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. 2024COEL000013**
DONALD J. TRUMP, the ILLINOIS STATE BOARD OF ELECTIONS, 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,	)	**Hon. Tracie R. Porter** **Calendar 9**
Respondents.	)	

OBJECTORS' REPLY IN SUPPORT OF THEIR MOTION TO GRANT PETITION FOR JUDICIAL REVIEW

Trump's response brief ("Response" or "Resp.") continues his pattern throughout this litigation of attempting to delay resolution and confuse the issues in this otherwise straightforward case by misrepresenting case law, the factual record, and the proceedings below. Rather than address each point raised in the Response, Petitioners use this reply to correct the record and make three basic points.

First, with election deadlines looming, the Court should decline Trump's request to waste critical time by remanding this case to the Electoral Board for further factual findings and legal determinations. To ensure that the case stays on track for ultimate resolution by the Illinois Supreme Court before the primary election, this Court should promptly reverse the Electoral Board's mistaken interpretation of Illinois law and find—as the Hearing Officer did below, based

on a robust and largely undisputed evidentiary record—that Trump engaged in insurrection and is disqualified under Section Three. To avoid any purported prejudice to Trump or the "confusion" he has portended, the Court can then stay the effect of that ruling pending review from the Illinois Supreme Court.

Second, in addressing the Electoral Board's faulty interpretation of the Election Code, the Court should disregard Trump's plain misreading of *Welch* and the clearly incorrect suggestion that a perjury standard should apply to questions about a candidate's qualifications for office.

Third, despite Trump's misleading claims to the contrary, the Hearing Officer's factual findings below were supported by ample admissible evidence, almost none of which was genuinely disputed. This Court is therefore well positioned to issue a prompt ruling finding—in accordance with Judge Erickson and every other tribunal to reach the merits in a Section Three challenge—that Trump engaged in insurrection in violation of Section Three and is therefore ineligible to appear on the ballot in the March 19, 2024 primary.

I. THIS COURT SHOULD REACH THE MERITS OF OBJECTORS' PETITION AND, UPON RULING THAT TRUMP IS DISQUALIFIED FROM THE BALLOT, STAY ENFORCEMENT OF ITS JUDGMENT.

Contrary to Trump's urging (Resp. at 4, 15-16), this Court should not remand this case back to the Electoral Board upon resolving the Illinois law issues in favor of Objectors. It should instead reach the merits of Trump's disqualification under Section Three, order him removed from the ballot, and then stay enforcement of its order until the Illinois Supreme Court rules in this case. Though Trump claims that the circuitous path of remanding to the Electoral Board to rule on the merits would be "the most efficient and sensible path to comprehensive resolution of this case," the opposite is clearly true. A much more efficient and sensible approach would be for this Court to rule on these remaining legal issues. As this Court has recognized, efficiency is of utmost

importance here because "any further delay . . . in this matter impedes upon the public's confidence in a fair and just election process." Feb. 8, 2024 Order at 7. Moreover, although Trump has repeatedly disputed that the Electoral Board is equipped to resolve the merits of this case, and indeed, the Electoral Board so found, everyone agrees that this Court is well suited to decide complex constitutional and factual inquiries. *See* Resp. at 15 (arguing the Electoral Board "is an administrative agency charged mostly with checking paperwork," in contrast to a court, which is "authorized to engage in open-ended constitutional and factual inquiries"). If this Court rules and then stays its decision pending appeal in the Illinois Supreme Court, Illinois will be in the best possible position to respond promptly and effectively to any decision issued by the U.S. Supreme Court regarding Trump's disqualification under Section Three.

Trump references the *Purcell* principle to suggest this case should not move forward, but it has no application here. Resp. at 2. As Trump recognizes, the *Purcell* principle is an admonition that "courts should ordinarily not alter election rules on the eve of an election." *See* Resp. at 2 (citing *Republican Nat'l Comm. v. Democratic Nat'l Comm.*, 140 S. Ct. 1205, 1207 (2020)). But Objectors have not and do not ask this Court to alter Illinois' election rules; they simply ask this Court to order that existing rules be enforced. It is the typical practice of Illinois election authorities "whenever a candidate is removed from the ballot after ballots have already been printed," for election authorities to "either reprint the ballots or, if there is not enough time, simply inform voters at the polling place that the candidate has been removed."[1] Moreover, the *Purcell* principle is limited to federal court orders upending state election regulations—it does not pertain to a state's alteration of its own election laws. *See Merrill v. Milligan*, 142 S. Ct. 879, 880–81 (2022)

[1] Peter Hancock, *Trump Ballot Challenge in Illinois to Move Forward*, CAPITOL NEWS ILLINOIS (Feb. 7, 2024), https://news.wttw.com/2024/02/07/trump-ballot-challenge-illinois-move-forward (providing statement of Electoral Board spokesman Matt Deitrich on January 30, 2024).

(Kavanaugh, J., joined by Alito, J., concurring) ("It is one thing for a State on its own to toy with its election laws close to a State's elections. But it is quite another thing for a federal court to swoop in and re-do a State's election laws in the period close to an election."). Lastly, here, the animating principle of the *Purcell* doctrine would in no way be implicated if this Court stays enforcement of its order on the merits pending appeal to the Illinois Supreme Court.

II. THERE IS NO SUPPORT FOR A NEW "KNOWING LIE" STANDARD, AND THE *WELCH* CASE IS INAPPOSITE.

The "knowing lie" standard that Trump now urges this Court to adopt is so plainly wrong that Trump never even raised it to the Hearing Officer below. And, notably, the Illinois State Board of Elections and its members, though parties to these proceedings, have elected not to defend this new unworkable and unsupported standard before this Court.

Trump's attempt to twist *Welch v. Johnson*, 147 Ill. 2d 40 (1992), to serve his ends is futile. It does not even tangentially support the view that electoral boards must apply a perjury standard when evaluating a candidate's statement that he is qualified for office. Indeed, Trump's references to the Election Code's own perjury provisions (10 ILCS 5/29-10) are a mere distraction. Resp. at 8-10. Objectors have never argued that Trump should be removed from the ballot because he committed perjury; their contention has always been that he should be removed because he is disqualified from the Presidency under Section Three.

Trump admits that *Welch*'s holding was limited to a candidate's statement of economic interest, Resp. at 7-8, but he seems to want the Court to infer that the "willful or intentional falsehood" standard applied there to a statement of economic interest somehow also applies to a candidate's statement that he is qualified for office. *See* Resp. at 8, 10, 11. There is no basis for this illogical leap. The Election Code incorporates the requirements of the Ethics Act only in connection with the statement of economic interest because the Ethics Act—not the Election

Code—is the statute that details the standards for a statement of economic interest. *See Welch*, 147 Ill. 2d at 50 (citing 10 ILCS 5/10-5 (Election Code provision requiring a candidate to state that he "has filed . . . a statement of economic interest *as required by the Illinois Governmental Ethics Act*") (emphasis added), and citing 5 ILCS 420/4A-104, 107 (Ethics Act provisions articulating standards for statements of economic interest)). The *Welch* Court explained that the Ethics Act provisions (Sections 4A-104 and 107) "merely require the filing of . . . statements [of economic interest] containing no willful or intentional falsehood," *id.* at 51, and because the Election Code's requirement that a candidate provide a statement of economic interest incorporates the Ethics Act's standards governing the statement of economic interest, the Court ruled that an inadvertent error in a statement of economic interest would not disqualify a candidate from the ballot. There is simply no legal or logical basis to apply this standard to the mandatory sworn statement of candidate qualifications under the Election Code.

Crucially, the Election Code's requirement in Section 5/7-10 that a candidate attest that he "is qualified for the office specified" contains no reference to the Ethics Act, and Trump has not even attempted to argue that any Ethics Act provision pertains to, let alone governs, this requirement. *See* 10 ILCS 5/7-10. Accordingly, *Welch* is inapposite. There is no reason to import its "willful" standard into the requirement at issue here.

Moreover, Illinois courts have already conclusively determined that the purpose of requiring an attestation of qualification in nominating papers is to ensure that candidates *are actually qualified*, and thus there is no reason to resort to inapt cases like *Welch* or interpretive canons like "the doctrine of *noscitur a sociis*" (Resp. at 10), to posit some new interpretation. *See Muldrow v. Mun. Officers Electoral Bd. For City of Markham*, 2019 IL App (1st) 190345, ¶ 20 ("If a candidate's statement that he or she is qualified for the office sought is *inaccurate*, the statement

fails to satisfy statutory requirements and constitutes a valid basis upon which an electoral board may sustain an objector's petition seeking to remove a candidate's name from the ballot.") (emphasis added); *Goodman*, 241 Ill. 2d at 408 ("a sworn statement of candidacy attesting that he or she is 'qualified for the office specified' . . . evinces an intention [by the legislature] to require candidates to meet the qualifications for the office they seek . . . ."); *Geer v. Kadera*, 173 Ill. 2d 398, 406 (1996) ("The purpose of [10 ILCS 5/7-10] and similar provisions is to ensure an orderly procedure in which only the names of qualified persons are placed on the ballot."). In short, as already interpreted by Illinois courts, these provisions of the Election Code require the Electoral Board to remove from the ballot any candidate who falsely swears he is qualified—regardless of whether he acted willfully.

Trump wrongly contends that Objectors have not cited *a single case* where the Electoral Board or Illinois Appellate Court ruled that a candidate was not qualified for office and should be removed from the ballot despite the candidate's subjective belief that he or she is qualified. Resp. at 11. That is false. Cases abound where candidates assert their belief in their qualification for office and are nonetheless removed from the ballot, and many more exist where candidates are excluded from the ballot due to a false Statement of Candidacy without any consideration by the electoral board of whether the candidate "knowingly lied." Objectors cited several such cases in their merits brief (pp. 19-20) and provide citations to those cases and several more below:

- *Overturf v. Hopkins*, 24 SOEBGP 115[2] (on the same day as the decision in this matter, Electoral Board excluded a candidate from the ballot who subjectively believed he had adequately established residency, following a contentious and detailed evidentiary hearing that examined information about topics including his divorce, his children's schooling, and his various residences over several years)

- *Cinkus v. Vill. of Stickney Mun. Officers Electoral Bd.*, 228 Ill. 2d 200 (2008) (Illinois Supreme Court affirmed decision finding candidate unqualified and removing his name

[2] The Board Hearing Transcript for this matter can be found at R-143-62.

from ballot due to his municipal debt, despite candidate's firm belief his municipal debt did not render him unqualified)

- *Goodman v. Ward*, 241 Ill. 2d 398, 408 (2011) (Illinois Supreme Court affirmed decision to remove candidate from ballot despite his belief that he was qualified for office based on his claim that "he was not obligated to meet the residency requirement until the time of the election")

- *Gercone v. Cook Cnty. Officers Electoral Bd.*, 2022 IL App (1st) 220724-U (unpublished) (Illinois Appellate Court affirmed decision finding candidate unqualified for the office of sheriff and removing her from the ballot because she lacked the required training, despite her belief that her training was adequate)

- *Rudd v. Lake Cnty. Electoral Bd.*, 2016 IL App (2d) 160649, ¶ 21 (Illinois Appellate Court affirmed Board decision finding candidate unqualified to run as an independent and removing his name from ballot despite candidate's belief that he had properly disaffiliated from the Democratic party)

- *Schumann v. Fleming*, 261 Ill. App. 3d 1062 (1994) (Illinois Appellate Court held that candidate was not qualified to appear on ballot despite candidate's belief that he met the applicable residency requirements)

- *Ferritto v. Abernathy*, 08 SOEB GP 502 (June 9, 2008)[3] (Electoral Board removed candidate from ballot because the nominating committee that selected candidate was not properly constituted; Board did not consider or make any determination as to whether candidate knowingly lied about his qualifications for office)

- *Bednar v. Blezien*, 09 SOEB GP 510 (Dec. 2, 2009) (Electoral Board removed candidate from ballot because candidate did not satisfy the applicable residency requirements; Board did not consider or make any determination as to whether candidate knowingly lied about his qualifications for office)

Trump, on the other hand, has not identified a single instance where an Illinois court or an electoral board deemed a candidate unqualified for office but nonetheless permitted them to appear on the ballot because of their "good faith" belief in their qualification (whether as a "mistake of fact" or "mistake of law") when they signed their Statement of Candidacy. This position is completely unsupported by any statutory authority or case law and must be rejected.

[3] State Officers Electoral Board decisions are available at: https://www.elections.il.gov/ElectionOperations/SOEBDecisionSearch.aspx.

III. THE HEARING OFFICER'S FINDING THAT TRUMP ENGAGED IN INSURRECTION IN VIOLATION OF SECTION THREE IS SUPPORTED BY AMPLE ADMISSIBLE EVIDENCE IN THE RECORD.

The basic facts about what happened on January 6th are matters of public record that are not in dispute. Upon Trump's urging, an armed mob stormed the United States Capitol in an effort to thwart the constitutionally mandated process of certifying the results of the election in order to prevent the peaceful transfer of power. The violent attack of that day, Trump's statements encouraging and stoking that violence, and his refusal to call off the attack are all evident from either Trump's own statements on Twitter, indisputable news footage, or both. Thus, although the factual findings from the January 6th Report are plainly admissible under Illinois Rule of Evidence 803(8) and support the finding that Trump engaged in insurrection, Trump's claim that "[a]lmost all" of Petitioner's proof comes from that report is simply false. Resp. at 28.

Nor can Trump contest the basic facts of what happened. He purports to dispute that he acted with "specific intent," Resp. at 31, but if Trump had some intent *other* than to encourage the January 6th attackers to block the peaceful transfer of power, one would certainly expect him to testify about what his intent was. Instead, he has declined to testify, by affidavit or otherwise, in this and all other Section Three challenges. With ample opportunity to offer testimony, Trump's silence regarding his intent is telling and, indeed, damning. Notably, though Trump's counsel now calls the crimes and violence at the Capitol "deplorable," Resp. at 4, Trump himself continues to refuse to do so. To the contrary, he refers to the attackers who were imprisoned for their violent crimes on January 6th as "J6 hostages," as though they were martyrs for a noble cause. C-3740 V8 n.155 (Mot. for Summary Judgment at 30 n.155).[4] As in other challenges, Trump's refusal here to

[4] Most recently, Trump explicitly acknowledged that what happened on January 6 was an "insurrection," but bizarrely claimed that then-Speaker of the House Nancy Pelosi was the instigator. Newsweek, *Trump Accuses Nancy Pelosi Of Causing January 6 Insurrection*, YOUTUBE (Feb. 8, 2024), https://www.youtube.com/watch?v=S3IS87jWUNc (video of Trump).

testify regarding his intent in the face of the damning public record leaves the evidence of Trump's engagement in insurrection unrebutted. *Cf. Anderson v. Griswold,* 2023 CO 63, ¶ 221 (noting that the "great bulk" of the evidence establishing that Trump engaged in insurrection was "undisputed at trial"). For this reason, among others, Trump's misleading statement that there is "no basis in the existing factual record" (Resp. at 15) for the Court to resolve the factual issues raised by Petitioner's Section Three challenge is simply untrue.

Ultimately, though the factual findings of the January 6th Report are not necessary to establish that Trump engaged in insurrection, they are certainly admissible under Rule 803(8), which permits admission of "factual findings from legally authorized investigations." Thus, the Hearing Officer expressly found, notwithstanding Trump's false claim to the contrary, Resp. at 29, that the January 6th Report's findings are admissible under Rule 803(8). C-6672 V12 (Hearing Officer Report and Recommended Decision at 16). Faced with the clear language of Rule 803(8), Trump now claims—in an argument he waived by never advancing it before the Hearing Officer—that the January 6th Report is inadmissible because its findings contain expressions of opinion or the drawing of conclusions. Resp. at 29. Yet Trump notably fails to identify a *single* "opinion" or "conclusion" from the January 6th Report that Petitioners cite or rely upon in their briefs or that the Hearing Officer referenced in his own findings of fact. This is because to the extent Petitioners relied on the January 6th Report, they cited only to those *factual* findings that are clearly admissible under Rule 803(8). Trump also falsely suggests that the January 6th Report's conclusions are somehow necessary to reach a conclusion regarding Trump's intent. Resp. at 30-31. But Trump's intent is clear from his undisputed conduct and the context in which he acted. For example, as the Hearing Officer expressly found, Trump's tweet at the height of the attack regarding Vice President Mike Pence's purported lack of courage in refusing to illegally stop the certification of

the electoral result "could not possibly have had any other intended purpose besides to fan the flames [of the attack]." C-6673 V12 (Hearing Officer Report and Recommended Decision at 17). That finding does not adopt any conclusion from the January 6th Report; it is Judge Erickson's independent logical inference from undisputed facts.

Under the express language of Rule 803(8), and as Judge Erickson found, the findings of historical facts from the January 6th Report are admissible under Rule 803(8), and those facts only provide further support to the public record, which indisputably establishes that Trump engaged in insurrection under Section Three.[5] Indeed, every tribunal to reach the merits and consider these undisputed facts in a Section Three challenge has found that Trump *did* engage in insurrection in violation of Section Three. *Id.* (Hearing Officer Report and Recommended Decision at 16); C-4940-73 V10 (Maine Sec'y of State Ruling in *In re: Challenges to Primary Nomination Petition of Donald J. Trump, Republican Candidate for President of the United States* (Dec. 28, 2023));

[5] Trump also displays a basic misunderstanding of the rule against hearsay by suggesting that findings in the January 6th Report regarding statements made *to* President Trump necessarily constitute inadmissible hearsay. Resp. at 30-31. Of course, statements made to Trump are not hearsay because they are not offered for the truth of the matter asserted but for the effect on the listener—*i.e.*, Trump. *See* C 6595-648 V12 (Exhibit 1 to Petitioners' Reply in Support of Motion for Summary Judgment) (addressing each evidentiary objection, including numerous meritless hearsay objections, in detail).

Anderson, 2023 CO 63, ¶ 221.[6] There is no reason for this Court to reach a different conclusion once it corrects the Board's mistaken interpretation of Illinois law and proceeds to the merits.

CONCLUSION

For the above reasons and those stated in their brief styled as their Motion to Grant Petition for Judicial Review, Objectors request that the Court (i) grant their Petition for Judicial Review; (ii) overrule the Decision of the Electoral Board; (iii) adopt the findings of the Hearing Officer that Trump violated Section Three of the Fourteenth Amendment; (iv) order that the name of Candidate shall not be printed on the official ballot as a candidate for the Republican Nomination for the Office of the President of the United States for the March 19, 2024 General Primary Election or the November 5, 2024 General Election; and (v) stay enforcement of that order pending appeal to the Illinois Supreme Court.

Dated: February 14, 2024

PETITIONERS-OBJECTORS

By: /s/ Ed Mullen
One of their Attorneys

[6] Trump's reference to some 88 actions "similar" to this one is unsupported by any citation and also grossly misleading. *See* Resp. at 1. A large number of challenges filed in federal court were dismissed for lack of Article III standing, an irrelevant issue here. *See, e.g.*, *Castro v. Oliver*, No. 123CV00766MLGGJF, 2024 WL 150104, at *1 (D.N.M. Jan. 12, 2024) (dismissing challenge on standing grounds and citing numerous other cases brought by same *pro se* plaintiff that were dismissed on the same basis). A small number of cases brought in state proceedings have also been dismissed or denied based on specific state-law issues not applicable here. *See, e.g.*, *Growe v. Simon*, No. A23-1354, 2024 WL 464567, at *10 (Minn. Feb. 7, 2024) (dismissing challenge on state statutory grounds). And a small number of trial courts have also incorrectly suggested that challenges might be nonjusticiable under the federal political question doctrine, but no state or federal appellate court anywhere in the United States has upheld such a suggestion. *See* Pet. for Judicial Review at 43 & n.14. Not a single one of these cases found that Trump did not engage in insurrection or that Section Three does not apply to him; every case that reached the merits (including, in the alternative, Judge Erickson's own recommendation) found that he engaged in insurrection and is disqualified from the presidency.

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

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

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