversial, and regrettably uncivil spectacle. Objectors seek to remove President Trump from the Illinois presidential primary ballot, on the ground that he allegedly "engaged in insurrection." Pursuant to an expedited schedule, the U.S. Supreme Court is in the midst of deciding the same federal Constitutional issues Objectors assert below, and will likely issue its decision within a couple of weeks. In the meantime, although 88 actions similar to Petitioners' objection to President Trump's nominating papers have been filed in 45 states plus the District of Columbia, not a single jurisdiction has removed President Trump's name from a ballot. Even the two jurisdictions that have found President Trump to be ineligible pursuant to Section 3 of the Fourteenth Amendment (Colorado and Maine) have stayed their judgments pending the U.S. Supreme Court's review of the Colorado Case, and are currently

[2] In Colorado, the lead plaintiff was named Norma Anderson and the initial defendant was Colorado Secretary of State Jena Griswold. (President Trump subsequently intervened.) *See Anderson v. Griswold,* 2023 CO 63. To minimize confusion, *Anderson* refers to the Colorado plaintiff and Petitioners or Objectors refers to the plaintiffs here. (Merrill Aff. ¶ 3.)

printing primary ballots with President Trump's name on them. On January 30, 2024, the State Officers Electoral Board issued its bipartisan, unanimous decision overruling Petitioners' objections. Accordingly, President Trump's name is on primary ballots throughout Illinois, which have already been printed. And overseas and early voting has already started in Illinois. (Merrill Aff. ¶ 4.)

Petitioners are now asking the Circuit Court to overturn the Electoral Board's decision. Moreover, Petitioners are trying to goad the Circuit Court into racing the U.S. Supreme Court to a decision on this issue. And the Circuit Court has largely accepted their invitation. It denied the Candidate's motion to stay the case pending the Supreme Court's decision, and it set a schedule that will require it to consider hundreds of pages of briefing and many thousands of pages of record in barely one week. Given these circumstances, the State Board of Elections has indicated that by February 16, 2024—the date the Circuit Court is set to hear the merits of Objectors' appeal—it will be too late to print new ballots. Thus, even if the U.S. Supreme Court were to affirm the decision in the Colorado Case and there was a basis to reverse the Electoral Board's decision, the only remedy available for Petitioners' claims would be an order directing the State Board of Elections not to count any votes for Trump. (Merrill Aff. ¶ 5.)

Accordingly, the Candidate is appealing the Circuit Court's denial of his motion to stay pursuant to Rule 307(a)(1), as permitted by settled Illinois law. By this motion, the Candidate seeks an emergency stay of Circuit Court proceedings pending this appeal. Unless this Court immediately calls a halt, the Electoral Board and the Candidate will be required to file massively overlength briefs on **Tuesday, February 13,** and the Circuit Court will conduct an in-person public hearing on **Friday, February 16 at 10:00 a.m.**—all on a matter that will be decided by the highest court in the land, likely within days of that scheduled hearing. If the Circuit Court actually manages to issue an order a few days before the Supreme Court does, that will create an additional risk of

rapidly changing court rulings that could significantly disrupt Illinois officials' preparations for the election. (Merrill Aff. ¶ 6.)

If this were not problematic enough by itself, Petitioners' counsel have also chosen to engage in uncivil and inappropriate mudslinging in an apparent effort to attract media attention. Among other things, Petitioners' brief in the Circuit Court accuses all eight members of the bipartisan Electoral Board, and its General Counsel, of "shocking" conduct and of intentionally misconstruing the law for political purposes. And it accuses the Candidate's counsel of "intentional falsehood—in plain English, a lie." Neither accusation is nor can be substantiated. (Merrill Aff. ¶ 7.)

There is no reason for any of this when the U.S. Supreme Court is about to rule. After that decision, if Petitioners want to continue seeking review of any Illinois-specific issues in this case, there will be plenty of time for the Circuit Court to take up those issues in a more orderly fashion. Until then, pending the outcome of this appeal, the Circuit Court proceedings should be stayed. (Merrill Aff. ¶ 8.)

BACKGROUND

Petitioners seek to remove the Candidate's name from the ballot in Illinois, based on their objection that President Trump allegedly "engaged in insurrection" under Section Three of the Fourteenth Amendment of the United States Constitution. Before the Electoral Board, the Hearing Officer recommended dismissing Petitioners' objection, the Board's General Counsel recommended overruling Petitioners' objection on the merits, and the eight members of the Board (four Democrats and four Republicans) voted unanimously to overrule the objection. (*See* Exhibit D, 1/30/2024 Electoral Board Decision Overruling Petitioners' Objection; Merrill Aff. ¶ 9.) Alternatively, the Board concluded that it lacks authority under Illinois law to decide objections of this type. (*Id.*)

Now, Petitioners are asking the Circuit Court to overturn that decision, conduct its own review of the record, and order that the Candidate's name be removed from the ballot. In so doing, Petitioners rely almost exclusively on decisions on similar claims from Colorado and Maine, while ignoring adverse decisions in 43 other states plus the District of Columbia. In fact, Petitioners submitted no original evidence whatsoever to the Electoral Board, but relied exclusively on the record compiled in the Colorado case. Petitioners asked the Electoral Board (over the Candidate's objections) to simply adopt wholesale the findings of the Colorado courts. (Merrill Aff. ¶ 10.) The Electoral Board declined to find any facts. (Exhibit D, ¶ 10.G.)

However, both Colorado and Maine—along with every other state with a Republican primary— are currently printing ballots that ***include*** President Trump's name. That is because both the Colorado and Maine courts have stayed the effects of decisions in those states pending review by the U.S. Supreme Court. *Anderson v. Griswold,* 2023 CO 63, ¶ 7; *In re Rosen*, Me. Sec'y of State (Dec. 28, 2023), at p.33 (staying decision pending judicial review); *Trump v. Sec'y of State*, 2024 ME 5, ¶ 8 (Jan. 24, 2024) ("the effect of the Secretary of State's ruling [was stayed] pending the outcome of the U.S. Supreme Court's decision in *Anderson*"). (Merrill Aff. ¶ 11.)

And that review process has proceeded rapidly and is nearing an end. The U.S. Supreme Court granted President Trump's petition for *certiorari* in the Colorado case at the beginning of January. *See* Order, *Trump v. Anderson*, No. 23-719 (U.S. Jan. 5, 2024).[3] In the five weeks since then, the Supreme Court has received complete briefing from the parties and has conducted oral argument. All indications are that the Court will decide this issue in a matter of days, or at most a few weeks. (Merrill Aff. ¶ 12.)

1. The U.S. Supreme Court case. The Supreme Court's review is very likely to authoritatively decide all of the key issues in this case. The Supreme Court accepted full review of the

[3] Available at https://www.supremecourt.gov/orders/courtorders/010524zr2_886b.pdf).

question, "Did the Colorado Supreme Court err in ordering President Trump excluded from the 2024 presidential primary ballot?" Pet. for Cert., Questioned Presented, p.(i) (filed Jan. 3, 2024);[4] 1/5/2024 Order (granting petition in full). In this case, Petitioners seek the exact same result—to bar President Trump from the primary ballot. (Merrill Aff. ¶ 13.)

The issues before the Supreme Court include the same ones that the Candidate raised before the Electoral Board, and those issues self-evidently apply to this litigation. (Merrill Aff. ¶ 13.) Specifically, the Supreme Court is reviewing President Trump's contentions that:

- "Congress—not a state court—is the proper body to resolve questions concerning a presidential candidate's eligibility." Pet. for Cert., *Trump v. Anderson*, at 19.
- "Section 3 is inapplicable to President Trump" because, by its terms, it does not bar anyone from holding the Presidency (as opposed to other government positions) and it does not apply to former presidents. *Id.* at 23-26.
- "President Trump did not 'engage in insurrection'" within the meaning of Section 3, because "the events of January 6, 2021, were not 'insurrection' as that term is used in Section 3," and because "nothing that President Trump did 'engaged'" in them. *Id.* at 26-27.
- "Section 3 of the Fourteenth Amendment prohibits individuals only from *holding* office," and "does not prevent anyone from *running* for office, or from *being elected* to office." *Id.* at 31.

A decision by the Supreme Court on any or all of these issues would be controlling precedent in this case—and a decision in President Trump's favor on even one of these issues would be

[4] Available at https://www.supremecourt.gov/DocketPDF/23/23-719/294892/20240104135300932_20240103_Trump_v_Anderson__Cert_Petition%20FINAL.pdf.

dispositive of this case. (Merrill Aff. ¶ 13.) By contrast, the Supreme Court is reviewing only one question specific to the Colorado decision. Pet. for Cert., *Trump v. Anderson*, at 29-31.

Indeed, when Petitioners-Appellees' counsel have filed similar challenges to President Trump's ballot access other states, they have reassured courts that a U.S. Supreme Court decision on President Trump's eligibility would "resolve the issue" nationwide, Pet'rs Reply Br. at 8, *Growe v. Simon*, No. A23-1354 (Minn.) (filed Oct. 23, 2023), and would be the "final decision" for the entire nation. Appellants' Br. at 39, *LaBrant v. Benson,* No. 368165 (Mich. Ct. App.) (filed Nov. 30, 2023); *see also* Mem. in Supp. Of Mandamus at 69-70, *Nelson v. Griffin-Valade*, at 69 (Ore.) (filed Dec. 6, 2023) (same). (*See* Exhibit E (select pages from briefs) (highlighting added); Merrill Aff. ¶ 14.)

In light of all that, it is very likely that a ruling from the U.S. Supreme Court in President Trump's favor will immediately dispose of this case and allow a voluntary dismissal or a stipulated outcome without the need for further substantial proceedings. Only if the Supreme Court rules against President Trump on every ground will this Court need to review the Electoral Board's state law grounds for unanimously rejecting Petitioners' objection. (Merrill Aff. ¶ 15.)

Petitioners have argued, and the Circuit Court expressed concern, that this case involves issues of Illinois law that will not be resolved by the Supreme Court's decision. Specifically, Petitioners contend that the Board's decision could impact future similar challenges, and that the Board's decision will need to be reviewed no matter what the Supreme Court decides. This is mistaken both logically and practically. Logically, if the Supreme Court rules in favor of President Trump, it is highly likely that its ruling will also render Petitioners' merits arguments here unmeritorious. This case will be definitively resolved on federal-law grounds, and the resolution of alternative state-law issues will become a moot and academic point. (Merrill Aff. ¶ 16.)

But even if the case were not mooted and Illinois election authorities could still take action, based on a hypothetical Circuit Court reversal of the Board's decision, *e.g.*, the Objectors suggested election authorities could take various steps "to suppress the [Trump] vote," "such as placing signs at . . . polling place[s]" announcing any Circuit Court decision reversing the Board (2/8/2024 Order Denying Motion to Stay (Exhibit C) at 4), any such actions—just weeks before the election—would violate the animating concerns of the *Purcell* Principle. Critically, the U.S. Supreme Court "has repeatedly emphasized that . . . courts should ordinarily not alter the election rules on the eve of an election." *Republican National Committee, et al. v. Democratic National Committee, et al.*, 140 S. Ct. 1205, 1207 (2020) (*per curiam*) (citing *Purcell v. Gonzalez*, 549 U.S. 1 (2006) (*per curiam*); *Frank v. Walker*, 574 U.S. 929 (2014); *Veasey v. Perry*, 135 S. Ct. 9 (2014)). The purpose of this rule is to prevent confusion that may result in the disenfranchisement of voters; accordingly, courts must limit changes to election laws and procedures on the eve of an election.

And practically, even if Petitioners could and wanted to continue pressing their state-law issues at that point, the Supreme Court decision would drastically change the scale and tenor of this litigation. The Candidate, with ballot access assured, likely would not even need to participate anymore. The voluminous and politically-polarizing factual record, relevant only to President Trump's ultimate eligibility, would drop out of the case. If Petitioners really wanted to, and if the Circuit Court determined that the case was not moot, they could litigate the remaining state-law issues against the other respondents below, which include the Electoral Board and each of its eight members. The political spectacle would be gone, and the remaining questions of Illinois law could be resolved in a far more orderly fashion. (Merrill Aff. ¶ 17.)

2. Petitioners are trying to turn the Circuit Court proceedings into a mud-slinging contest. Before the Circuit Court entered a briefing schedule or even received the full record from the Electoral Board, Petitioners filed a purported merits brief that more than tripled the Circuit Court's standing page limit. Regrettably, this brief included numerous unprofessional, uncivil, and disparaging remarks about the members of the Board, its General Counsel, and the Candidate's counsel. (Merrill Aff. ¶ 18.) For instance, Petitioners stated that:

- "The General Counsel's Recommendation, and the Board's decision adopting it, rather transparently was not an earnest interpretation of the law." (Merits Br. at 19 n.4.)
- "In a shocking and highly questionable last-minute recommendation, the General Counsel proposed, and the Board adopted, a restriction on the Board's review … that has absolutely no legal basis…. Neither the Election Code nor caselaw provides any basis for this newly created, absurd and unworkable supposed standard." (*Id.* at 17.)
- The Candidate's counsel's factual presentation to the Board was "completely dishonest." "This account is an intentional falsehood—or in plain English, a lie." (Merits Br. at 4.)

This is a marked departure from previous litigation in other States involving President Trump's ballot access—which of course has been heated at times and has included strident arguments about the merits of the parties' legal positions and of President Trump's conduct, but has until now avoided impugning the integrity and honesty of election officials and opposing counsel. (Merrill Aff. ¶ 19.) Illinois Supreme Court Justices have corrected even judges of the Appellate Court for personal attacks of the type that Petitioners-Appellees' counsel are now hurling. *E.g., Maksym v. Bd. of Election Comm'rs*, 242 Ill. 2d 303, 332 (Ill. 2011) (Judge's claim that majority's legal analysis was "pure flight of fancy," "conjur[ed] out of thin air" and based on the "whims of two judges" "cross[ed] the line" of civility and professionalism) (concurring opinion); *see People v. Bull*, 185 Ill.2d 179, 222 (Ill. 1998 (The terms of [legal] debate … must be framed by civility

and respect, and not by suspicion and untruths…. When rancor eclipses reason, the quality of the debate is diminished, the bonds of collegiality are strained, and the judicial process is demeaned.")

It is not clear why Petitioners' counsel have suddenly amped up the rhetoric like this. What *is* clear is that it is totally unnecessary. Ballot-access litigation involving President Trump has spanned 45 states and the District of Columbia, lasted many months, and is now about to culminate in a U.S. Supreme Court decision. Although contentious, it has until now been marked by a good degree of civility and decorum in court. With a likely-definitive Supreme Court decision imminent, there is no reason for the Circuit Court to engage in additional, unnecessary proceedings that plainly threaten to devolve into an unseemly spectacle. (Merrill Aff. ¶ 20.)

3. The Circuit Court denied the Candidate's stay request. Petitioners filed their petition for judicial review of the Board's decision on January 30, 2024. Notably, pursuant to Election Code Section 10-10.1, 10 ILCS 5/10-10.1, the Circuit Court has 30 days to conduct a hearing on Petitioners' objection, or until Thursday, February 29, 2024. Although the Circuit Court had not entered a briefing schedule, on February 5, Petitioners filed their opening brief in the Circuit Court—totaling 46 pages, even though the court's standing order set a limit of 15. A majority of Petitioner's 46-page brief addresses the federal Constitutional issues the U.S. Supreme Court is poised to decide. (Merrill Aff. ¶ 21.)

In light of the realities described above, the Candidate promptly moved the Circuit Court to stay its proceedings pending the U.S. Supreme Court's decision. On February 7, 2024, the Circuit Court denied President Trump's stay motion and set an expedited merits briefing schedule. (*See* Exhibits B and C.) The Circuit Court allowed Petitioners' overlength brief, directed the Candidate to file a response brief by next Tuesday, February 13, and scheduled a public hearing for Friday, February 16 at 10:00 a.m., almost two weeks sooner than required by Section 10-10.1(a). (*Id.*; Merrill Aff. ¶ 22.)

The Candidate now is appealing the Circuit Court's denial of his stay request. "Under established Illinois law, the denial of a stay of trial court proceedings is treated as a denial of a request for a preliminary injunction and is appealable as a matter of right." *Blumenthal v. Brewer*, 2016 IL 118781, ¶ 39 (2016).

4. This Court should stay Circuit Court proceedings pending resolution of this appeal. These circumstances strongly suggest staying this case pending a decision on this appeal. Illinois law is well settled that "[w]hen two pending actions involve substantially the same subject matter, a court may stay the proceedings in one matter to see if the disposition of one may settle the other." *Khan v. Khan*, 2023 IL App (1st) 230840-U, ¶ 23 (citation omitted). And it is "[g]enerally" proper to "stay[] a proceeding in favor of another proceeding that could dispose of significant issues." *Id.* (cleaned up); *accord, e.g., Lisk v. Lisk*, 2020 IL App (4th) 190364, ¶ 23; *J.S.A. v. M.H.*, 384 Ill. App. 3d 998, 1005 (3d Dist. 2008), *as modified on denial of reh'g* (Sept. 8, 2008). When an overlapping trial-court case and a pending appeal "share a significant issue," then "the circuit court should stay its proceedings for a reasonable length of time, until the appeal resolves the shared significant issue." *Khan v. BDO Seidman, LLP*, 2012 IL App (4th) 120359, ¶ 74. That is especially true "if the other proceeding has the potential of being completely dispositive." *Cholipski v. Bovis Lend Lease, Inc.*, 2014 IL App (1st) 132842, ¶ 40.

That is exactly the situation here. As explained above, the U.S. Supreme Court's imminent decision is highly likely to dispose of this entire case, or at the least to resolve the most significant issues (and the only arguably urgent issues) in this case. The fact that Petitioners are not parties to the U.S. Supreme Court case does not change that practical reality. Petitioners do not assert any personal right to some particular piece of property. They are asserting the same legal theory about the Candidate's eligibility that their counsel have presented in 45 other States, and that is currently

before the U.S. Supreme Court for decision. The Supreme Court decision is likely to resolve Petitioners' objections in every practical sense. (Merrill Aff. ¶ 23.)

At minimum, these issues bear fuller consideration. Further Circuit Court proceedings should not be allowed to moot the Candidate's appeal of the Circuit Court's denial of a stay before this Court can even consider it fully. The Court should therefore order a stay in the Circuit Court pending the outcome of this appeal. (Merrill Aff. ¶ 24.)

CONCLUSION

WHEREFORE, Petitioner-Appellant Donald J. Trump respectfully requests the entry of an order staying proceedings in the Circuit Court while the Appellate Court considers the merits of President Trump's appeal of the Circuit Court's February 7, 2024 ruling denying President Trump's motion to stay.

Dated: February 9, 2024

Respectfully submitted,

RESPONDENT-APPELLANT DONALD J. TRUMP

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

Scott E. Gessler
GESSLER BLUE LLC
7350 E. Progress Place, Ste. 100
Greenwood Village, CO 80111
720-839-6637
sgessler@gesslerblue.com

Adam P. Merrill (6229850)
WATERSHED LAW LLC (No. 64892)
55 W. Monroe, Suite 3200
Chicago, Illinois 60603
312.368.5932
AMerrill@Watershed-Law.com

Nicholas J. Nelson (pro hac vice)
CROSS CASTLE PLLC
333 Washington Ave. N.,
STE 300-9078
Minneapolis, MN 55401
612.429.8100
nicholas.nelson@crosscastle.com

No. 1-24-0282
IN THE APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

STEVEN DANIEL ANDERSON, CHARLES J. HOLLEY, JACK L. HICKMAN, RALPH E. CINTRON, and DARRYL P. BAKER,	)	Appeal from the Circuit Court of Cook County, Illinois, County Department, County Division
Petitioners-Appellees,	)	Circuit Court No.: 2024 COEL 13
v.	)	Hon. Tracie R. Porter, Judge Presiding
DONALD J. TRUMP,	)	
Respondent-Appellant, and	)	
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,	)	
other Respondents below.	)	

AFFIDAVIT

Under penalties as provided by law pursuant to Section 1-109 of the Illinois Code of Civil Procedure, the undersigned counsel, certifies that the statements set forth herein are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that he verily believes the same to be true:

1. I am a member of the bar of the State of Illinois. I am a Partner with the law firm of Watershed Law LLC ("Watershed"). I represent Respondent-Appellant in the above-captioned matter. I offer this affidavit in support of Respondent-Appellant Donald J. Trump's Emergency Motion to Stay Circuit Court Proceedings Pending Appeal (the "Motion to Stay").

Exhibit A

2. Notably, the Circuit Court's February 7, 2024 ruling, as reflected in two Orders dated February 8, 2024 (true and correct copies of which are attached as Exhibit B and Exhibit C): (a) requires the Candidate to respond to the Petition for Judicial Review of Petitioners-Appellees ("Petitioners" or "Objectors") by Tuesday, February 13, 2024 and (b) set Objectors' Petition For Judicial Review for a merits hearing on Friday, February 16, 2024, at 10:00 a.m.

3. President Trump respectfully requests that this Court decide this emergency motion for a stay pending appeal to minimize the time and expense of litigating issues that the U.S. Supreme Court is poised to decide in *Trump v. Anderson*, No. 23-719, 2024 WL 61814 (U.S. Jan. 5, 2024) (the "Colorado Case"). In Colorado, the lead plaintiff was named Norma Anderson and the initial defendant was Colorado Secretary of State Jena Griswold. (President Trump subsequently intervened.) *See Anderson v. Griswold,* 2023 CO 63. To minimize confusion, *Anderson* refers to the Colorado plaintiff and Petitioners or Objectors refers to the plaintiffs here. Notably, the Colorado Case has been expedited by the U.S. Supreme Court, is fully briefed, has been argued, and is awaiting what is expected to be a prompt decision.

4. This Court's immediate intervention, in the form of a stay order, is required to prevent the Objectors in this case from using the Illinois courts to stage a wasteful, controversial, and regrettably uncivil spectacle. Objectors seek to remove President Trump from the Illinois presidential primary ballot, on the ground that he allegedly "engaged in insurrection." Pursuant to an expedited schedule, the U.S. Supreme Court is in the midst of deciding the same federal Constitutional issues Objectors assert below, and will likely issue its decision within a couple of weeks. In the meantime, although 88 actions similar to Petitioners' objection to President Trump's nominating papers have been filed in 45 states plus the District of Columbia, not a single jurisdiction has removed President Trump's name from a ballot. Even the two jurisdictions that

have found President Trump to be ineligible pursuant to Section 3 of the Fourteenth Amendment (Colorado and Maine) have stayed their judgments pending the U.S. Supreme Court's review of the Colorado Case, and are currently printing primary ballots with President Trump's name on them. On January 30, 2024, the State Officers Electoral Board issued its bipartisan, unanimous decision overruling Petitioners' objections, a true and correct copy of which is attached as Exhibit D. Accordingly, President Trump's name is on primary ballots throughout Illinois, which have already been printed. And overseas and early voting has already started in Illinois.

5. Petitioners are now asking the Circuit Court to overturn the Electoral Board's decision. Moreover, Petitioners are trying to goad the Circuit Court into racing the U.S. Supreme Court to a decision on this issue. And the Circuit Court has largely accepted their invitation. It denied the Candidate's motion to stay the case pending the Supreme Court's decision, and it set a schedule that will require it to consider hundreds of pages of briefing and many thousands of pages of record in barely one week. Given these circumstances, the State Board of Elections has indicated that by February 16, 2024—the date the Circuit Court is set to hear the merits of Objectors' appeal—it will be too late to print new ballots. Thus, even if the U.S. Supreme Court were to affirm the decision in the Colorado Case and there was a basis to reverse the Electoral Board's decision, the only remedy available for Petitioners' claims would be an order directing the State Board of Elections not to count any votes for Trump.

6. Accordingly, the Candidate is appealing the Circuit Court's denial of his motion to stay pursuant to Rule 307(a)(1), as permitted by settled Illinois law. By the Motion to Stay, the Candidate seeks an emergency stay of Circuit Court proceedings pending the appeal. Unless this Court immediately calls a halt, the Electoral Board and the Candidate will be required to file massively overlength briefs on **Tuesday, February 13,** and the Circuit Court will conduct an in-

person public hearing on **Friday, February 16 at 10:00 a.m.**—all on a matter that will be decided by the highest court in the land, likely within days of that scheduled hearing. If the Circuit Court actually manages to issue an order a few days before the Supreme Court does, that will create an additional risk of rapidly changing court rulings that could significantly disrupt Illinois officials' preparations for the election.

7. Petitioners' counsel have also chosen to engage in uncivil and inappropriate mudslinging in an apparent effort to attract media attention. Among other things, Petitioners' brief in the Circuit Court accuses all eight members of the bipartisan Electoral Board, and its General Counsel, of "shocking" conduct and of intentionally misconstruing the law for political purposes. And it accuses the Candidate's counsel of "intentional falsehood—in plain English, a lie." (Quotes are from Petitioners' brief below.) Neither accusation is nor can be substantiated.

8. There is no reason for such expedited treatment when the U.S. Supreme Court is about to rule. After that decision, if Petitioners want to continue seeking review of any Illinois-specific issues in this case, there will be plenty of time for the Circuit Court to take up those issues in a more orderly fashion.

9. Petitioners seek to remove the Candidate's name from the ballot in Illinois, based on their objection that President Trump allegedly "engaged in insurrection" under Section Three of the Fourteenth Amendment of the United States Constitution. Before the Electoral Board, the Hearing Officer recommended dismissing Petitioners' objection, the Board's General Counsel recommended overruling Petitioners' objection on the merits, and the eight members of the Board (four Democrats and four Republicans) voted unanimously to overrule the objection. (*See* Exhibit D, which is a true and correct copy of the 1/30/2024 Electoral Board Decision Overruling

Petitioners' Objection.) Alternatively, the Board concluded that it lacks authority under Illinois law to decide objections of this type. (*Id.*)

10. Now, Petitioners are asking the Circuit Court to overturn the Board's decision, conduct its own review of the record, and order that the Candidate's name be removed from the ballot. In so doing, Petitioners rely almost exclusively on decisions on similar claims from Colorado and Maine, while ignoring adverse decisions in 43 other states plus the District of Columbia. In fact, Petitioners submitted no original evidence whatsoever to the Electoral Board, but relied exclusively on the record compiled in the Colorado case. Petitioners asked the Electoral Board (over the Candidate's objections) to simply adopt wholesale the findings of the Colorado courts. The Electoral Board declined to find any facts. (*See* Exhibit D, ¶ 10.G.)

11. However, both Colorado and Maine—along with every other state with a Republican primary— are currently printing ballots that ***include*** President Trump's name. That is because both the Colorado and Maine courts have stayed the effects of decisions in those states pending review by the U.S. Supreme Court. *Anderson v. Griswold,* 2023 CO 63, ¶ 7; *In re Rosen*, Me. Sec'y of State (Dec. 28, 2023), at p.33 (staying decision pending judicial review); *Trump v. Sec'y of State*, 2024 ME 5, ¶ 8 (Jan. 24, 2024) ("the effect of the Secretary of State's ruling [was stayed] pending the outcome of the U.S. Supreme Court's decision in *Anderson*").

12. And that review process has proceeded rapidly and is nearing an end. The U.S. Supreme Court granted President Trump's petition for *certiorari* in the Colorado case at the beginning of January. *See* Order, *Trump v. Anderson*, No. 23-719 (U.S. Jan. 5, 2024).[1] In the five weeks since then, the Supreme Court has received complete briefing from the parties and has

[1] Available at https://www.supremecourt.gov/orders/courtorders/010524zr2_886b.pdf).

conducted oral argument. All indications are that the Court will decide this issue in a matter of days, or at most a few weeks.

13. The Supreme Court's review is very likely to authoritatively decide all of the key issues in this case. The Supreme Court accepted full review of the question, "Did the Colorado Supreme Court err in ordering President Trump excluded from the 2024 presidential primary ballot?" Pet. for Cert., Questioned Presented, p.(i) (filed Jan. 3, 2024);[2] 1/5/2024 Order (granting petition in full). In this case, Petitioners seek the exact same result—to bar President Trump from the primary ballot. The issues before the Supreme Court include the same ones that the Candidate raised before the Electoral Board, and those issues self-evidently apply to this litigation. A decision by the Supreme Court on any or all of these issues would be controlling precedent in this case—and a decision in President Trump's favor on even one of these issues would be dispositive of this case.

14. Indeed, when Petitioners-Appellees' counsel have filed similar challenges to President Trump's ballot access other states, they have reassured courts that a U.S. Supreme Court decision on President Trump's eligibility would "resolve the issue" nationwide, Pet'rs Reply Br. at 8, *Growe v. Simon*, No. A23-1354 (Minn.) (filed Oct. 23, 2023), and would be the "final decision" for the entire nation. Appellants' Br. at 39, *LaBrant v. Benson,* No. 368165 (Mich. Ct. App.) (filed Nov. 30, 2023); *see also* Mem. in Supp. Of Mandamus at 69-70, *Nelson v. Griffin-Valade*, at 69 (Ore.) (filed Dec. 6, 2023) (same). (*See* Exhibit E (which are true and correct copies of select pages from these briefs) (with highlighting added).)

[2] Available at https://www.supremecourt.gov/DocketPDF/23/23-719/294892/20240104135300932_20240103_Trump_v_Anderson__Cert_Petition%20FINAL.pdf.

15. It is likely that a ruling from the U.S. Supreme Court in President Trump's favor will immediately dispose of this case and allow a voluntary dismissal or a stipulated outcome without the need for further substantial proceedings. It is Respondent's view that only if the Supreme Court rules against President Trump on every ground will this Court need to review the Electoral Board's state law grounds for unanimously rejecting Petitioners' objection.

16. Petitioners have argued, and the Circuit Court expressed concern, that this case involves issues of Illinois law that will not be resolved by the Supreme Court's decision. Specifically, Petitioners contend that the Board's decision could impact future similar challenges, and that the Board's decision will need to be reviewed no matter what the Supreme Court decides. That is not correct. Logically, if the Supreme Court rules in favor of President Trump, it is highly likely that its ruling will also render Petitioners' merits arguments here unmeritorious. This case will be definitively resolved on federal-law grounds, and the resolution of alternative state-law issues will become a moot and academic point.

17. And practically, even if Petitioners could and wanted to continue pressing their state-law issues at that point, the Supreme Court decision would drastically change the scale and tenor of this litigation. The Candidate, with ballot access assured, likely would not even need to participate anymore. The voluminous and politically-polarizing factual record, relevant only to President Trump's ultimate eligibility, would drop out of the case. If Petitioners really wanted to, and if the Circuit Court determined that the case was not moot, they could litigate the remaining state-law issues against the other respondents below, which include the Electoral Board and each of its eight members. The political spectacle would be gone, and the remaining questions of Illinois law could be resolved in a far more orderly fashion.

18. Before the Circuit Court entered a briefing schedule or even received the full record from the Electoral Board, Petitioners filed a purported merits brief that more than tripled the Circuit Court's standing page limit. Regrettably, this brief included numerous unprofessional, uncivil, and disparaging remarks about the members of the Board, its General Counsel, and the Candidate's counsel. For instance, Petitioners stated that:

- "The General Counsel's Recommendation, and the Board's decision adopting it, rather transparently was not an earnest interpretation of the law." (Merits Br. at 19 n.4.)
- "In a shocking and highly questionable last-minute recommendation, the General Counsel proposed, and the Board adopted, a restriction on the Board's review … that has absolutely no legal basis…. Neither the Election Code nor caselaw provides any basis for this newly created, absurd and unworkable supposed standard." (*Id.* at 17.)
- The Candidate's counsel's factual presentation to the Board was "completely dishonest." "This account is an intentional falsehood—or in plain English, a lie." (Merits Br. at 4.)

The quotes are true and accurate quotes from Petitioners' merits brief below.

19. Petitioners' rhetoric and tone is a marked departure from previous litigation in other States involving President Trump's ballot access—which of course has been heated at times and has included strident arguments about the merits of the parties' legal positions and of President Trump's conduct, but has until now avoided impugning the integrity and honesty of election officials and opposing counsel.

20. It is not clear why Petitioners' counsel have suddenly amped up the rhetoric like this. Ballot-access litigation involving President Trump has spanned 45 states and the District of Columbia, lasted many months, and is now about to culminate in a U.S. Supreme Court decision. Although contentious, it has until now been marked by a good degree of civility and decorum in court. With a likely-definitive Supreme Court decision imminent, there is no reason for the Circuit Court to engage in additional, unnecessary proceedings that plainly threaten to devolve into an unseemly spectacle.

21. Petitioners filed their petition for judicial review of the Board's decision on January 30, 2024. Notably, pursuant to Election Code Section 10-10.1, 10 ILCS 5/10-10.1, the Circuit Court has 30 days to conduct a hearing on Petitioners' objection, or until Thursday, February 29, 2024. Although the Circuit Court had not yet entered a briefing schedule, on February 5, Petitioners filed their opening brief in the Circuit Court—totaling 46 pages, even though the court's standing order set a limit of 15. A majority of Petitioner's 46-page brief addresses the federal Constitutional issues the U.S. Supreme Court is poised to decide.

22. In light of the realities described above, the Candidate promptly moved the Circuit Court to stay its proceedings pending the U.S. Supreme Court's decision. On February 7, 2024, the Circuit Court denied President Trump's stay motion and set an expedited merits briefing schedule. (*See* Exhibits B and C.) The Circuit Court allowed Petitioners' overlength brief, directed the Candidate to file a response brief by next Tuesday, February 13, and scheduled a public hearing for Friday, February 16 at 10:00 a.m., almost two weeks sooner than required by Section 10-10.1(a). (*Id.*)

23. As explained above, the U.S. Supreme Court's imminent decision is highly likely to dispose of this entire case, or at the least to resolve the most significant issues (and the only

arguably urgent issues) in this case. The fact that Petitioners are not parties to the U.S. Supreme Court case does not change that practical reality. Petitioners do not assert any personal right to some particular piece of property. They are asserting the same legal theory about the Candidate's eligibility that their counsel have presented in 45 other States, and that is currently before the U.S. Supreme Court for decision. The Supreme Court decision is likely to resolve Petitioners' objections in every practical sense.

24. These issues bear fuller consideration. Further Circuit Court proceedings should not be allowed to moot the Candidate's appeal of the Circuit Court's denial of a stay before this Court can even consider it fully.

FURTHER AFFIANT SAYETH NOT.

/s/ Adam P. Merrill
Adam P. Merrill

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

STEVEN DANIEL ANDERSON, CHARLES J. HOLLEY, JACK L. HICKMAN, RALPH E. CINTRON, and DARRYL P. BAKER,	)	
Petitioners-Objectors,	)	
v.	)	**Case No. 2024 COEL 000013**
DONALD J. TRUMP, 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,	)	**Calendar 9 – Courtroom 1704** **Judge Tracie R. Porter**
Respondents.	)	

ORDER

This matter coming before this Honorable Court this 7th day of February, 2024 on Petitioners-Objectors' Amended Motion for Expedited Consideration of Petition for Judicial Review and Respondent-Candidate Donald J. Trump's Motion to Stay Pending U.S. Supreme Court Decision, all parties present through counsel via Zoom, **IT IS HEREBY ORDERED:**

1. Respondent-Candidate Donald J. Trump's Motion to Stay Pending U.S. Supreme Court Decision is denied, as stated in open court on February 7, 2024. A written ruling of this Court's decision will be entered by February 8, 2024.

2. Petitioners-Objectors' Amended Motion for Expedited Consideration of Petition for Judicial Review is denied, as stated in open court on February 7, 2024. A written ruling of this Court's decision will be entered by February 8, 2024.

3. The Court is in receipt of the external drive Objectors provided to the Court containing the video exhibits the Objectors presented to the Electoral Board.

4. Candidate advised the Court that he intends to file as soon as possible an external drive containing the video exhibits he presented to the Electoral Board, but by no later than February 14, 2024.

Exhibit B

5. Objectors' filing of an oversized brief in support of their Petition for Judicial Review, titled "Objectors' Motion to Grant Petition for Judicial Review", filed on February 5, 2024, is permitted. For the remainder of these proceedings, the Court lifts its standing order limiting briefs to fifteen pages.

6. The Objectors' filing entitled, "Objectors' Motion to Grant Petition for Judicial Review," will not be set for briefing as a motion, but Objectors have deemed such filing a brief in support of their Petition for Judicial Review.

7. The Candidate shall have until Tuesday, February 13, 2024, to file his response brief to Objectors' brief in support of their Petition for Judicial Review.

8. Counsels shall deliver printed courtesy copies of all pleadings to the Court on February 14, 2024, by 12:00 p.m., delivered to Room 1701 of the Richard J. Daley Center, 50 West Washington Street, Chicago, Illinois, and copies of all pleadings via email in PDF format directly to Judge Tracie R. Porter.

9. Objectors stated that they did not intent to file a reply brief in support of their Petition for Judicial Review. However, in the event the Objectors file a reply brief, it shall be filed as expeditiously as possible following the filing of the Candidate's response brief, but by no later than Wednesday, February 14, 2024, and courtesy copies shall be deliver to the court as soon as practical, but by no later than February 15, 2024 by 10:00 a.m., delivered to Room 1701 of the Richard J. Daley Center, 50 West Washington Street, Chicago, Illinois, and copies of all pleadings via email in PDF format directly to Judge Tracie R. Porter.

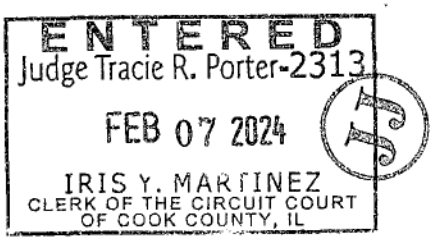
10. A hearing on Petitioners-Objectors' Petition for Judicial Review is scheduled for Friday, February 16, 2024, at 10:00 a.m. It will take place in-person in Courtroom 1703 of the Richard J. Daley Center, 50 West Washington Street, Chicago, Illinois. Remote participation and streaming will not be available.

Dated: February 7, 2024.

2313

Judge Tracie R. Porter

Order prepared by:
Counsel for Petitioners-Objectors
Caryn C. Lederer (clederer@hsplegal.com)
Hughes Socol Piers Resnick & Dym, Ltd.
70 West Madison Street, Suite 4000
Chicago, IL 60602
Firm No. 45667



IN THE CIRCUIT COURT OF COOK COUNTY
COUNTY DEPARTMENT – COUNTY DIVISION

STEVEN DANIEL ANDERSON, CHARLES J. HOLLEY, JACK L. HICKMAN, RALPH E. CINTRON, and DARRYL P. BAKER,	)	
Petitioners-Objectors,	)	**No. 2024COEL000013**
v.	)	**Hon. Tracie R. Porter**
DONALD J. TRUMP, the ILLINOIS STATE BOARD OF ELECTIONS sitting as the State Officers Electoral Board, and its Members, *et al.*,	)	**Calendar 9 – Courtroom 1704**
Respondent-Candidate.	)	

ORDER

This matter comes before the Court for Judicial Review of Petitioners-Objectors Steven Daniel Anderson, *et al.*'s ("Objectors") Amended Motion for Expedited Consideration of Petition for Judicial Review ("Amended Motion to Expedite") and Respondent-Candidate Donald J. Trump's ("Candidate") Motion to Stay Pending U.S. Supreme Court Decision in *Trump v. Anderson*, No. 23-719 (U.S. Jan. 5, 2024) ("Motion to Stay") (Objectors and Candidate, hereinafter collectively referred to as the "Parties"), and that both Parties are represented by Counsel. This Court having considered the oral arguments on February 7, 2024, reviewed the motions, accompanied exhibits and other relevant pleadings presented by the Parties, finds as follows:

I. STATEMENT OF FACTS

1. On January 4, 2024, the Candidate filed nomination papers, with the Illinois State Board of Elections (the "State Electoral Board") to appear on the ballot at the March 19, 2024, General Primary Election, as a candidate for the Republican Nomination for the Office of the President of the United States. (Petition for Judicial Review filed on January 30, 2024 ("Petition") with the Circuit Court of Cook County, Illinois (the "Court Record")).

Exhibit C

2. On January 4, 2024, Objectors filed with State Electoral Board their petition objecting to the validity of the Candidate's nomination papers. The basis for their objection is "that Candidate is disqualified from holding the Office of the President of the United States under Section 3 of the Fourteenth Amendment 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 the Constitution." (Objectors' Amended Motion to Expedite, ¶2).

3. On January 30, 2024, the State Electoral Board convened to consider the recommendations of the Hearing Officer and the General Counsel of the State Electoral Board and Objectors' Petition filed on January 4, 2024 ("Petition"). The State Electoral Board voted unanimously denying Objectors' Motion for Summary Judgment, granting in part the Candidate's Motion to Dismiss, and overruled the Objectors' Petition. (24 SOEB GP 517, State Electoral Board Decision, January 30, 2024, ¶10).

4. On January 30, 2024, after the State Electoral Board's decision was served on the Candidate and/or his Counsels, Objectors timely filed a Petition for Judicial Review with the Circuit Court of Cook County, Illinois. Objectors timely served their Petition on the State Electoral Board, the Candidate and filed the required statutory Proof of Service of the Petition for Judicial Review. (Court Record, January 31, 2024).

5. On January 30, 2024, Objectors filed a Motion for Expedited Consideration of Petition for Judicial Review ("Motion to Expedite") before the Circuit Court. (Court Record, January 30, 2024). The Motion to Expedite requested a schedule in which Parties would file responsive briefs by February 2, 2024, and set a hearing on the Objectors' Petition by February 5, 2024. (Court Record, Motion for Expedited Consideration of Petition for Judicial Review, filed January 30, 2024). The matter was randomly assigned by the Clerk of the Circuit Court of Cook County to be heard before Judge Marcia O'Brien Conway in the County Division, Calendar 6.

6. On January 31, 2024, Objectors filed a Motion to Substitute Judge, as a matter of right. That same day, the Acting Presiding Judge of the County Division randomly reassigned the matter to Judge Mary S. Trew in the County Division, Calendar 12, and Judge Trew scheduled Objectors' Amended Motion to Expedite for hearing on February 2, 2023 at 9:30 a.m. (Court Record, January 31, 2024).

7. On February 2, 2024, the Candidate filed a Motion for Substitution of Judge, as a matter of right, which motion was granted. The Acting Presiding Judge of the County Division

again reassigned the case that same day from Judge Mary S. Trew to Judge Tracie R. Porter in the County Division, Calendar 9. The case was heard before Judge Porter at 11:15 a.m. that same day.

8. On February 2, 2024, the Parties appeared before this Court. The Court set a briefing schedule on Objectors' Amended Motion to Expedite filed on January 31, 2024. The Court also set a simultaneous briefing schedule on Candidate's Motion to Stay which was to be filed, and was actually filed, on February 2, 2024. (Court Record, Briefs on both Parties' Motions filed on February 2, 2024 and February 5, 2024).

9. On February 5, 2024, the State Electoral Board filed a Common Law Record of the election proceedings in this matter, which consisted of twelve volumes of filings, consisting of more than 6,000 pages of the proceedings. (Court Record, February 5, 2024).

10. The Court set a hearing on February 7, 2024, at 1:00 p.m. for both Parties to argue their respective motions.

11. On February 7, 2024, the Objectors' Counsel delivered an external drive to the Court consisting of trial video exhibits considered by and presented before the Colorado Supreme Court in the matter of *Anderson v. Griswold*, 2023 CO 63 (Colo., Dec. 19, 2023), although these exhibits had not been filed in the Court Record as of the date of this Order.

II. COURT'S DETERMINATION

I. Objectors' Amended Motion for Expedited Hearing

First, the Objectors argue in their Amended Motion to Expedite that February 2, 2024, was the deadline for election authorities to have sufficient ballots printed and available to mail to military and overseas voters, pursuant to 10 ILCS 5/7-16, 5/16-5.01. (Amended Motion to Expedite, ¶9).

Second, the Objectors bring forth that February 8, 2024 is the first day for an election authority to mail a ballot to vote-by-mail voters, and the first day for early voting at the office of the election authority, pursuant to 10 ILCS 5/19-4, 5/19A-15. (Amended Motion to Expedite, ¶10).

Therefore, the Objectors are requesting the Court to schedule an expedited hearing sooner than the 30 day-period mandated by the Illinois Election Code, ("Election Code") under 10 ILCS 5/10-10.1 because doing so would avoid "any prejudice to Objectors and minimize disruption of the election process for Illinois election authorities and Illinois voters." (Amended Motion to

Expedite, ¶10). The Objectors have not provided the Court with any legal authority or statutory provisions to support a more expedited process than is already codified under Section 10-10.1 of the Election Code.

In enacting 10 ILCS 5/10-10.1, the legislature already set forth the deadlines for all filings on an expedited basis within a 30-day window. The Election Code as it exists contemplates that the courts will have to make decisions about who are and are not qualified to be on the ballot. While this Court may set forth an expedited schedule sooner than contemplated under Section 10-10.1, it is not required to follow a proposed expedited schedule suggested by one party, such as the Objectors suggest in their motion.

In addition, the courts in Illinois have dealt with ballots that have been printed with a candidate's name on it after it issued a ruling that disqualified the candidate's name from being on the ballot. *See Ruffin v. Feller*, 2022 IL App (1st) 220692, ¶ 11 (allowing the candidate's name to stay on the ballot, but directing that no votes cast on her behalf shall be counted by the County Clerk). During oral arguments on February 7, 2024, Counsel for the Objectors proposed that the Election Board could take various means to suppress the vote of a candidate that is found disqualified by the courts, such as placing signs at the polling place, issuing mailings, or other measures.

Finally, it was not possible to set the specific briefing schedule and hearing date on the Objectors' Amended Motion to Expedite, especially given the motion practice that both the Objectors and Candidate have engaged in, which has caused some delay in setting a briefing schedule and a hearing date on Objectors' Petition for Judicial Review. In fact, Objectors' Counsel at the hearing on February 7, 2024, stated that her Motion to Grant Petition for Judicial Review was really not a motion but Objectors' brief in support of the Petition for Judicial Review filed on January 30, 2024. Labeling such brief as a motion could have further prolonged the expeditious process contemplated under Section 10-10.1 of the Election Code.

This Court finds that the time period provided under Section 10-10.1 of the Election Code allows sufficient and reasonable time for the Parties to file briefs on the merits of the Petition for Judicial Review and for the court to set a hearing date, which the Court set on February 7, 2024, so as to avoid further delay in this matter.

The Court also could not proceed until the State Electoral Board filed its Record of Proceedings which it filed in twelve volumes on February 5, 2024. Additionally, the Objectors

only just delivered the video exhibits to the Court on February 7, 2024, and the Candidate has yet to submit their digital and/or video exhibits as of February 7, 2024. Thus, the Court could not proceed with a briefing schedule or hearing until all relevant pleadings had been submitted to the Court.

Therefore, the Court denies Objectors' Amended Motion to Expedite for the following reasons:

a. One of the issues involved in this Petition for Judicial Review involves constitutional issues under federal law, which has been raised by both Parties. The constitutional issues cannot fairly and justly be considered by this Court in the expedited proceeding as suggested by the Objectors.

b. On February 5, 2024, the State Electoral Board filed the record of proceedings before the hearing officer and its decision ("Board Record"). The Board Record is voluminous, with twelve volumes filed into the Court Record, and an estimated 6,000 pages, excluding video exhibits provided to the Court by the Objectors and to be provided by the Candidate. Given the volume of the Board Record, the pleadings and briefs of the Parties, and the video exhibits in this case, the Court needs adequate time to review the documentation and video exhibits, as presented by the Parties to support their positions, in order for the Court to make a fair and just determination of the issues presented for judicial review.

c. The Illinois Election Code under 10 ILCS 5/10-10.1 ("Election Code") has set forth a time frame for judicial review for election cases, with a hearing held within a 30-day time frame and the court's decision to issue promptly after such hearing. The Court finds no legal or compelling reasons set forth by the Parties to deviate from the time frame set by the Election Code, especially given that the issues involve both federal constitutional and state law considerations, which a decision of this Court is likely to be appealed.

d. The Parties, respectively, exercised their right to file motions, including two motions for Substitution of Judge, the Objectors' Amended Motion to Expedite, and the Candidate's Motion to Stay. In doing so, those motions caused delay in setting a briefing schedule and subsequent hearing date on the substantive issues before the Court in the Objectors' Petition for Judicial Review.

e. On February 7, 2024, the Court set the Petition for Judicial Review for a hearing on February 16, 2024, therefore, the Objectors' request to expedite this matter is moot.

II. Candidate's Motion to Stay Pending United States Supreme Court Decision

Candidate requests that this Court enter a brief stay until the United States Supreme Court renders a decision in the case of *Trump v. Anderson*, No. 23-719 (U.S. Jan. 5, 2024), in which the United States Supreme Court considered oral arguments on February 8, 2024, because the issue before the United States Supreme Court will resolve the federal constitutional issue before this Court in Illinois. (Candidate's Motion to Stay, pp. 2-3).

In the alternative, the Candidate is willing to have a more expedited hearing within the 30 days set forth in Section 10-10.1 of the Election Code, and proposes that the Court delay a hearing until February 29, 2024. (Candidate's Motion to Stay, p. 7).

As to the constitutional issue, the Candidate states that the issue before the United States Supreme Court is "Did the Colorado Supreme Court err in ordering President Trump excluded from the 2024 presidential primary ballot?" which requires a consideration on federal constitutional issues under the Fourteenth Amendment, Section 3. (Candidate's Motion to Stay, p. 3).

However, before this Court is the issue raised by the Objectors in the State Electoral Board decision of whether the Candidate "knowingly lied" in his Statement of Candidacy, which may impose a new scienter requirement not set forth in the text of 10 ILCS 5/7-10 of the Election Code. (Objectors' Response in Opposition to Respondent's Motion to Stay, pp. 7-8; 24 SOEB GP 517, State Electoral Board Decision, January 30, 2024, ¶10-C).

Taking in consideration the issues from the State Electoral Board under judicial review by this Court, the Court denies Candidate's Motion to Stay, for the following reasons:

a. The Illinois Election Code gives this Court jurisdiction over this matter, and requires the Court to schedule a hearing within 30 days of the filing of the Petition for Judicial Review and to make an expeditious decision thereafter, which this Court is capable of doing on issues presented in the Objectors' Petition for Judicial Review.

b. While the constitutional issue presented in this matter may be resolved by the United States Supreme Court, until a decision is rendered by the highest court of the land, this Court finds no reason to delay its determination, or to stall any right of appeal of the Parties to the highest court of this state.

c. In addition to the constitutional issue before this Court, there is a state statutory interpretation issue that may not be resolved by the United States Supreme Court's decision on the federal constitutional issue.

d. While the Court may stay a proceeding in favor of another proceeding, the court is not required to do so, especially when the statutory law is clear as to how the court is to proceed in election cases. See 10 ILCS 5/10-10.1. Given the impact of a decision by this Court, or a higher court, related to the State Electoral Board's facilitation of the March 19, 2024, General Primary Election, any further delay by the Parties in this matter impedes upon the public's confidence in a fair and just election process.

III. Conclusion

Therefore, the rulings of this Court are as follows:

a. The Objectors' Amended Motion to Expedite is denied.

b. The Candidate's Motion to Stay is denied.

c. This Order is a final and appealable order.

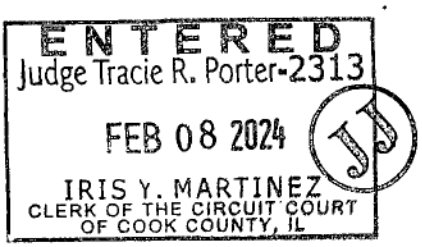
So Ordered.

Dated: February 8, 2024

ENTERED:

2313

Judge Tracie R. Porter



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.

Exhibit D

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
mpiers@hsplegal.com

Margaret E. Truesdale
mtruesdale@hsplegal.com

Justin M. Tresnowski
jtresnowski@hsplegal.com

Ed Mullen
ed_mullen@mac.com

Ron Fein
rfein@freespeechforpeople.org

Courtney Hostetler
chostetler@freespeechforpeople.org

John Bonifaz
jbonifaz@freespeechforpeople.org

Ben T. Clements
bclements@freespeechforpeople.org
ben@clementslaw.org

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

A23-1354

State of Minnesota
In Supreme Court

Joan Growe, Paul Anderson, Thomas Beer, David Fisher, Vernae Hasbargen, David Thul, Thomas Welna, and Ellen Young,

Petitioners,

v.

Steve Simon, Minnesota Secretary of State,

Respondent,

v.

Republican Party of Minnesota,

Respondent.

PETITIONERS' REPLY BRIEF

Charles N. Nauen (#121216)
David J. Zoll (#0330681)
Kristen G. Marttila (#0346007)
Rachel A. Kitze Collins (#0396555)
LOCKRIDGE GRINDAL NAUEN P.L.L.P.
100 Washington Avenue South, Suite 2200
Minneapolis, MN 55401-2159
(612) 339-6900
cnnauen@locklaw.com
djzoll@locklaw.com
kgmarttila@locklaw.com
rakitzecollins@locklaw.com

FREE SPEECH FOR PEOPLE
Ronald Fein (*pro hac vice*)
Amira Mattar (*pro hac vice*)
Courtney Hostetler (*pro hac vice*)
John Bonifaz (*pro hac vice*)
Ben Clements (*pro hac vice*)
1320 Centre St. #405
Newton, MA 02459
(617) 244-0234
rfein@freespeechforpeople.org
amattar@freespeechforpeople.org
chostetlet@freespeechforpeople.org
jbonifaz@freespeechforpeople.org
bclements@freespeechforpeople.org

Attorneys for Petitioners

KEITH ELLISON
Attorney General
State of Minnesota

NATHAN J. HARTSHORN
Assistant Attorney General
Atty. Reg. No. 0320602

ALLEN COOK BARR
Assistant Attorney General
Atty Reg. No. 0399094
445 Minnesota Street, Suite 1400
St. Paul, Minnesota 55101-2131
(651) 757-1252 (Voice)
(651) 297-1235 (Fax)
nathan.hartshorn@ag.state.mn.us
allen.barr@ag.state.mn.us

Attorneys for Respondent Steve Simon, Minnesota Secretary of State

Exhibit E

R. Reid LeBeau II (#347504)
JACOBSON, MAGNUSON, ANDERSON
& HALLORAN, P.C.
180 E. Fifth St. Ste. 940
St. Paul, MN 55101
(651) 644-4710
rlebeau@thejacobsonlawgroup.com

Attorneys for Intervenor-Respondent Republican Party of Minnesota

Nicholas J. Nelson (#391984)
Samuel W. Diehl (#388371)
CROSSCASTLE PLLC
333 Washington Avenue N.
Ste 300-9078
Minneapolis, MN 55401
P: (612) 429-8100
F: (612) 234-4766
nicholas.nelson@crosscastle.com
sam.diehl@crosscastle.com

Attorneys for Donald J. Trump and Amicus Curiae Donald J. Trump for President 2024, Inc.

requirements for office and will therefore not be subsequently disqualified, thereby causing the need for new elections"), *remanded as moot*, 52 F.4th 907 (11th Cir. 2022); *State ex rel. Sandlin v. Watkins*, 21 La. Ann. 631, 632 (1869) ("the State has obviously a great interest in" enforcing Section 3 "and a clear right to" do so). Likewise, this Court can decide whether Trump is eligible.[6]

4. *The possibility of conflicting decisions should be given no weight.*

Intervenor-Respondents assert this Court should dismiss this case because state courts may decide the issue differently. But *Baker* says nothing about courts deciding matters differently. The doctrine protects coordinate branches from each other. If the doctrine prevented resolution wherever sister courts may decide a matter differently, no case would ever be decided. That is why appellate courts exist. As a practical matter, if any state court decides Trump is disqualified, the U.S. Supreme Court can resolve the issue. The possibility that another court may decide this matter differently does not relieve this Court of its obligation to decide the case before it.

5. *The issues were not resolved by the Senate impeachment trial.*

Trump's final argument invokes res-judicata-like principles to argue that the Senate's failure to convict Trump forecloses this matter. To the extent the Senate impeachment vote has any relevance, it *supports* the conclusion that Trump engaged in insurrection and therefore is disqualified under Section 3. First, a clear bipartisan

[6] For these reasons, and as more fully explained in Petitioners' forthcoming supplemental brief, this Court's unpublished dicta in *Oines v. Ritchie*, A12-1765 (Minn. 2012) that "under federal law it is Congress that decides challenges to the qualifications of an individual to serve as president" is erroneous and unpersuasive and provides no basis to deny the Petition in this case.

STATE OF MICHIGAN
IN THE COURT OF APPEALS

ROBERT LaBRANT, ANDREW BRADWAY, NORAH MURPHY, and **WILLIAM NOWLING,**

Plaintiffs-Appellants,

Court of Appeals No. 368628
Court of Claims No. 23-000137-MZ

v

JOCELYN BENSON, in her official capacity as Secretary of State,

Defendant-Appellee,

THIS APPEAL INVOLVES AN URGENT ELECTION MATTER RELATED TO THE FEBRUARY 27, 2024 PRESIDENTIAL PRIMARY

and

DONALD J. TRUMP,

Intervening Appellee.
_____/

ROBERT DAVIS,

Plaintiff-Appellant,

Court of Appeals No. 368615
Circuit Court No. 23-012484-AW

v

WAYNE COUNTY ELECTION COMMISSION,

Defendant-Appellee.
_____/

BRIEF ON APPEAL OF PLAINTIFFS-APPELLANTS LaBRANT ET AL.

ORAL ARGUMENT REQUESTED

GOODMAN ACKER, P.C.
MARK BREWER (P35661)
ROWAN CONYBEARE (P86571)
17000 W. Ten Mile Road
Southfield, MI 48075
(248) 483-5000
mbrewer@goodmanacker.com

FREE SPEECH FOR PEOPLE
Ronald Fein (*pro hac vice* forthcoming)
John Bonifaz (*pro hac vice* forthcoming)
Ben Clements (*pro hac vice* forthcoming)
Amira Mattar (*pro hac vice* forthcoming)
Courtney Hostetler (*pro hac vice* forthcoming)
1320 Centre Street, Suite 405
Newton, MA 02459
(617) 244-0234

Attorneys for *LaBrant* Plaintiffs-Appellants

in part on other grounds, 497 Mich 36; 859 NW2d 678 (2014). *Compare, e g,* Michigan's constitutional prohibition on officeholding for former officials who have been convicted of certain felonies. *See* Const 1963, art XI, § 8. The governor could, in theory, pardon a convicted felon. *See* Const 1963, art V, § 14. But the mere theoretical possibility that a governor *might* do this does not mean that convicted felons may appear on ballots and run for office notwithstanding the prohibition. Likewise, the fanciful speculation that two-thirds of both houses might grant Trump amnesty does not prevent Michigan from exercising its plenary power to appoint electors in the manner directed by its legislature, which includes this challenge procedure.

Second, there is no "unusual need for unquestioning adherence to a political decision already made," *Baker*, 369 US at 217, nor did the Court below explain how there could be at this stage. *After* electors have been appointed, such a need might arise. But this case arises nearly a year before the date set for the appointment of electors. No political decision has been made; nor is one expected any time soon.

Third, there is no "potentiality of embarrassment from multifarious pronouncements by various departments on one question." *Id*. As a preliminary matter, if Michigan or any other state rules that Trump is disqualified under Section 3, he may appeal that decision to the United States Supreme Court, which can render a final decision. And crucially, "various departments" does not mean "various state courts." State courts *regularly* rule on questions that could also be decided by courts in other states; no one would claim, for example, that Michigan courts cannot decide a First or Second Amendment question merely because California or Texas courts might rule differently. Rather, state courts interpret and apply the United States Constitution to their best ability, subject to appeal to the United States Supreme Court. The trial court's suggestion that the United States Supreme Court is incapable of resolving a fast-track election dispute, *see* Opinion & Order, p 20

(Ex 1, p 21), is belied by the Court's history of rapid decisions on contested constitutional election issues. *See, e g, Bush v Gore*, 531 US 98; 121 S Ct 525; 148 L Ed 2d 388 (2000) (argued December 11, 2000, and decided the next day).

* * *

This case involves the application of the Fourteenth Amendment to a specific set of facts. It involves weighty issues of nationwide interest, but so do many other cases considered by Michigan courts. Its resolution may have political consequences, but so do many other cases considered by Michigan courts. And as the United States Supreme Court explained, the political question doctrine "is one of 'political questions,' not one of 'political cases.'" *Baker*, 369 US at 217. Article II of the United States Constitution grants Michigan the power to appoint its electors in the manner directed by the legislature; the legislature has empowered its courts to hear this challenge; nothing in the Constitution says otherwise. The case does not fall under the political question doctrine and the courts must decide it.

CONCLUSION AND RELIEF SOUGHT

For the reasons stated, Plaintiffs-Appellants ask that the Court:

1. Reverse the Court of Claims; and

2. Remand to the Court of Claims to conduct an evidentiary hearing on Trump's eligibility under the Disqualification Clause to be placed on the Michigan presidential primary ballot.

IN THE SUPREME COURT FOR THE STATE OF OREGON

MARY LEE NELSON, MICHAEL NELSON, JUDY HUFF, SAMUEL JOHNSON, and CHAD SULLIVAN, electors of Oregon,

Plaintiffs-Relators,

v.

LAVONNE GRIFFIN-VALADE, Secretary of State of Oregon,

Defendant.

SC S _____

MANDAMUS PROCEEDING:

MEMORANDUM IN SUPPORT OF:

PETITION FOR PEREMPTORY OR ALTERNATIVE WRIT OF MANDAMUS

DANIEL W. MEEK
OSB No. 79124
10266 S.W. Lancaster Road
Portland, OR 97219
503-293-9021
dan@meek.net

JASON KAFOURY
OSB No. 091200
Kafoury & McDougal
411 SW Second Ave Ste 200
Portland OR 97204
503-224-2647
jkafoury@kafourymcdougal.com

FREE SPEECH FOR PEOPLE
Ronald Fein (*pro hac vice* forthcoming)
John Bonifaz (*pro hac vice* forthcoming)
Ben Clements (*pro hac vice* forthcoming)
Courtney Hostetler (*pro hac vice* forthcoming)
Amira Mattar (*pro hac vice* forthcoming)
1320 Centre St. #405
Newton, MA 02459
(617) 244-0234

Attorneys for Plaintiffs-Relators

Ellen F. Rosenblum, OSB 753239
Attorney General
Benjamin Gutman, OSB 160599
Office of Solicitor General
1162 Court Street NE
Salem, Oregon 97301-4096
503-378-6002
ellen.f.rosenblum@doj.state.or.us
benjamin.gutman@doj.state.or.us

Attorneys for Defendant

to issue mandamus requiring the Secretary to limit the ballot to constitutionally qualified candidates would not preclude Congress from later removing Trump's Section 3 disability. Congress could remove the disability tomorrow, or after this or another court rules Trump ineligible to appear on the ballot, thereby enabling him to appear on the ballot despite his engagement in insurrection.

2. There is no "unusual need for unquestioning adherence to a political decision already made," *Baker*, 369 US at 217, nor could there be at this stage. *After* electors have been appointed, that need might arise. But appointment of electors is almost a year away. No political decision has been made, nor will be made any time soon.

3. There is no "potentiality of embarrassment from multifarious pronouncements by various departments on one question." *Id.* If Oregon or another state rules that Trump is disqualified under Section 3, he may appeal that decision to the US Supreme Court, which can render a final decision. And "various departments" does not mean "various state courts." State courts *regularly* rule on questions that could also be decided by courts in other states; no one claims, e.g., that Oregon courts cannot decide a First or Second Amendment question merely because California or Texas courts might rule differently. Rather, state courts interpret and apply the Constitution to their best ability, subject to US Supreme Court review. And that Court can render rapid decisions on contested constitutional election issues. *See, e.g., Bush v.*

Gore, 531 US 98 (2000) (argued December 11, 2000, and decided the next day).

VII. CONCLUSION.

Trump is disqualified from the Oregon presidential primary and general election ballots under Section 3. For the reasons explained above and in the accompanying Petition for Peremptory or Alternative Writ of Mandamus and the accompanying Statement of Facts, this Court should (1) exercise its original mandamus jurisdiction under Article VII, section 2, of the Oregon Constitution and ORS 34.120, and (2) issue a peremptory writ of mandamus requiring the Secretary of State to disqualify Donald J. Trump from both the Oregon 2024 presidential primary election ballot and the Oregon 2024 general election ballot. Alternatively, if this Court does not immediately issue a peremptory writ, this Court should issue an alternative writ of mandamus directing the Secretary of State to show cause why she should not be required

//

//

//

//

//

//

//

//

CERTIFICATE OF SERVICE

I, Adam P. Merrill, hereby certify that on February 9, 2024, I caused a true and correct copy of the foregoing RESPONDENT-APPELLANT DONALD J. TRUMP'S EMERGENCY MOTION TO STAY CIRCUIT COURT PROCEEDINGS PENDING APPEAL to be served upon all parties/ counsel of record via the Court's Electronic Filing System, and upon the following via electronic mail message:

HUGHES SOCOL PIERS RESNICK & DYM, LTD.
Matthew Piers
Caryn Lederer
70 W. Madison St., Ste. 4000
Chicago, IL 60602
Matthew J. Piers
MPiers@hsplegal.com
clederer@hsplegal.com

Sarah Newman
State of Illinois Assistant Attorney General
100 W. Randolph Street, 13th Floor
Chicago, Illinois 60601
Sarah.Newman@ilag.gov

FREE SPEECH FOR PEOPLE
Ronald Fein (pro hac vice)
Amira Mattar (pro hac vice)
Courtney Hostetler (pro hac vice)
John Bonifaz (pro hac vice)
Ben Clements (pro hac vice)
1320 Centre St. #405
Newton, MA 02459
rfein@freespeechforpeople.org
amira@freespeechforpeople.org
chostetler@freespeechforpeople.org
jbonifaz@freespeechforpeople.org
bclements@freespeechforpeople.org

MULLEN LAW FIRM
Ed Mullen (ARDC: 6286924)
1505 W. Morse Ave.
Chicago, IL 60626
ed_mullen@mac.com

Under penalties as provided by law pursuant to section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this certificate of service are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that he verily believes the same to be true.

/s/ Adam P. Merrill
Adam P. Merrill