

FILED
2/2/2024 8:55 PM
Tris Y. Martinez
CIRCUIT CLERK
COOK COUNTY, IL
2024COEL000013

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

STEVEN DANIEL ANDERSON, <i>et al.</i> ,)	
)	
Petitioners/Objectors,)	Case No. 2024 COEL 13
)	
v.)	Hon. Tracie R. Porter
)	
DONALD J. TRUMP, <i>et al.</i> ,)	Calendar 9
)	
Respondents.)	

**RESPONDENT/CANDIDATE DONALD J. TRUMP’S MOTION
TO STAY PENDING U.S. SUPREME COURT DECISION**

In less than a week, the U.S. Supreme Court will hear arguments about many of the exact same issues presented in this case. The Supreme Court’s decision is expected within a few weeks, and there is no dispute that it is likely to control the outcome here, as Petitioners’ counsel has admitted in similar proceedings in other states (*see infra*, at 4). This Court therefore should stay these proceedings pending resolution by the Supreme Court. That likely will resolve this case without the need for further briefing or decision. At the very least, it will allow the parties and the Court to address the issues here with the benefit of the Supreme Court’s instructions.

1. Introduction and background. Petitioners seek to remove President Trump’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. Before the State Officers Electoral Board, the Hearing Officer and General Counsel both recommended overruling Petitioners’ objection, and the eight members of the Electoral Board (four Democrats and four Republicans) voted unanimously to do so. (*See Exhibit A, 1/30/2024 Electoral Board Decision Overruling Petitioners’ Objection.*)

Now, Petitioners ask the courts to overturn that decision. In doing so, they rely most exclusively on decisions on similar claims from Colorado and Maine, while ignoring adverse decisions in numerous other states. In fact, Petitioners submitted no original evidence whatsoever to the Electoral Board, but relied exclusively on the record compiled in the Colorado case. (See Exhibit B, Candidate’s counsel’s 1/24/2024 email to the hearing officer with stipulation attached.) Instead, 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. (Ex. A, ¶ 10.G.)

However, both Colorado and Maine are currently printing Presidential ballots that *include* President Trump’s name. That is because both the Colorado courts and the Maine Secretary of State have voluntarily stayed the effects of their decisions 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) (attached as Exhibit C); *Trump v. Sec’y of State*, 2024 ME 5, ¶ 8 (Jan. 24, 2024) (the Maine courts “stayed, by agreement of all parties, the effect of the Secretary of State’s ruling pending the outcome of the U.S. Supreme Court’s decision in *Anderson*”).*

And that review is coming very soon. The U.S. Supreme Court granted President Trump’s petition for *certiorari* in the Colorado case four weeks ago, and the Supreme Court has scheduled argument in that case for this coming Thursday, February 8. See Order, *Trump v. Anderson*, No. 23-719 (U.S. Jan. 5, 2024) (available at https://www.supremecourt.gov/orders/courtorders/010524zr2_886b.pdf). If the Supreme Court continues

* In Colorado, the lead plaintiff was named Norma Anderson and the initial defendant was Colorado Secretary of State Jena Griswold. (President Trump subsequently intervened.) To minimize confusion, *Anderson* refers to the Colorado plaintiff and Petitioners or Objectors refers to the plaintiffs here.

the expedited schedule it has followed so far, its decision should be issued before the end of February.

2. The U.S. Supreme Court case. The Supreme Court’s review is very likely to authoritatively decide the 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) (available at https://www.supremecourt.gov/DocketPDF/23/23-719/294892/20240104135300932_20240103_Trump_v_Anderson_Cert_Petition%20FINAL.pdf); 1/5/2024 Order (granting petition in full). In this case, Petitioners ask the Illinois courts to order exactly the same thing.

The issues before the Supreme Court include the same ones that President Trump raised before the Electoral Board in this case, and those issues self-evidently apply to this litigation. 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 dispositive of this case. By contrast, the Supreme Court is reviewing only one question specific to the Colorado decision. *Id.* at 29-31.

Indeed, when Petitioners’ counsel have filed similar challenges to President Trump’s ballot access in other States, they have reassured the appellate courts there that a U.S. Supreme Court decision on President Trump’s eligibility would “resolve the issue” nationwide, Pet’rs Reply Br. at 8, *Grove 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 D (select pages from briefs) (highlighting added).)

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 dismissal on state grounds.

3. The Court should enter a brief stay to allow the U.S. Supreme Court to decide. These circumstances strongly suggest staying this case pending the Supreme Court’s decision. “When 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) (attached as Exhibit E). 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 Petitioners are not parties to the U.S. Supreme Court case does not change the practical realities here. Petitioners are not asserting any personal right to some particular piece of property. They are asserting the same legal theory about President Trump’s eligibility that their counsel have presented in numerous other States, and that is currently being presented in the U.S. Supreme Court. The Supreme Court decision is likely to resolve their claims in every practical sense.

In short—a stay is strongly supported by the interests of judicial efficiency, convenience of the parties, the orderly administration of justice, and issuing clear instructions for Illinois election officials. The Court therefore should stay proceedings until such date as the Petitioners notify it the Supreme Court has issued its decision in *Anderson*.

4. This Court has authority to issue a stay. To be sure, 10 ILCS 5/10-10.1(a) instructs the Court to hold a hearing on the Petition within 30 days of its filing, which would be February 29, 2024. As we explain in Candidate’s opposition to Petitioners’ motion to expedite, the U.S. Supreme Court likely will rule before then, so a temporary stay

in this case is compatible with Section 10-10.1(a)'s statutory instruction. But even if a stay were to extend slightly beyond that 30-day window, neither this statute nor any other prevents a court from staying proceedings because this court possesses "[t]he inherent power of a trial court to control the disposition of the cases on its docket." *Kaden v. Pucinski*, 263 Ill. App. 3d 611, 615 (1st Dist. 1994).

Indeed, even if the statute *did* purport to prohibit a stay, that would be an invalid encroachment on judicial power. As the Illinois Supreme Court has explained, the General Assembly "has power to enact laws governing judicial practice only where such laws do not infringe upon the inherent powers of the judiciary.... Consequently, we hold, to the extent that it restricts the inherent power of the court to issue a stay where appropriate, [a statute] is unconstitutional." *Ardt v. Illinois Dep't of Prof'l Regul.*, 154 Ill. 2d 138, 151 (1992). *Ardt* involved a stay of judgment, and its rationale applies equally to a stay of proceedings like the one President Trump seeks here. The *Ardt* court's premise was that "a court has the inherent power to issue temporary restraining orders or preliminary injunctions," that this power "can neither be taken away nor abridged by the legislature," and that "[a] stay" of judgment "is a type of injunction." *Id.* at 716-17. Consistent with that, "established Illinois law" treats a stay of proceedings "as ... a preliminary injunction." *Blumenthal v. Brewer*, 2016 IL 118781, ¶ 39. Thus, a stay of proceedings comes within the same inherent authority of the courts discussed in *Ardt*. For that very reason, the Appellate Court has specifically interpreted *Ardt* to mean "that trial courts have the inherent authority to stay any proceedings before them," even in the face of purported statutory restrictions. *Midkiff v. Gingrich*, 355 Ill. App. 3d 857, 864 (5th Dist. 2005). Indeed, the Appellate Court has expressly stated (albeit non-precedentially) that "no statute can strip or limit the circuit

court’s authority to impose [such] a stay.” *Khan v. Khan*, 2023 IL App (1st) 230840-U, ¶ 20 (Ex. E).

Therefore, for both practical and legal reasons, the Court can stay these proceedings pending a Supreme Court decision without the need to schedule a hearing date. In the alternative, if this Court wishes simply to calendar a hearing for February 29—thirty days after the filing of the Petition—the Court could stay only the briefing due dates in this case. If the Supreme Court has not rendered its decision by February 29, the Court could use the hearing to discuss how the case may best proceed, and whether briefs should be filed at that point.

5. Conclusion. The Court should enter an order staying all proceedings in this case and instructing Petitioners to request any further proceedings they desire after the Supreme Court decides *Anderson*. In the alternative, the Court should enter an order staying all proceedings in this case except for a hearing a February 29.

Dated: February 2, 2024

Respectfully submitted,

RESPONDENT/CANDIDATE DONALD J. TRUMP

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

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STATE OF ILLINOIS)
) ss
COUNTY OF COOK)

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

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

DECISION

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

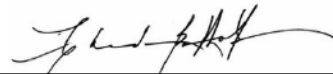
1. The State Board of Elections has been duly and legally constituted as the State Officers Electoral Board pursuant to Sections 10-9 and 10-10 of the Election Code (10 ILCS 5/10-9 and 5/10-10) for the purpose of hearing and passing upon the objections filed in this matter and as such, has jurisdiction in this matter, except as specifically noted in Paragraph 10 below.
2. On January 4, 2024, Steven Daniel Anderson, Charles J. Holley, Jack L. Hickman, Ralph E. Cintron, and Darryl P. Baker, timely filed an objection to the nomination papers of Donald J. Trump, Republican Party candidate for the office of President of the United States.
3. A call for the hearing on said objection was duly issued and was served upon the Members of the Board, the Objectors, and the Candidate by registered mail as provided by statute unless waived.

4. On January 17, 2024, the State Officers Electoral Board voted to adopt the Rules of Procedure, and a hearing officer was assigned to consider arguments and evidence in this matter.
5. On January 19, 2024, Candidate filed a Motion to Dismiss Objectors' Petition ("Motion to Dismiss"). On January 23, 2024, Objectors filed a Response to Candidate's Motion to Dismiss Objectors' Petition. On January 25, 2024, Candidate filed a Reply in Support of his Motion to Dismiss.
6. On January 19, 2024, Objectors filed a Motion to Grant Objectors' Petition or, in the Alternative, for Summary Judgment ("Motion for Summary Judgment"). On January 23, 2024, Candidate filed Candidate's Opposition to Objectors' Motion for Summary Judgment. On January 25, 2024, Objectors filed Objectors' Reply in Support of their Motion to Grant Objectors' Petition or, in the Alternative, for Summary Judgment.
7. On January 24, 2024, a Stipulated Order Regarding Trial Transcripts and Exhibits ("Stipulated Order") was entered. Under this Stipulated Order, the parties stipulated to the authenticity of certain exhibits admitted in *Anderson v. Griswold*, District Court, City and County of Denver, No. 23CV32577, as well as transcripts in that proceeding.
8. On January 26, 2024, a hearing was held before the Hearing Officer. During the hearing, the parties utilized certain pieces of evidence encompassed by the Stipulated Order and made oral arguments to the Hearing Officer.
9. The Board's appointed Hearing Officer issued a recommended decision in this matter after reviewing all matters in the record, including arguments and/or evidence tendered by the parties.
10. Upon consideration of this matter, the Board adopts the findings of fact, conclusions of law, and recommendations of the Hearing Officer, except as set forth below, and adopts the conclusions of law and recommendations of the General Counsel and finds that:
 - A. Factual issues remain that preclude the Board from granting Objectors' Motion for Summary Judgment.
 - B. Paragraph 1 of this Decision is incorporated by reference.

- C. Objectors have not met their burden of proving by a preponderance of the evidence that Candidate's Statement of Candidacy is falsely sworn in violation of Section 7-10 of the Election Code, 10 ILCS 5/7-10, as alleged by their objection petition.
- D. In the alternative, and to the extent the Election Code authorizes the Board to consider whether Section 3 of the 14th Amendment to the U.S. Constitution operates to bar Candidate from the ballot in Illinois, under the Illinois Supreme Court's decisions in *Goodman v. Ward*, 241 Ill.2d 398 (2011), and *Delgado v. Board of Election Commissioners*, 224 Ill.2d 482 (2007), the Board lacks jurisdiction to perform the constitutional analysis necessary to render that decision.
- E. Candidate's Motion to Dismiss should be granted as to Candidate's argument that the Board lacks jurisdiction to decide whether Section 3 of the 14th Amendment to the U.S. Constitution operates to bar Candidate from the ballot in Illinois. The remaining grounds for dismissal argued in the Motion to Dismiss were not reached by the Board and are now moot.
- F. Candidate's nomination papers, including his Statement of Candidacy, are valid.
- G. No factual determinations were made regarding the events of January 6, 2021.

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

DATED: 01/30/2024



Casandra B. Watson, Chair

CERTIFICATE OF SERVICE

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

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

Caryn C. Lederer
clederer@hsplegal.com

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- 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:

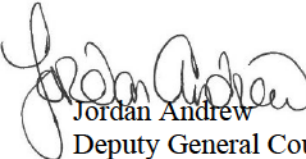
- Via email to the address(es) indicated below:

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Jordan Andrew

Deputy General Counsel
Illinois State Board of Elections

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

Judge Erickson,



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

Adam P. Merrill
Watershed Law LLC
312.368.5932

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

Dear Counsel,

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

 [Objectors' Exhibit List & Documents.pdf](#)
 [Colorado Trial Video Exhibits](#)

Please let us know if you have any questions.

Thank you,
Caryn

Exhibit B



HSPRD

Caryn C. Lederer, *Shareholder*

HUGHES SOCOL PIERS RESNICK & DYM, LTD.

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Chicago, IL 60602

Dir: **312.604.2622** Fax: **312.604.2623**

Pronouns: she/her/hers

[Click to send me files.](#)

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

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

**STIPULATED ORDER REGARDING TRIAL TRANSCRIPTS
AND EXHIBITS FROM THE COLORADO ACTION**

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

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

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

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

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

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

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

Dated: January 24, 2024

SO STIPULATED:

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

DONALD J. TRUMP

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

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

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ENTERED:

Hearing Officer Clark Erickson

STATE OF MAINE
SECRETARY OF STATE

In re: Challenges of Kimberley Rosen,
Thomas Saviello, and Ethan Strimling; Paul
Gordon; and Mary Ann Royal to Primary
Nomination Petition of Donald J. Trump,
Republican Candidate for President of the
United States

**RULING OF THE SECRETARY
OF STATE**

On December 15, 2023, I held a hearing under 21-A M.R.S. § 337 on three challenges to the nomination petition of Donald J. Trump, for the Republican primary for President of the United States. The first two challenges—one filed by Mary Ann Royal (the “Royal Challenge”) and one (the “Rosen Challenge”) filed by Kimberley Rosen, Thomas Saviello, and Ethan Strimling (the “Rosen Challengers”)—contest Mr. Trump’s qualification for office under Section Three of the Fourteenth Amendment to the U.S. Constitution. The third challenge, filed by Paul Gordon (the “Gordon Challenge”), contests Mr. Trump’s qualification under the Twenty-Second Amendment. For the reasons set forth below, I conclude that Mr. Trump’s primary petition is invalid. Specifically, I find that the declaration on his candidate consent form is false because he is not qualified to hold the office of the President under Section Three of the Fourteenth Amendment.

Procedural History

The Secretary of State’s Office received three challenges to the nomination petition of Donald J. Trump, each filed under 21-A M.R.S. §§ 336 and 337. The deadline for filing those challenges was 5:00 pm on Friday, December 8, 2023. *See* 21-A M.R.S. § 337(2)(A). Each challenge was timely.

In the first challenge, Mary Ann Royal, a registered voter of Winterport, alleged that Mr. Trump violated his oath of office because he engaged in insurrection or rebellion against the United

States, or has given aid or comfort to the enemies thereof. While Ms. Royal did not explicitly identify Section Three of the Fourteenth Amendment as the basis of her challenge, it clearly underpins the disqualification argument she set forth.

In the second challenge, Attorney Paul Gordon, a registered voter of Portland, argued that because Mr. Trump has expressly stated that he won the 2020 election, he is barred from office under the Twenty-Second Amendment to the U.S. Constitution, which sets a two-term limit on Presidents.

In the third challenge, Kimberley Rosen, a registered voter of Bucksport and former Republican State Senator; Thomas Saviello, a registered voter of Wilton and former Republican State Senator; and Ethan Strimling, a registered voter of Portland and former Democratic State Senator, collectively contended that Mr. Trump is barred from office because he engaged in insurrection as defined by Section Three of the Fourteenth Amendment.

On Monday, December 11, 2023, I issued a Notice of Hearing to all parties, indicating that a consolidated hearing would be held at 10:00 am on December 15, 2023, in Augusta. The Notice informed the parties that the hearing would be conducted in accordance with 21-A M.R.S. § 337 and the Maine Administrative Procedure Act (“APA”). The parties exchanged exhibit and witness lists during the afternoon of December 13, 2023, and the Secretary of State’s Office received timely applications to intervene from the Citizens for Responsibility and Ethics in Washington (“CREW”); John Fitzgerald of Sedgwick; State Representative Mike Soboleski; Professor Mark A. Graber; and Michael Lake of Belgrade.

At the start of the hearing, I denied the intervention petitions of Mr. Fitzgerald and Mr. Lake because they were not present for the hearing. However, without objection from the parties, I ultimately accepted their submissions as amicus briefs. I also granted, without timely objection,

the intervention requests of CREW and Representative Soboleski, who were present for the hearing, and the intervention request of Professor Graber, who intervened solely for the purpose of submitting an amicus brief.

At the start of the hearing, I noted for the parties that the following were already part of the administrative record:

- Mr. Trump's original petition
- Mr. Trump's candidate consent form, dated October 20, 2023
- The challenge of Mary Anne Royal, dated December 6, 2023
- The challenge of Paul Gordon, dated December 8, 2023
- The challenge of Kimberley Rosen, Thomas Saviello, and Ethan Strimling, dated December 8, 2023
- The Notice of Hearing sent by email and U.S. mail to the challengers and the candidate, dated December 11, 2023

Without objection from the parties, I admitted the Rosen Challengers' first five exhibits. They consist of Mr. Trump's signed consent form (identical to Mr. Trump's first and only exhibit¹); the Rosen Challenge; and voter registration records for each Rosen challenger.² I provisionally admitted the Rosen Challengers' remaining exhibits, exhibits 6 through 112,³ at the hearing pending resolution of any objections. I also provisionally admitted Attorney Gordon's three exhibits, all articles pertaining to Mr. Trump's claims regarding the 2020 election, as well as

¹ Mr. Trump attached additional exhibits to a brief he submitted after the hearing, which I have addressed below.

² No party has challenged the voter registration status of any challenger, and I therefore find that each challenge complies with 21-A M.R.S. § 337(2)(A).

³ Exhibit 111 is a file folder containing a series of additional exhibits. For ease of reference, I have renumbered those exhibits as Rosen Ex. 111-1 through Ex. 111-56.

Representative Soboleski's single exhibit, a YouTube video concerning Mr. Trump's role in the events of January 6, 2021.

At the hearing, Ms. Royal and Attorney Gordon testified under oath. The Rosen Challengers called one witness, Professor Gerard M. Magliocca, a law professor at the Indiana University School of Law. Mr. Trump called no witnesses. I also heard argument on the scope of my authority under state and federal law.

Without objection of the parties, I set a deadline of 5:00 pm on Monday, December 18, for articulation and briefing of objections to any provisionally admitted exhibits, and I therefore held the hearing record open. Mr. Trump timely filed a brief articulating objections, and the Rosen Challengers timely responded by the deadline I set at the hearing: 5:00 pm on Tuesday, December 19. No other party filed objections.

I likewise permitted the parties to submit final legal briefs regarding the merits of the challenges by Tuesday, December 19, at 5:00 pm. The Rosen Challengers and Mr. Trump chose to waive closing statements at the hearing, deferring instead to their legal briefs. I received timely closing briefs from the Rosen Challengers and Mr. Trump.

Following the Colorado Supreme Court's decision in *Anderson v. Griswold*, Case No. 23SA300, 2023 CO 63, 2023 WL 8770111 (Dec. 19, 2023), I invited additional briefing from the parties regarding the significance of that decision, if any, to this case by 8:00 pm on Thursday, December 21, 2023. The Rosen Challengers and Mr. Trump filed briefs by the deadline.

On Wednesday, December 27, sixteen days after he learned that I would preside over the hearing in this matter and shortly before issuance of my decision, Mr. Trump filed a Motion requesting that I disqualify myself due to alleged bias. That Motion is denied as untimely. *See* 5 M.R.S. § 9063(1) (requiring "timely charge of bias"). Moreover, had the Motion been timely, I

would have determined that I could preside over this matter impartially and without bias. My decision is based exclusively on the record before me, and it has in no way been influenced by my political affiliation or personal views about the events of January 6, 2021.

Legal Requirements

Under Section 443 of Title 21-A, the Secretary of State is responsible for preparing ballots for a presidential primary election. The Secretary must “determine if a petition meets the requirements of,” as relevant here, Section 336 of Title 21-A, “subject to challenge and appeal under section 337.” 21-A M.R.S. § 443.

Section 336 requires that a candidate consent form be filed with the primary petition or at any earlier time during which signatures may be collected. *Id.* § 336. That form, which is prepared by the Secretary of State, “must include a list of the statutory and constitutional requirements of the office sought by the candidate.” *Id.* § 336(1). The submitted form must also contain a “declaration of the candidate’s place of residence and party designation and a statement that the candidate meets the qualifications of the office the candidate seeks, which the candidate must verify by oath or affirmation . . . that the declaration is true.” *Id.* § 336(3).

“If, pursuant to the challenge procedures in section 337, any part of the declaration is found to be false by the Secretary of State, the consent and the primary petition are void.” *Id.* To prevail on a challenge to a candidate’s nomination petition, “the challenger has the burden of providing sufficient evidence to invalidate the petitions or any names upon the petitions.” *Id.* § 337(2)(B).

Findings of Fact and Conclusions of Law

I have reviewed the exhibits submitted in this case. I also have carefully considered the arguments proffered by the parties. I take my role in this proceeding extremely seriously, given

both the stakes and the novel constitutional questions at issue. For the reasons that follow, I conclude that Mr. Trump's primary petition is invalid.

A. Most of the Evidence Submitted by the Rosen Challengers, and Objected to by Mr. Trump, Is Admissible Under 5 M.R.S. § 9057.

Title 5, Section 9057 sets forth the governing standard for admissibility of evidence in Section 337 proceedings. It is more permissive than the Maine Rules of Evidence, *see* 21-A M.R.S. § 9057(1), and directs that “[e]vidence shall be admitted if it is the kind of evidence upon which reasonable persons are accustomed to rely in the conduct of serious affairs,” *id.* § 9057(2). I “may,” though by no means must, “exclude irrelevant or unduly repetitious evidence.” *Id.* This “relaxed evidentiary standard,” *State v. Renfro*, 2017 ME 49, ¶ 10, 157 A.3d 775, affords me substantial latitude to decide what evidence to admit, though it generally favors admissibility.

Mr. Trump first makes a blanket objection, on Due Process grounds, to the fact that he was unable to review the Rosen Challengers' exhibits before the hearing. As discussed on the record, due to a technical difficulty suffered by the Rosen Challengers, a Dropbox link provided to the parties before the hearing and containing many of the Rosen Exhibits was inoperative. With assistance from my office, copies of the evidence were provided to counsel during the hearing.

This delay does not amount to a Due Process violation. There is no requirement under the APA that evidence be shared prior to an administrative hearing. The APA mandates that parties be permitted to “present evidence and arguments on all issues, and at any hearing to call and examine witnesses and to make oral cross-examination of any person present and testifying.” 5 M.R.S. § 9056(2). Mr. Trump was afforded those opportunities at the hearing.

Further, at my instruction, the Rosen Challengers circulated an exhibit list before 5:00 pm on Wednesday, December 13, that identified Rosen Exhibits 1 through 87. Additional exhibits that the Rosen Challengers entered into evidence at the hearing were identified by Intervenor

CREW by email during the afternoon of Thursday, December 14. Therefore, by early evening on December 14, Mr. Trump was fully aware of all of the exhibits that would be offered against him at the hearing.

This was ample notice, in part because the majority of the evidence that the Rosen Challengers offered at the hearing had already been presented and litigated in *Anderson v. Griswold*. Scott Gessler, Mr. Trump's lead counsel here, is lead counsel for Mr. Trump in that case, too. *See generally Anderson*, 2023 CO 63. I also afforded all parties three additional days after the hearing to organize and file their objections to any exhibits, minimizing any disadvantage that may have resulted from the delay in the exhibits being shared. Mr. Trump's Due Process objection to the Rosen Challengers' exhibits is therefore overruled.

The notice the Rosen Challengers provided stands in stark contrast to how Mr. Trump has handled 25 exhibits,⁴ never before referenced in this proceeding, that he cites in footnotes to his evidentiary objections brief. Mr. Trump has not requested that I enter these exhibits into evidence, nor would it be fair to do so over an objection three days after the hearing. Mr. Trump submitted an exhibit list prior to the hearing containing only one exhibit, and he could have supplemented the record with additional exhibits at the hearing. He chose not to do so, and I accordingly sustain the objection of the Rosen Challengers, as articulated in their response brief, to those exhibits. They will not be admitted.⁵

⁴ The exhibits are numbered 26-51. Mr. Trump has never identified exhibits 1-25.

⁵ Mr. Trump also attached a single exhibit to his closing brief, namely a report of the Inspector General of the U.S. Department of Defense on the events of January 6, 2021. Mr. Trump does not cite the exhibit in his brief, nor has its admission been objected to by the Rosen Challengers. I find that the exhibit is relevant and reliable and, without objection, will admit it into evidence as Trump Exhibit 2.

Mr. Trump also makes a blanket challenge to the relevance of the Rosen Challengers' evidence, claiming that none pertains to the truth or falsity of Mr. Trump's declaration under Section 336(3). As discussed further below, I conclude that the evidence is relevant. *See* 5 M.R.S. § 9057(2). I accordingly overrule the objection.

The meat of Mr. Trump's objection brief is focused on the Rosen Challengers' Exhibit 7, the Final Report of the Select Committee to Investigate the January 6 Attack on the United States Capitol (the "January 6 Report"). Mr. Trump's objections to the admissibility of the report are overruled.

As an initial matter, Mr. Trump's objections hinge largely on rules of evidence that do not govern this proceeding. The fact that a report includes hearsay, contains irrelevant facts, or lacks foundation does not automatically render it inadmissible under the APA. Rather, the central question is whether, under Section 9057(2), it is the type of evidence on which reasonable persons are accustomed to rely in serious affairs.

I rule that that the January 6 Report meets this standard. Under the Federal Rules of Evidence, government investigative reports, including reports of Congress, are presumed admissible, with the party challenging admissibility bearing the burden of showing the report is untrustworthy. *See Beech Aircraft Corp. v. Rainey*, 488 U.S. 153, 167 (1988); *Barry v. Trustees of Int'l Ass'n Full-Time Salaried Officers & Emps. of Outside Loc. Unions & Dist. Counsel's (Iron Workers) Pension Plan*, 467 F. Supp. 2d 91, 96 (D.D.C. 2006). Trustworthiness is assessed according to a non-exhaustive list of four factors: "(1) the timeliness of the investigation; (2) the special skill or expertise of the investigating official; (3) whether a hearing was held and the level at which it was conducted; and (4) possible motivation problems." *Barry*, 467 F. Supp. 2d at 97; *see also Beech Aircraft*, 488 U.S. at 167 n.11. Similarly, in Maine, "factual findings from a legally

authorized investigation” are admissible under the Maine Rules of Evidence unless “sources of information or other circumstances indicate lack of trustworthiness. *See* Me. R. Evid. 803(8)(a).

I am not bound by either the federal or Maine rules of evidence because this is an APA proceeding. However, the four factors outlined above provide a useful framework for assessing the trustworthiness of the January 6 Report. The first three factors plainly counsel in favor of admissibility. Mr. Trump’s objections focus primarily on the fourth factor, namely the motivation of the authors. But all Congressional reports are to some degree political, and many of the facts contained in the Report are corroborated by other documentary and video evidence in the record. I accordingly see no reason to exclude the January 6 Report in its entirety under 5 M.R.S. § 9057(2). That said, Mr. Trump’s concerns are valid insofar as the Report reflects a curated view of the evidence and contains characterizations of that evidence. These limitations influence the weight that I assign to the Report.

Mr. Trump also objects to the records and evidence that the Rosen Challengers seek to admit from the proceedings in *Anderson*.⁶ Mr. Trump’s reliance on *Cabral v. L’Hereux*, 2017 ME 50, 157 A.3d 795, to support his objection is misplaced. In that case, the Law Court instructed that courts cannot of their own accord take *judicial notice* of testimony and exhibits from separate proceedings. *See id.*, 2017 ME 50, ¶ 11, 157 A.3d 795. But that is not what the Rosen Challengers have requested here. They have sought to admit each and every exhibit individually, and have provided a copy of each to me and to the parties.⁷ The fact that the exhibits are associated with *Anderson* is, in other words, beside the point, as it is the evidence itself that the Rosen Challengers

⁶ Mr. Trump likewise objects to inclusion of the final order issued in *New Mexico ex rel. White v. Griffin*. *See* Rosen Ex. 36. The objection is overruled. I may properly consider the legal analysis of a court on relevant legal issues to the extent the analysis is persuasive.

⁷ Moreover, as noted above, testimony included in those exhibits was subject to cross-examination by Mr. Trump during the *Anderson* proceedings.

have identified as exhibits. That is sufficient under 5 M.R.S. § 9057(2), and the objection is overruled.⁸

Mr. Trump also levies a number of individual objections to particular exhibits proffered by the Rosen Challengers.⁹ I sustain these objections in part. Specifically, while I am not obligated to exclude irrelevant evidence, *see* 5 M.R.S. § 9057(2), I conclude that Rosen Exhibits 38-48, videos of speeches, town halls, and conferences from 2015-2019 and 2023, are too remote in time from the events of January 6, 2021, to be relevant, and I therefore will exclude them. I likewise sustain Mr. Trump's objection as to Rosen Exhibits 78 and 79—my predecessor's November 2017 press release, and letter of August 2018—for the same reason.

Otherwise, Mr. Trump's objections are overruled. Insofar as he has concerns about authenticity, foundation, completeness, hearsay, or improper legal argument, they do not render the challenged exhibits automatically inadmissible under the APA, and I find them reliable given they themselves contain sufficient indicia of reliability and are corroborated by other evidence in the record. I will consider Mr. Trump's concerns when assigning weight to these exhibits.¹⁰

In sum, I sustain Mr. Trump's objections as to Rosen Exhibits 38-48 and 78-79. I likewise sustain the Rosen Challengers' objection to the exhibits attached to Mr. Trump's evidentiary objections brief. Otherwise, Rosen Exhibits 6-112, which I admitted provisionally at the hearing,

⁸ Mr. Trump also makes a puzzling *res judicata* argument, suggesting that because he prevailed in a lower Colorado court, the Rosen Challengers cannot introduce evidence from that case against him. Putting aside the lack of any legal basis for this argument, I will assume that Mr. Trump no longer wishes to press it given the subsequent decision of the Colorado Supreme Court.

⁹ The First Amendment argument that Mr. Trump included in his objections brief, and which has no bearing on the admissibility of evidence, is addressed in Part D.4, below.

¹⁰ As to the legal briefs objected to—e.g., Rosen Exhibit 81, the amicus brief of Professor Magliocca in *Grove v. Simon*—I agree that they are not evidence of any fact and I admit them solely to consider their analysis of the applicable law.

are admitted. All other exhibits that were provisionally admitted at the hearing are now admitted given no party filed an objection to their admission. With this ruling, the hearing record is now closed.

B. As a General Matter, the Secretary of State Has Authority to Keep Unqualified Candidates Off the Primary Election Ballot.

As a general matter, states have inherent authority over their ballots. Consistent with state authority to regulate the “Times, Places and Manner” of congressional elections under Article I, Section 4 of the U.S. Constitution, and to manage the selection process for presidential electors, *see* U.S. Const. art. II, § 1 (“Each State shall appoint, in such Manner as the Legislature thereof may direct, a Number of Electors”); *McPherson v. Blacker*, 146 U.S. 1, 35 (1892 (“[T]he appointment and mode of appointment of electors belong exclusively to the states under the constitution of the United States.”), “the States have evolved comprehensive . . . election codes regulating [the] selection and qualification of candidates.” *Storer v. Brown*, 415 U.S. 724, 730 (1974).

The inevitable result of States managing their own elections is that each has different requirements and procedures for ballot access, even with respect to presidential candidates. President Biden, for example, will not appear on New Hampshire’s 2024 Democratic presidential primary ballot, even though he has qualified for Maine’s 2024 Democratic presidential primary ballot. At the same time, Mr. Chris Christie will not appear on the Maine’s 2024 Republican presidential primary ballot, even though he will appear on New Hampshire’s 2024 Republican presidential primary ballot.

Similarly, while state legislatures cannot create new qualifications for holding presidential office, they can choose to establish a process to exclude candidates who fail to meet the qualifications set forth in the U.S. Constitution. *See, e.g., Anderson*, 2023 CO 63, ¶¶ 53-56. As

now-Justice Gorsuch observed in *Hassan v. Colorado*, 495 F. App'x 947 (10th Cir. 2012), “a state’s legitimate interest in protecting the integrity and practical functioning of the political process permits it to exclude from the ballot candidates who are constitutionally prohibited from assuming office.” *Id.* at 948; *see also Lindsay v. Bowen*, 750 F.3d 1061, 1065 (9th Cir. 2022) (excluding age-ineligible candidate for president because “a state has an interest, if not a duty, to protect the integrity of its political processes from frivolous or fraudulent candidacies” (quoting *Bullock v. Carter*, 405 U.S. 134, 145 (1972))); *Socialist Workers Party of Ill v. Ogilvie*, 357 F. Supp. 109, 113 (N.D. Ill. 1972) (holding state was not obligated to place presidential candidate on the ballot who did not meet age requirement).

It is that authority that the Maine Legislature has delegated to me. As the Rosen Challengers note, under Section 443 of Title 21-A, the Secretary of State is statutorily obligated to determine if a nomination petition meets the requirements of Section 336. *See, e.g., Christie v. Bellows*, No. AP-23-42 (Me. Super. Ct., Ken. Cnty., Dec. 21, 2023) (affirming Secretary’s decision to reject candidate petition of presidential candidate for lacking sufficient certified signatures). Section 336, in turn, requires all candidates, including presidential candidates, to submit a written consent containing a declaration of residency and party designation, and a statement that the candidate “meets the qualifications of the office the candidate seeks.” 21-A M.R.S. § 336(3). Section 336 also renders any primary petition void where I find, pursuant to a challenge like those filed in this case, that “any part of the declaration is . . . false.” *Id.*

Maine’s election laws thus contemplate that I review the accuracy of a candidate’s declaration that they meet the qualifications of the office they seek. I therefore disagree with Mr. Trump’s contention that only Congress can adjudicate the qualifications of a Presidential candidate. The State’s authority, and that delegated by the Legislature, require me to limit access

to the primary ballot to qualified candidates *See, e.g., Christie*, No. AP-23-42; *Carey v. Sec’y of State*, No. CV-2022-09 (Me. Super. Ct., Oxford Cnty., May 10, 2022) (affirming decision to exclude candidate for District Attorney from primary ballot because “Maine election law required that [the candidate] certify . . . that he was qualified to serve as a District attorney” but he failed to so certify because by statute he was not qualified).

Two further aspects of my authority to exclude unqualified candidates from the primary ballot warrant mention. *First*, that authority is not limited to the specific qualifications set forth on a given year’s candidate consent form. While Section 336 requires that the consent form list the statutory and constitutional requirements of the office sought by the candidate, 21-A M.R.S. § 336(1), the declaration refers not to the form, but to the qualifications: the candidate must “verify by oath or affirmation” that they “meet the qualifications of the office the candidate seeks.” 21-A M.R.S. § 336(3); *accord Carey*, No. CV-2022-09. The statute reflects that the Legislature’s principal concern was not whether a candidate is truthful on the form, but more fundamentally whether the candidate is *qualified for office*.

For this reason, the declaration on the 2024 consent form, which asks candidates to confirm that they “meet the qualifications to hold this office as listed above,” Rosen Ex. 1 (signed consent), is not, as Mr. Trump claims, limited to the qualifications listed on that form. The word “as” in the declaration is significant. Absent the word “as,” the phrase “meet the qualifications to hold this office listed above” would limit the scope of the declaration as Mr. Trump claims. Its presence, however, underscores that the qualifications are listed on the consent form as a convenience—the qualifications “as listed above”—consistent with my obligation to print them under Section 336(1).

Any alternative interpretation would suggest that I can pick and choose which qualifications are applicable in designing a candidate consent form, which I straightforwardly

cannot do. *See Doane v. Dep't of Health & Hum. Servs.*, 2017 ME 193, ¶ 13, 170 A.3d 269 (“If a regulation conflicts with an existing statute, the statute controls.”). The form, for example, omits reference to the Twenty-Second Amendment prohibition of serving as President for more than two terms, but that qualification plainly still applies. Similarly, if my office did not list the Article II qualifications on the form, I would not consequently be required to place a teenager on the presidential primary ballot. The declaration is instead applicable to *all* qualifications of the office sought, and there is nothing unfair about holding a candidate to them, as Section 336(3) contemplates.

Second, the fact that Section 336(3) separately refers to a “declaration of the candidate’s place of residence and party designation and a statement that the candidate meets the qualifications of the office the candidate seeks” is of no moment. Counsel for Mr. Trump—who, before his co-counsel said the opposite, admitted at the hearing that the declaration and statement were legally indistinguishable—points to no aspect of the legislative history of Section 336 suggesting that the distinction is meaningful. Section 336(3) requires that both the declaration and statement be verified by oath or affirmation, and Section 355, which incorporates analogous requirements for nomination petitions of non-party candidates, collapses the distinction entirely and directly requires a declaration “that the candidate meets the qualifications of the office the candidate seeks.” 21-A M.R.S. § 355(3).

That said, even if there were a distinction between the declaration and statement identified in Section 336(3), that would not meaningfully limit my obligation to keep unqualified candidates off the ballot. The Rosen Challenge, for example, cites both Section 336 and Section 337. While Section 336(3) addresses the declaration—and directs that the petition is invalid should I find that declaration false in any way—Section 337(2) authorizes challenges to the validity of primary

petitions more broadly, underscoring my authority as Secretary of State to keep clearly unqualified candidates off the primary ballot. *Cf. Arsenault v. Sec'y of State*, 2006 ME 11, 905 A.2d 285 (reviewing whether Secretary properly interpreted relevant statute in disqualifying replacement candidate without questioning Secretary's authority to disqualify unqualified candidates).

C. Mr. Trump's False Claims Regarding the 2020 Election Do Not Disqualify Him Under the Twenty-Second Amendment.

The Twenty-Second Amendment provides that “[n]o person shall be elected to the office of the President more than twice.” U.S. Const. amend. XXII, § 1. Attorney Gordon claims that given Mr. Trump won the 2016 election, and has repeatedly claimed to have won the 2020 election, he is disqualified. *See* Gordon Challenge 2 (“When a candidate makes a factual representation that disqualifies him from the office he seeks, he cannot appear on the ballot.”); *see also* Gordon Exs. 1-3 (newspaper articles quoting Mr. Trump making these claims).

Attorney Gordon cites no authority for his interpretation of the Twenty-Second Amendment, which is contrary to the Amendment's plain meaning. Application of the term limit turns on whether an individual has *actually been elected President twice*, not on beliefs or assertions about that fact. *Cf. Nader v. Butz*, 398 F. Supp. 390, 397 (D.D.C. 1975) (“Having been elected to [the presidency] twice, [Richard Nixon] is precluded from serving again.”). That Mr. Trump has falsely asserted that he won the 2020 election is no more disqualifying than it would be for him to proclaim that he is not a United States citizen. In other words, political grandstanding does not trigger the bar of the Twenty-Second Amendment.

When questioned at the hearing, Attorney Gordon admitted that, as a factual matter, Mr. Trump did not win the 2020 election. In fact, there appears to be no dispute between any of the parties that President Biden prevailed over Mr. Trump. Therefore, given Mr. Trump has only won

a single election for President, he is not barred from being elected to the same office again under the Twenty-Second Amendment.

D. Mr. Trump Engaged in Insurrection Against the United States Such that He Is Not Qualified to Hold the Office of President.

1. Section 337 is an appropriate process by which to adjudicate a candidate qualification challenge based on Section Three of the Fourteenth Amendment.

The exercise of state authority to keep unqualified candidates off the ballot is contingent on the state creating a process by which to do so. *See Anderson*, 2023 CO 63, ¶¶ 53-56. Sections 336, 337, and 443 of Title 21-A describe that process in Maine. There is no other mechanism of which I am aware by which a Maine voter can challenge the qualifications of a candidate for office. It is the means by which I am authorized, and indeed duty-bound under the terms of the oath of office to which I swore, *see Me. Const. art. IX, § 1*, to enforce Maine's election laws.

The question of whether a petition is valid under Title 21-A is typically straightforward. If there is a dispute about the validity of signatures, or a candidate is underage or not a resident of the correct jurisdiction, the taking of extensive evidence may be unnecessary. Discharge of my duty in such cases requires little interpretation of governing law or the corresponding record. Rather, I am tasked with determining whether a statutory or constitutional requirement is met according to well-established standards.

As the Rosen Challengers have pointed out, however, my role in determining whether a candidate has qualified for the ballot is not always so simple. The Secretary of State has, for example, wrestled with complex evidentiary records regarding potential fraud of petition circulators. *See Boyer v. Dep't of the Sec'y of State*, Docket No. AP-18-20 (Me. Super., Ken. Cty., Apr. 26, 2018). The Secretary has also had to consider novel and difficult questions of state and federal constitutional law. *See, e.g., Jones v. Sec'y of State*, 2020 ME 113, 238 A.3d 982.

This case presents similar hurdles. *See Anderson*, 2023 CO 63, ¶ 7 (recognizing that a challenge under Section Three of the Fourteenth Amendment is “uncharted territory” and presents “several issues of first impression”). But complexity is not a limitation on my authority under Sections 336, 337, or 443. These statutes do not suggest that I am restricted to adjudicating straightforward questions of law or fact. Nor do I have the discretion to decline to rule in ballot qualification cases simply because they present difficult issues. The statutes instead reflect that Maine has joined other states in choosing to enforce Section Three of the Fourteenth Amendment, and in doing so the Maine Legislature has delegated that authority to me. *See, e.g., Anderson*, 2023 CO 36, ¶ 56; *New Mexico ex rel. White v. Griffin*, No. D-101-CV-2022-00473, 2022 WL 4295619, at *16 (N.M. Dist. Ct. Sept. 6, 2022); *Worthy v. Barrett*, 63 N.C. 199, 202 (1869); *In re Tate*, 63 N.C. 308, 308 (1869); *Louisiana ex rel. Sandlin v. Watkins*, 21 La. Ann. 631, 632 (1869).

Mr. Trump’s concerns about the adequacy of this proceeding are therefore without merit. He has had the opportunity to present evidence; to call witnesses; to cross-examine; and to argue at length both the legal and factual issues germane to my decision. And while the timeline of the proceedings has, by necessity, been compressed, this is hardly the first time that Mr. Trump—or Attorney Gessler—has confronted the applicability of Section Three of the Fourteenth Amendment to a presidential candidate. It likewise is not the first time that Mr. Trump has had to grapple with whether the evidence presented here, which almost directly mirrors that which was offered in *Anderson*, demonstrates that he engaged in insurrection.¹¹ And Mr. Trump has the opportunity to appeal my decision, providing him with additional process in both the Superior Court and the Law Court. *See* M.R. Civ. P. 80C; 21-A M.R.S. § 337(D)-(E); *Amsden v. Moran*, 904 F.2d 748, 755

¹¹ In *Anderson*, Trump had the opportunity to engage in discovery, litigate dispositive motions, and present his full case at a five-day trial, obviating any concern that the speed of this proceeding is unfair. *Anderson*, 2023 CO 63, ¶¶ 79-86. In fact, both Mr. Trump and the Rosen Challengers heavily rely on the arguments and evidence from the *Anderson* proceeding.

(1st Cir. 1990) (recognizing that the “existence of state remedies” is “highly relevant” to claims of due process violations).

While I am cognizant of the fact that my decision could soon be rendered a nullity by a decision of the United States Supreme Court in *Anderson*, that possibility does not relieve me of my responsibility to act. Nor do the deadlines set forth in Section 337 give me the option to delay my decision until the Supreme Court has ruled. I therefore conclude that I have the authority to adjudicate the Rosen and Royal Challenges, and that this Section 337 proceeding is appropriate for doing so.

2. Section Three of the Fourteenth Amendment Is Self-Executing Without Congressional Action and Applies to the President.

Section Three of the Fourteenth Amendment, ratified in 1868, provides, in relevant part, that:

No person shall be a Senator or Representative in Congress, or elector of President and Vice-President, or hold any office, civil or military, under the United States . . . who, having previously taken an oath, as a member of congress, or as an officer of the United States . . . to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

U.S. Const. amend XIV, § 3.

As a threshold matter, the fact that Section Three refers to *holding* office, rather than *running for* office, is not noteworthy. Article II’s qualifications do not refer to running for office, either, but rather are phrased in terms of eligibility “to the office.” *See* U.S. Const. art. II, § 1, cl.

5. My obligation, here triggered by the Rosen and Royal Challenges, is to keep candidates unqualified to *take* office from Maine’s presidential primary ballot. *See* 21-A M.R.S. § 336(3); *see also Lindsay*, 750 F.3d at 1065; *Hassan*, 495 F. App’x at 948; *Ogilvie*, 357 F. Supp. at 113.

Turning then to the principal question of whether Section Three of the Fourteenth Amendment applies to candidates for president, I conclude that it does, for the following reasons.

First, no Congressional action is necessary to render effective the qualification set forth in Section Three. The Supreme Court has described the Fourteenth Amendment as “undoubtedly self-executing without any ancillary legislation, so far as its terms are applicable to any existing set of circumstances.” *Civil Rights Cases*, 109 U.S. 3, 20 (1883). Contemporary evidence suggests the same is true, specifically, of Section Three. *See, e.g.*, Dec. 15, 2023 Hearing 5:46:50-5:48:52 (Magliocca). Both the military and states themselves, for example, began enforcing Section Three soon after adoption without any Congressional authorization. *See* Dec. 15, 2023 Hearing 5:26:50-5:27:20, 5:46:55-5:47-10 (Magliocca); *see also* *Worthy*, 63 N.C. at 202; *In re Tate*, 63 N.C. at 308; *Watkins*, 21 La. Ann. at 632; *State ex rel. Downes v. Towne*, 21 La. Ann. 490 (1869). Congress also began granting amnesties pursuant to its ability to “remove [the] disability” imposed by Section Three, which only would be necessary if Section Three had taken effect. *See* Dec. 15, 2023 Hearing 5:29:56-5:30:18, 5:47:35-5:47:58 (Magliocca).

I recognize that Section Five of the Fourteenth Amendment provides that “[t]he Congress shall have the power to enforce, by appropriate legislation, the provisions of this article.” U.S. Const. amend. XIV, § 5. But that does not mean that action pursuant to Section Five is a prerequisite to the substantive provisions of the Fourteenth Amendment having any legal force. Indeed, champions of the Section Three enforcement mechanism that Congress briefly authorized questioned whether it was necessary at all. *See Cong. Globe*, 41st Cong., 1st Sess., p. 626-28. It stands to reason that, like Section One of the Fourteenth Amendment, which the Supreme Court has recognized is self-executing, *see City of Boerne v. Flores*, 521 U.S. 507, 524 (1997); *see also* *Cong. Globe*, 39th Cong. 1st Sess., pp. 1095, 2459, 2498 (highlighting desire to ensure Section

One could not functionally be repealed by a future Congress); the Thirteenth Amendment, which also contains an enforcement provision and is self-executing, *see* U.S. Const. amend. XIII; *see The Civil Rights Cases*, 109 U.S. at 20; and the qualifications of Article II, which are not contingent on enforcement legislation, Section Three requires no Congressional action in order to become effective. *See Anderson*, 2023 CO 63, ¶¶ 88-106.

On this point, I find *Griffin's Case*, 11 F. Cas. 7 (C.C.D. Va. 1869), to be unpersuasive. It is not binding in Maine, does not assess whether states can enforce Section Three without Congressional authorization, and has been discredited. *See, e.g., Anderson*, 2023 CO 63, ¶ 103; Amicus Br. of Constitutional Law Professor Mark A. Graber 7-8 (Dec. 14, 2023).¹²

Second, the presidency is covered by Section Three. It is an “office, civil or military, under the United States,” and the President is an “officer of the United States.” U.S. Const. amend. XIV, § 3.

The U.S. Constitution repeatedly refers to the presidency as an office. *See* U.S. Const. art. I, § 3; art. II, §§ 1, 4; U.S. Const. amends. XII, XXII, XXV; *see also Anderson*, 2023 CO 63, ¶ 133 (noting Constitution refers to the presidency as an office 25 times). At first blush, it would seem odd to interpret the text of Section Three to incorporate the President through a catchall provision that follows the enumeration of Senators, Representatives, and presidential and vice-presidential electors. But none of those enumerated positions are “offices” under the Constitution. The Constitution does not refer to Senators and Representatives as such, *see, e.g.,* U.S. Const. art. I, § 5, cl. 1 (referring to “[m]embers” of Senate and House); *id.* art. I, § 6, cl. 2 (same); *id.* art. II, § 1,

¹² Dicta from *Robinson v. Bowen*, 567 F. Supp. 2d 1144 (N.D. Cal 2008), cited by Mr. Trump, is likewise unpersuasive. That case involved an attempt to obtain an order from a federal court barring John McCain from the ballot, rather than the enforcement of state laws designed to keep individuals unqualified for the office they seek off the ballot.

cl. 2 (distinguishing Senators and Representatives from those holding office under the United States),¹³ and electors are “no more officers or agents of the United States than are . . . the people of the States when acting as electors of representatives in congress,” *Fitzgerald v. Green*, 134 U.S. 377, 379 (1890).

The history of Section Three firmly supports the idea that it covers the presidency. Professor Magliocca testified that Members of Congress believed the presidency to constitute an office when debating the language of Section Three,¹⁴ as did contemporaries outside of Congress, including those who sought to keep Jefferson Davis from the presidency. *See* Dec. 15, 2013 Hearing 5:36:16-5:41:40; *see also Anderson*, 2023 CO 63, ¶ 140 (highlighting this understanding in debates around adopting the Fourteenth Amendment); *cf. District of Columbia v. Heller*, 554 U.S. 570, 577 (2008) (prioritizing normal and ordinary usage of words over “secret or technical meanings that would not have been known to ordinary citizens in the founding generation”). Opinions issued by then–U.S. Attorney General Stanbury echoed this understanding, confirming the breadth of Section Three’s reference to “officer under the United States.” *See* 12 U.S. Op. Att’y Gen. 182, 203, 1876 WL 2127 (1867); 12 U.S. Op. Att’y Gen. 141, 158 (1867); *see also* Dec. 15, 2013 Hearing 5:42:50-5:44:00 (Magliocca).

¹³ While the Court in *U.S. Terms Limits, Inc. v. Thornton*, 514 U.S. 779 (1995), referred to both the President and Members of Congress as “federal officers,” *see id.* at 805 n.17, that offhand statement in a footnote is hardly authoritative, never mind more persuasive than contemporaneous accounts of the meaning of Section Three. Additionally, references in the Constitution to offices in the House and Senate that Mr. Trump cites only support the Rosen Challengers’ view, in that they distinguish offices like Speaker from the elected position of Representative or Senator. *See* U.S. Const. art. I, § 2, cl. 5 (“The House of Representatives shall chuse their Speaker and other Officers . . .”).

¹⁴ Members of Congress likewise did not distinguish between officers “of” and officers “under” the United States. *See, e.g.,* Cong. Globe, 39th Cong., 1st Sess., p. 3939.

Mr. Trump cites an early draft of Section Three that referred to the “office of President or Vice President,” Cong. Globe, 39th Cong., 1st Sess. 919 (1866), as evidence that the adopted language was not intended to be as expansive. But the Rosen Challengers persuasively argue that (1) the early draft confirms that the drafters both intended the presidency to be covered by Section Three and considered the presidency an office; and (2) the adopted language of Section Three contains a much broader catchall than that which was included in the draft Mr. Trump cites, suggesting it was broadened to incorporate the office of the presidency. This makes good sense; it is implausible that the drafters of Section Three chose to exempt the highest office in our government from an amendment designed to keep confederates from positions of power. *See* Cong. Globe, 39th Cong., 1st Sess. 2505 (1866) (drafter of Section Three noting that his proposal would ensure “the loyal alone shall rule the country which they alone have saved” and that traitors would be “cut[] off . . . from all political power in the nation.”); *see also* Dec. 15 Hearing 5:23:10-5:23:55 (Magliocca).

The uniqueness of the president’s oath does not change the calculus, either.¹⁵ While the Article II oath requires the President to “preserve, protect and defend the Constitution,” U.S. Const. art. II, § 8, which is technically different than Article VI’s command that officers take an oath to “support this Constitution,” *id.* art. IV, cl. 3, that is a distinction without a difference. *See, e.g.,* Cong. Globe 39th Cong., 1st Sess. App’x, p. 234 (statements of Kentucky Senator Garrett Davis referencing both oaths in listing constitutional protections against insurrection); *accord* Dec. 15, 2023 Hearing 5:25:41-5:26:33, 5:44:14-5:46:28 (Magliocca). To preserve, protect, and defend the Constitution is, necessarily, to support it. *See Anderson*, 2023 CO 63, ¶¶ 156-58.

¹⁵ The parties do not contest that Mr. Trump took the presidential oath. *See Rosen Ex. 6.*

In sum, the text, history, and context of Section Three of the Fourteenth Amendment make clear that it covers the President, and that it is a qualification enforceable by the states.

3. The record demonstrates that the events of January 6, 2021 were an insurrection.

The parties do not meaningfully dispute the events of January 6, 2021. Multiple government reports that the Rosen Challengers entered into evidence confirm that a large group of people violently attacked the Capitol with the intent of preventing the certification of the presidential election. This resulted in a lockdown of the Capitol complex, an evacuation of the Vice President and congressional leaders, an interruption of official House and Senate proceedings, and multiple deaths and injuries. As described in a United States Government Accountability Report:

Over the course of about 7 hours, more than 2,000 protestors entered the U.S. Capitol on January 6, disrupting the peaceful transfer of power and threatening the safety of the Vice President and members of Congress. The attack resulted in assaults on at least 174 police officers, including 114 Capitol Police and 60 D.C. Metropolitan Police Department officers. These events led to at least seven deaths and caused about \$2.7 billion in estimated costs.

Rosen Ex. 60 (GAO, Report to Congressional Requestors, Capitol Attack: Federal Agencies Identified Some Threats, but Did not Fully Process and Share Information Prior to January 6, 2021 (GAO-23-106625) (Feb. 2023) (“GAO Report”)), at 1.

In making their case that the events of January 6, 2021 constitute an insurrection, the Rosen Challengers rely heavily on the proceedings in—and evidence from—the *Anderson* case. Much of that evidence is in the record here, and I find the reasoning of the Colorado Supreme Court

compelling.¹⁶ That said, even without the benefit of the *Anderson* decision, I have little trouble concluding that the events of January 6, 2021 were an insurrection within the meaning of Section Three of the Fourteenth Amendment.

Professor Magliocca defined an insurrection as a public use of violence by a group of people to hinder or prevent the execution of the Constitution. *See* Dec. 15, 2023 Hearing 5:30:30-5:31:08 (Magliocca). This definition is well supported by the historical record. *See id.* 5:31:12-5:33:04 (Magliocca); *see also* Noah Webster, *An American Dictionary of the English Language* 613 (1860) (defining insurrection as distinct from rebellion, and as “[a] rising against civil or political authority; the open and active opposition of a number of persons to the execution of law in a city or state”).

Mr. Trump criticizes Professor Magliocca’s definition as based on sources too “weak” and disparate in time, but he offers no workable alternative definition. *See* President Donald J. Trump’s Closing Argument (Dec. 19, 2023) at 38. Specifically, Mr. Trump’s claim that insurrection must be “violent enough, potent enough, long enough, and organized enough to be considered a significant step on the way to rebellion,” *id.* at 39, is both ambiguous as a standard and poorly supported by the evidence he cites. *Accord Anderson*, 2023 CO 63, ¶ 183. An insurrection need not involve military-style weaponry, *see Case of Fries*, 9 F. Cas. 940 (C.C.D. Pa. 1800) (“[M]ilitary weapons” like “guns and swords” “are not necessary to make such insurrection or rising amount to levying of war”), involve bloodshed, *see In re Charge to Grand Jury*, 62 F. 828,

¹⁶ In their supplemental brief, the Rosen Challengers go even further, arguing that the doctrine of collateral estoppel mandates that I accept the *Anderson* Court’s factual determinations. But as the Challengers also recognize, non-mutual collateral estoppel is not mandatory in this case. *See Van Houten v. Harco Constr.*, 655 A.2d 331, 333 (Me. 1995) (nonmutual collateral estoppel is permissible only on a case-by-case basis where it serves the interests of justice) (Me. 1995); *State Mut. Ins. Co. v. Bragg*, 589 A.2d 35, 37 (Me. 1991). I conclude that it would be antithetical to the interests of justice to prohibit Mr. Trump, in this proceeding, from arguing that the Rosen Challengers did not demonstrate that Mr. Trump engaged in insurrection.

830 (N.D. Ill. 1894), or even be highly organized, *see Home Ins. Co. of N.Y. v. Davila*, 212 F.2d 731, 736 (1st Cir. 1954).

Nonetheless, even if insurrection under Section Three were so limited, the evidence here shows that the events of January 6, 2021 meet that standard. As demonstrated by videos and documentary evidence in the record, a large and angry crowd entered the U.S. Capitol near midday on January 6 and assaulted the capitol police officers charged with defending it, vandalized and stole property, and ransacked offices. *See* Rosen Ex. 62 (Staff Report, Examining the U.S. Capitol Attack: A Review of the Security, Planning, and Response Failures on January 6, Committee on Homeland Security and Government Affairs & Committee on Rules and Administration (“Senate Staff Report”)), at 1; Rosen Exs. 67-72, 75 (video of attack on Capitol). Many of those involved were armed with weapons—some brought to the Capitol, some wrested from police officers, and some repurposed items looted from inside the Capitol itself—and over a few hours they used them to breach barriers and attack those who resisted. *See* Rosen Ex. 62 (Senate Staff Report) at 28-29; *see also* Rosen Exs. 67-72, 75 (video of attack on Capitol). The crowd ultimately entered the Capitol as Members of Congress were meeting to certify the Electoral College vote count. *See* Trump Ex. 2 (Review of the DOD’s Role, Responsibilities, and Actions to Prepare for and Respond to the Protest and Its Aftermath at the U.S. Capitol Campus on January 6, 2021, Inspector General, U.S. Dep’t of Defense, Report No. DODIG-2022-039 (“DOD Report”)), at 5. In other words, the attack was violent enough, potent enough, and long enough to constitute an insurrection.

It also cannot reasonably be disputed that the rioters were organized behind a common purpose. That purpose is evident not only from the context, discussed in more detail below, but also from the very chants and recitations of the rioters themselves. They were present to “stop the steal,” i.e., prevent by force the certification of the results of the 2020 presidential election that

was scheduled to occur in the halls of Congress that afternoon. *See, e.g.*, Rosen Ex. 7 (Final Report, Select Committee to Investigate the January 6th Attack on the United States Capitol, (Dec. 22, 2022), 117th Cong., 2d Sess., H. Rep. 117-663) (“Jan. 6 Report”) at 57, 105-07, 533; Rosen Ex. 37 at 75, 80 (tweets claiming then–Vice President Pence could reject electors).

This violent disruption of Congress’s duty, through a transparently public use of force, meets both Professor Magliocca’s historically accurate definition of an insurrection, and Mr. Trump’s alternative definition. *See* Dec. 15, 2023 Hearing 5:49:18-5:51:08 (Magliocca); *accord Anderson*, 2023 CO 63, ¶¶ 186-89. I therefore conclude that the events of January 6, 2021, the “most significant breach of the Capitol in over 200 years,” Rosen Ex. 62 (Senate Staff Report) at 21, constituted an insurrection.

4. The record demonstrates that Mr. Trump engaged in the insurrection of January 6, 2021.

The question of whether Mr. Trump *engaged* in insurrection is a closer one. It would not be difficult to answer had Mr. Trump had been found guilty—or not guilty—of insurrection in a court of law pursuant to 18 U.S.C. § 2383 (criminalizing insurrection). The applicability of Section Three of the Fourteenth Amendment does not turn on whether an office-seeker has been convicted of a crime, however. Instead, under Sections 336 and 337, I am obligated to assess the record before me and make a determination based on the preponderance of the evidence, just as my predecessors have in other ballot access cases. *See Douglas v. Bd. of Trustees of Me. State Retirement Sys.*, 669 A.2d 177, 179 (Me. 1996) (applying preponderance standard in APA proceeding).¹⁷

¹⁷ The usual standard in an APA proceeding is preponderance of the evidence, and the parties have not argued that any other standard should apply.

Professor Magliocca defined “engaged in” as a voluntary act, by word or deed, in furtherance of an insurrection, including words of incitement. Dec. 15 2023 Hearing 5:34:30-5:34:44 (Magliocca). The support for this interpretation is robust, as succinctly summarized by Professor Magliocca himself at the hearing. *Id.* 5:35:02-5:35:37 (Magliocca). Contemporaneous decisions from Attorney General Stanbury suggest that engaging in insurrection did not require “having actually levied war or taken arms,” but rather was understood broadly to include official action “in furtherance of the common unlawful purpose” or “any overt act for the purpose of promoting the rebellion,” including “incit[ing] others” to act accordingly “by speech or by writing.” 12 Op. Att’y Gen. 141, 161-62 (1867); 12 Op. Att’y Gen. 182, 205 (1867); *see also Anderson*, 2023 CO 63, ¶ 192.¹⁸ Judicial decisions of the time likewise interpreted Section Three as covering “a voluntary effort to assist the Insurrection or Rebellion,” *United States v. Powell*, 27 F. Cas. 605, 607 (C.C.D. N.C. 1871); *accord Worthy*, 63 N.C. at 203; *Griffin*, 2022 WL 4295619, at *19; *United States v. Burr*, 25 F. Cas. 55, 178 (C.C.D. Va. 1807 (“[I]n treason, all are principals.” (quoting 4 Tuck Bl. Comm. Append. 40-47)), and even defined “levying war” as including “inciting and encouraging others” to commit treason, *In re Charge to Grand Jury*, 30 F. Cas. 1032, 1034 (C.C.S.D. N.Y. 1861); *accord In re Charge to Grand Jury-Treason*, 30 F. Cas. 1047, 1048-49 (C.C.E.D. Pa. 1851); *Ex parte Bollman*, 8 U.S. 75, 126 (1807) (Marshall, C.J.).

On this basis, I adopt the definition outlined by Professor Magliocca and concur that “engaged in insurrection” under Section Three of the Fourteenth Amendment includes “incitement.” *Accord Anderson*, 2023 CO 63, ¶ 194. The central question, then, is whether Mr.

¹⁸ Mr. Trump’s interpretation of these sources as suggesting that engagement is limited to official action that causes something more serious than an insurrection is unsupported by the record.

Trump’s statements and other conduct leading up to and including January 6, 2021—the essential facts of which are once again not in dispute—constitute incitement of insurrection.

Before the 2020 presidential election, Mr. Trump sowed doubt in its legitimacy. He declared, for example, at a campaign rally in Wisconsin that the only way he would lose “is if the election is rigged.” *See* Rosen Ex. 53. A month later, at a White House Press Briefing on September 23, 2020, he refused to commit to a peaceful transfer of power, instead demurring that he would “have to see.” *See* Rosen Ex. 55.

Consistent with this characterization, on Election Day and thereafter, and most prominently on social media, Mr. Trump repeatedly claimed that there had been widespread election fraud and that the presidency was being stolen from him. *See, e.g.*, Rosen Ex. 37 (tweets) at 10-16, 32-33, 38-40; Trump Ex. 2 (DOD Report) at 3, 18. He attacked the election’s validity and pressured Republicans, in Georgia and elsewhere, to overturn its results. *See* Rosen Ex. 37 (tweets) at 2, 23, 29-31, 49. Mr. Trump simultaneously implored his supporters to “SAVE AMERICA” and “fight on!” *See* Rosen Ex. 37 (tweets) at 25, 35.

In response to Mr. Trump’s inflammatory rhetoric, Gabriel Sterling, a Republican election official in the state of Georgia, publicly warned President Trump to “stop inspiring people to commit potential acts of violence” or “[s]omeone’s going to get killed.” *See* Rosen Ex. 59 (video) at 1:50. Mr. Trump responded by retweeting a video of the press conference, proclaiming “Rigged Election” and “Expose the massive voter fraud in Georgia.” *See* Rosen Ex. 37 (tweets) at 27. And when a November 14, 2020 rally in Washington, D.C. inspired by his continued attempts to “stop the steal” turned violent—there was a stabbing, numerous injuries, and multiple arrests—Mr. Trump justified the violence as self-defense against “ANTIFA SCUM.” Rosen Ex. 37 (tweets) at 17; Ex. 60 (GAO Report) at 88-91; Trump Ex. 2 (DOD Report) at 18.

On December 19, 2020, fully aware of how his words and deeds had bred violence and threatened more, Mr. Trump announced a rally in Washington on January 6, 2021, to protest certification of the election results. *See* Trump Ex. 2 (DOD Report) at 3. He tweeted:

Peter Navarro releases 36-page report alleging election fraud 'more than sufficient' to swing victory to Trump <https://washex.am/3nwaBCe>. A great report by Peter. Statistically impossible to have lost the 2020 Election. Big protest in D.C. on January 6th. Be there, will be wild!

See Rosen Ex. 37 (tweets) at 41. Multiple permit requests for rallies on January 5th and 6th followed, though none permitted a march from the Ellipse to the Capitol. *See* Rosen Ex. 7 (Jan. 6 Report) at 703-04. Mr. Trump apparently intended to call for such a march spontaneously. *Id.* at 704.

As the election machinery marched toward certification of the presidential election results on January 6, 2021, as required by the U.S. Constitution, *see* U.S. Const. art. II, § 1; *id.* amend. XII, Mr. Trump continued to press his case that the election was illegitimate. *See, e.g.,* Rosen Ex. 37 (tweets) at 47-48, 50. He repeatedly referenced the January 6, 2021 joint session of Congress at which the Electoral Votes would be counted on social media, and he reminded his supporters of the rally he had planned at the same time in Washington. *See, e.g., id.* at 47, 50, 55, 60, 62-63, 66, 72, 74-75; Rosen Ex. 62 (Senate Staff Report) at 22; Trump Ex. 2 (DOD Report) at 19.

The language Mr. Trump used was oftentimes inflammatory, too. On December 26, 2020, for example, Mr. Trump tweeted:

If a Democrat Presidential Candidate had an Election Rigged & Stolen, with proof of such acts at a level never seen before, the Democrat Senators would consider it an act of war, and fight to the death. Mitch [McConnell] & the Republicans do NOTHING, just want to let it pass. NO FIGHT!

Rosen Ex. 37 (tweets) at 49. That same day, Mr. Trump characterized the election as “the biggest SCAM in our nation’s history” and told his reporters “History will remember. Never give up. *See*

everyone in D.C. on January 6th.” Rosen Ex. 37 (tweets) at 50. Far right militias interpreted Mr. Trump’s tweets as a call to arms. *See* Rosen Ex. 7 (January 6 Report) at 499, 521.

A week later, on January 1, 2021, Mr. Trump retweeted a post from an organizer of the January 6 March for Trump stating “the calvary [sic] is coming, Mr. President!” calling it “[a] great honor!” *See* Rosen Ex. 37 (tweets) at 64. And as his supporters arrived in Washington on January 5, Mr. Trump again tweeted that the election had been “stolen,” that the country “won’t take it anymore!”, and that “the thousands of people pouring into D.C. . . . won’t stand for a landslide election victory to be stolen!” *See* Rosen Ex. 37 (Tweets) at 76.

On the morning of January 6, 2021, Mr. Trump implored then–Vice President Pence to block certification of the election. *See* Rosen Ex. 37 (tweets) at 80. A few hours later, in a speech that began at about noon following a variety of other speakers, *see id.* at 78; Trump Ex. 2 (DOD Report) at 5, 44, Mr. Trump in no uncertain terms urged Mr. Pence to “do the right thing,” and asked his supporters to go to the Capitol; “show strength”; and demand that Congress not certify the election for President Biden. *See* Rosen Ex. 63 (speech) at 16:15-16:30; *see also* Rosen Ex. 62 (Senate Staff Report) at 22. The crowd chanted “fight for Trump.” Rosen Ex. 63 (speech).

At the conclusion of his speech around 1:10 pm, minutes after the joint session of Congress to certify the election results had begun, *see* Rosen Ex. 7 (January 6 Report) at 461, 577; Rosen Ex. 62 (Senate Staff Report) at 23-24, Mr. Trump implored his supporters to

[F]ight like hell. And if you don’t fight like hell, you’re not going to have a country anymore . . . So we’re going to, we’re going to walk down Pennsylvania Avenue. I love Pennsylvania Avenue. And we’re going to the Capitol, and we’re going to try and give . . . We’re going to try and give them the kind of pride and boldness that they need to take back our country. So let’s walk down Pennsylvania Avenue.

Rosen Ex. 63 (speech) at 1:09:30-1:11:19. As the President concluded his speech, a large crowd marched toward the Capitol and forced their way past security barricades. *See* Rosen Ex. 7 (Jan. 6 Report) at 638; Rosen Ex. 62 (Senate Staff Report) at 22; Trump Ex. 2 (DOD Report) at 5, 44.

Mr. Trump learned that the Capitol was under attack by 1:21 pm. *See* Rosen Ex. 7 (Jan. 6 Report) at 577. Yet Mr. Trump made no effort to mobilize federal law enforcement or the National Guard, nor for hours did he ask his supporters to leave the area. *See id.* Instead, an hour later, and minutes after the Capitol building itself had been breached, *see id.* at 708, Mr. Trump tweeted that “Mike Pence didn’t have the courage to do what should have been done to protect our Country and our Constitution, giving States a chance to certify a correct set of facts, not the fraudulent or inaccurate ones which they were asked to previously certify. USA demands the truth!” *See* Rosen Ex. 37 (tweets) at 83. Thereafter, on social media, Mr. Trump asked those at the Capitol to support law enforcement and stay peaceful, *see* Rosen Ex. 37 (tweets) at 83-84, but he neither denounced the violence nor intervened to stop it, *see* Rosen Ex. 7 (Jan. 6 Report) at 110.

Finally, at 4:17 pm, Mr. Trump released a video telling the assembled rioters to go home, but rather than condemning them or their actions he noted his sympathy, calling them “very special.” *See* Rosen Ex. 76. Thereafter, Mr. Trump tweeted:

These are the things and events that happen when a sacred landslide election victory is so unceremoniously & viciously stripped away from great patriots who have been badly & unfairly treated for so long. Go home with love & in peace. Remember this day forever!

See Rosen Ex. 37 (tweets) at 84.

This is a compelling narrative, the facts of which are not in serious dispute. I conclude, as did the Colorado Supreme Court, *see Anderson*, 2023 CO 63, ¶ 221, that the record establishes that Mr. Trump, over the course of several months and culminating on January 6, 2021, used a false narrative of election fraud to inflame his supporters and direct them to the Capitol to prevent

certification of the 2020 election and the peaceful transfer of power. I likewise conclude that Mr. Trump was aware of the likelihood for violence and at least initially supported its use given he both encouraged it with incendiary rhetoric and took no timely action to stop it.

Mr. Trump's occasional requests that rioters be peaceful and support law enforcement do not immunize his actions. A brief call to obey the law does not erase conduct over the course of months, culminating in his speech on the Ellipse. The weight of the evidence makes clear that Mr. Trump was aware of the tinder laid by his multi-month effort to delegitimize a democratic election, and then chose to light a match.

The events of January 6, 2021 notwithstanding, Mr. Trump also claims that he cannot be disqualified from the presidency for his conduct because his public statements and speeches are protected by the First Amendment. But Mr. Trump cites no precedent—and I am unaware of any—that permits the First Amendment to override a qualification for public office. Section Three of the Fourteenth Amendment is not a criminal penalty, as in *Federal Election Commission v. Wisconsin Right to Life, Inc.*, 551 U.S. 449, 468-69 (2007), nor is it a punishment, *cf.* Dec. 15, 2023 Hearing 5:24:08-5:24:30 (Magliocca) (describing historical understanding of Section Three). It is simply a qualification for office.

Additionally, because I conclude that Mr. Trump intended to incite lawless action, his speech is unprotected by the First Amendment. *See Anderson*, 2023 CO 63, ¶¶ 230-56; *accord Thompson v. Trump*, 590 F. Supp. 3d 46, 115 (D.D.C. 2022) (Ellipse speech “plausibly [contained] words of incitement not protected by the First Amendment”); *see also Brandenburg v. Ohio*, 395 U.S. 444, 447-48 (1979) (incitement of lawless action unprotected by the First Amendment). Principles of free speech do not override the clear command of Section Three of the Fourteenth

Amendment, namely that those who orchestrate violence against our government may not wield the levers of its power.

Conclusion

I do not reach this conclusion lightly. Democracy is sacred, and the highest court of this State has repeatedly recognized that “no right is more precious in a free country than that of having a voice in the election of those who make the laws under which, as good citizens, we must live.” *Melanson v. Sec’y of State*, 2004 ME 127, ¶ 14, 861 A.2d 641 (quoting *Burdick v. Takushi*, 504 U.S. 428, 441 (1992) (cleaned up)). I am mindful that no Secretary of State has ever deprived a presidential candidate of ballot access based on Section Three of the Fourteenth Amendment. I am also mindful, however, that no presidential candidate has ever before engaged in insurrection. The oath I swore to uphold the Constitution comes first above all, and my duty under Maine’s election laws, when presented with a Section 336 challenge, is to ensure that candidates who appear on the primary ballot are qualified for the office they seek.

The events of January 6, 2021 were unprecedented and tragic. They were an attack not only upon the Capitol and government officials, but also an attack on the rule of law. The evidence here demonstrates that they occurred at the behest of, and with the knowledge and support of, the outgoing President. The U.S. Constitution does not tolerate an assault on the foundations of our government, and Section 336 requires me to act in response.

I conclude that the Rosen and Royal Challengers have met their burden under 21-A M.R.S. § 337(2)(B). They have provided sufficient evidence to demonstrate the falsity of Mr. Trump’s declaration that he meets the qualifications of the office of the presidency. Therefore, as required by 21-A M.R.S. § 336(3), I find that the primary petition of Mr. Trump is invalid.

Given the compressed timeframe, the novel constitutional questions involved, the importance of this case, and impending ballot preparation deadlines, I will suspend the effect of my decision until the Superior Court rules on any appeal, or the time to appeal under 21-A, Section 337 has expired. *Cf. In re Maine Clean Fuels, Inc.*, 310 A.2d 736, 744 (Me. 1973) (noting administrative agencies are free to fashion their own rules of procedure).

Dated: December 28, 2023



Shenna Bellows
Secretary of State

NOTICE OF APPEAL RIGHTS

The challenger or candidate may appeal this decision by commencing an action in the Superior Court within 5 days of this date, pursuant to 21-A MRSA section 337, subsection 2, paragraph D.

FILED

October 23, 2023

**OFFICE OF
APPELLATE COURTS**

State of Minnesota
In Supreme Court

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

v.

Steve Simon, Minnesota Secretary of State,
Respondent,

v.

Republican Party of Minnesota,
Respondent.

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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,

and

DONALD J. TRUMP,

Intervening Appellee.

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

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

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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**

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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

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No. 1-23-0840

NOTICE: This order was filed under Supreme Court Rule 23 and is not precedent except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

MOARIJ KHAN,)
)
Plaintiff-Appellant,) Appeal from the
) Circuit Court of
) Cook County
)
v.)
) 22 L 6084
AMBERINA KHAN, MANSAB KHAN, ALI)
HUSSAIN SHIRAZI, AHMAD HASSAN a/k/a A) Honorable
HASSAN, MERCHANTS BONDING) Michael F. Otto,
COMPANY and WEST BEND MUTUAL) Judge, Presiding
INSURANCE COMPANY,)
)
Defendants-Appellees.)

JUSTICE ELLIS delivered the judgment of the court.
Presiding Justice Howse and Justice McBride concurred in the judgment.

ORDER

- ¶ 1 *Held:* Affirmed. Court did not err in granting stay of lawsuit.
- ¶ 2 Plaintiff Moarij Khan sued his siblings and two notaries located in Illinois in the circuit court of Cook County after defendants allegedly participated in the forging of plaintiff’s and his mother’s names on documents to convert property located in India. Plaintiff had a pre-existing

lawsuit in India to prevent the conversion of that property, in which he and his mother hold an interest. That lawsuit is still pending.

¶ 3 Here in the circuit court, defendants moved to dismiss this action, given the pending action in India. In the alternative, they asked that the Cook County suit be stayed pending the outcome of the India litigation. The circuit court denied the motion to dismiss but stayed the action. Plaintiff now appeals the stay. We agree with the circuit court and affirm.

¶ 4 BACKGROUND

¶ 5 We draw our facts from the allegations in the complaint. Plaintiff Moarij Khan (“Moarij”), defendant Amberina Khan (“Amberina”), and defendant Mansab Khan (“Mansab”) are siblings. Their mother is Rasheeda Begum (“Rasheeda”), who is not a party to this action. The four of them have jointly owned real property in the Republic of India since 1986 (the “India property”).

¶ 6 In 2007, plaintiff Moarij discovered that certain individuals to whom he refers as the “Kumars” had created fraudulent documents and falsely claimed exclusive ownership of the India property. In 2016, plaintiff Moarij filed suit in India against the Kumars to protect his family’s exclusive ownership of the property. He obtained an injunction in 2018 that prohibited the Kumars from conveying the property.

¶ 7 The complaint alleges, however, that two of plaintiff Moarij’s siblings, defendants Amberina and Mansab, later conspired against Moarij and his mother. First, in July 2019, Amberina and Mansab met with a notary public in Chicago named Ali Hussain Shirazi (“defendant Shirazi”), also a defendant here, to witness and notarize signatures on an Indian legal document called a “ratification deed.” That document purported to indicate that the four owners

of the Indian property—plaintiff Moarij, his siblings, and their mother—had ratified the Kumars’ claim to ownership of that property.

¶ 8 That, of course, required the signatures of all four co-owners. Defendants Amberina and Mansab signed their own signatures, then signed for plaintiff Moarij and their mother. Shirazi then affixed his notary seal to the document, attesting to the genuineness of all four signatures, though only two of the four were actual signatories.

¶ 9 Second, in September 2019, defendants Amberina and Mansab met with another notary named Ahmad Hassan, also a named defendant here, in Hickory Hills. They asked him to witness and notarize signatures on an Indian document entitled “special power of attorney.” That document purported to grant an individual in India with power of attorney to further the ratification of the Kumars’ wrongful claim to ownership of the property.

¶ 10 Once again, defendants Amberina and Mansab signed their own names and forged the names of plaintiff Moarij and their mother. Hassan affixed his notary seal and signed below the signatures of Amberina and Mansab and their signatures for plaintiff Moarij and their mother. (Hassan would later admit to his wrongdoing in a sworn affidavit attached to the complaint; the Illinois Secretary of State revoked his commission as a notary public based on that admission.)

¶ 11 The complaint alleges that in October 2019, the Kumars paid defendant Amberina the equivalent of about \$53,000 in India rupees for the forged documents. Defendants Amberina and Mansab allegedly received additional payments from the Kumars. With the ratification deed and power-of-attorney in hand, the Kumars proceeded to sell the India property in pieces to various third parties.

¶ 12 When he later discovered what had happened, plaintiff Moarij obtained a second injunction in August 2020 in the India lawsuit. That injunction barred Indian government officials from registering any further sales deeds regarding that property until order of the court.

¶ 13 Here in the circuit court, plaintiff Moarij sued his siblings (Amberina and Mansab) for fraudulent concealment, civil conspiracy, and fraud. He sued the two notaries (Hassan and Shirazi), along with their bonding companies, for violating the Illinois Notary Public Act. See 5 ILCS 312/7-101 (West 2018) (“A notary public and the surety on the notary’s bond are liable to the persons involved for all damages caused by the notary’s official misconduct.”).

¶ 14 For each count against the notaries, the damages plaintiff claims are the loss of plaintiff’s “value and benefit of his one-third interest in the [Indian] Property.” For each count against his siblings, the claimed damages are “the loss of his interest in the Property and loss of the proceeds from the sale of the Property.” He estimates these damages at \$666,666.66.

¶ 15 While other defendants answered the complaint, defendant Hassan moved, under section 2-619(a)(3) of the Code of Civil Procedure, to dismiss the action due to a prior pending action or, in the alternative, to stay this action pending the outcome of the India litigation. See 735 ILCS 5/2-619(a)(3) (West 2018). The circuit court declined to dismiss the suit. But the court stayed the action, based not on section 2-619 but on its inherent authority, pending the outcome of the India litigation. This appeal followed.

¶ 16 ANALYSIS

¶ 17 Our jurisdiction is proper under Illinois Supreme Court Rule 307(a)(1) (eff. Nov. 1, 2017). A stay order is injunctive in nature; Rule 307(a)(1) confers appellate jurisdiction as of right from an order granting a stay. *Lisk v. Lisk*, 2020 IL App (4th) 190364, ¶ 22; *Cholipski v. Bovis Lend Lease, Inc.*, 2014 IL App (1st) 132842, ¶¶ 31-35.

¶ 18 Plaintiff raises several arguments against the propriety of the stay. The first is a legal one. He claims that, though the circuit court entered the stay based on its inherent authority, not on section 2-619(a)(3), the court was nevertheless constrained by the language of section 2-619(a)(3). Thus, says plaintiff, the trial court could only stay this action if it determined that “there is another action pending between the same parties for the same cause.” 735 ILCS 5/2-619(a)(3) (West 2022). He then proceeds to review the case law governing dismissals under section 2-619(a)(3) to demonstrate that this standard was not met here.

¶ 19 Plaintiff’s underlying premise is incorrect. Yes, a court may stay a case under section 2-619(a)(3); while one typically thinks of that statute as governing dismissals, the language permits a “motion for dismissal of the action or for other appropriate relief.” *Id.* § 2-619(a); *People ex rel. Department of Public Aid v. Santos*, 92 Ill. 2d 120, 130 (1982) (supreme court substituted relief of stay instead of dismissal on appeal); see *In re Marriage of Murugesh & Kasilingam*, 2013 IL App (3d) 110228, ¶ 19 (though considering dismissal there, noting that stay is authorized under section 2-619(a)(3)).

¶ 20 But the court’s authority to stay an action is by no means limited to section 2-619(a)(3), nor could it be. A stay is a type of injunction, an equitable remedy that the circuit court has the inherent authority to issue. *Ardt v. Illinois Department of Professional Regulation*, 154 Ill. 2d 138, 146 (1992). “This inherent equitable power, which is derived from the historic power of equity courts, can neither be taken away nor abridged by the legislature.” *Id.* So while a statute may provide for the remedy of a stay and even *broaden* the context in which it could be invoked, no statute can strip or limit the circuit court’s authority to impose a stay. *Id.*

¶ 21 Indeed, a court may issue a stay *sua sponte*, regardless of the parties’ preferences. See *Estate of Lanterman v. Lanterman*, 122 Ill. App. 3d 982, 990 (1984). The stay authority arises

from the court's inherent power to control the disposition of its cases. *Lisk*, 2020 IL App (4th) 190364, ¶ 23; *Vasa North Atlantic Insurance Co. v. Selcke*, 261 Ill. App. 3d 626, 628 (1994).

¶ 22 With that legal question settled, we consider plaintiff's argument that the circuit court erred in granting a stay. We review the trial court's issuance of a stay for an abuse of discretion. *Lisk*, 2020 IL App (4th) 190364, ¶ 22; *Guarantee Trust Life Insurance Co. v. Platinum Supplemental Insurance, Inc.*, 2016 IL App (1st) 161612, ¶ 35. This standard is "the most deferential standard of review recognized by law." *Cholipski*, 2014 IL App (1st) 132842, ¶ 39 (quoting *Khan v. BDO Seidman, LLP*, 2012 IL App (4th) 120359, ¶ 82). The court abuses its discretion when the trial court acts arbitrarily, exceeds the bounds of reason, or ignores or misapprehends the law. *Id.* Another way of saying the same thing is that an abuse of discretion occurs when no reasonable person would adopt the view of the circuit court. *Blum v. Koster*, 235 Ill. 2d 21, 36 (2009).

¶ 23 When 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. *Lisk*, 2020 IL App (4th) 190364, ¶ 23. The court should consider such factors as "comity; the prevention of multiplicity, vexation, and harassment; the likelihood of obtaining complete relief in the foreign jurisdiction; and the *res judicata* effect of a foreign judgment in the local forum." *Kellerman v. MCI Telecommunications Corp.*, 112 Ill. 2d 428, 447-48 (1986). Generally, "a trial court does not act 'outside its discretion' by staying a proceeding in favor of another proceeding 'that could dispose of significant issues.'" *Cholipski*, 2014 IL App (1st) 132842, ¶ 40 (quoting *Khan*, 2012 IL App (4th) 120359, ¶ 60).

¶ 24 There is obviously substantial overlap between the India lawsuit and this action. The parties are not identical, of course; while plaintiff's siblings are parties in both actions, there is

no claim against the two defendant notaries or their bonding companies in the India litigation.

And plaintiff correctly notes that the operative core of facts alleged here—attempts by plaintiff’s siblings, via the notaries, to forge documents concerning the India property—are only a subset of the broader story at issue in India concerning the Kumars’ attempt to assert control over the India property. He likewise notes that his siblings share his interests in the India litigation, whereas in this matter, they are on opposite sides. (Given what is alleged in this suit, it is not clear to us how plaintiff’s siblings would share the same interests with him in any way at this point; but we will concede him this point for purposes of argument.)

¶ 25 We agree with defendant Hassan that the key point is the issue of damages. The ultimate loss alleged is the same in both cases—the deprivation of plaintiff’s interest in the India property. If plaintiff is successful in the India litigation in recovering that interest or, in the alternative, obtaining compensation for his loss, he will be made whole or at least substantially so. Which is to say, the damages he claims in this case will either be eliminated or significantly reduced.

¶ 26 Use the example of defendant Hassan, as he was the party who sought the stay below. The complaint attaches documentation that Hassan has already admitted to misconduct in affixing his notary to signatures that he knew were not genuine. Suppose, hypothetically, that the evidence against Hassan is so clear and undisputed that plaintiff seeks summary judgment against him. And suppose the court grants that motion, entering summary judgment on the question of liability against defendant Hassan. What then? What are plaintiff’s damages? Surely those damages would be far less if plaintiff ultimately recovers his property via the India litigation or, alternatively, receives an award of compensation for his loss. True, plaintiff seeks punitive damages and attorney fees, which are not insubstantial, but there is no question that a sizeable portion of his damages claim depends on the outcome of the India litigation.

¶ 27 The circuit court here would be powerless to affect the result of the contest over the India property. Nothing in this lawsuit requests such action—understandably, given the pending action in India and the apparent lack of jurisdiction an Illinois court would have over this property in India. The court here cannot know the full measure of damages to award unless and until the India courts decisively speak.

¶ 28 All of which is to say, if plaintiff succeeds in protecting his interests via the litigation in India, that result will have a significant impact on the Cook County litigation. It could reduce the damages in this suit substantially, entitling defendants here to a significant offset. And the same result would obtain if the court in India determines that plaintiff is *not* entitled to his share of the India property for whatever reason, at which point defendants would have a strong argument (which they currently lack) about whether plaintiff is entitled to any damages at all for the loss of his interest in the India property. Either way, the outcome of the India litigation will have a profound impact on the outcome of the lawsuit in Cook County, and the circuit court could not possibly enter judgment on an award for damages without knowing the outcome in India.

¶ 29 Plaintiff complains that the already lengthy litigation in India shows no sign of end, that the backlog in cases in India far exceeds anything we see in Illinois. We are sympathetic, but that fact changes nothing. Regardless of how long that litigation takes, the circuit court would be unable to determine damages relative to the India property until that suit is concluded. It was well within the exercise of the court's discretion to decide to await the outcome of the India lawsuit.

¶ 30 CONCLUSION

¶ 31 The judgment of the circuit court is affirmed.

¶ 32 Affirmed.

CERTIFICATE OF SERVICE

I, Adam P. Merrill, hereby certify that on February 2, 2024, I caused a true and correct copy of the foregoing **RESPONDENT/CANDIDATE DONALD J. TRUMP'S MOTION TO STAY PENDING U.S. SUPREME COURT DECISION** to be served upon all parties/counsel of record via the Court's Electronic Filing System.

/s/ Adam P. Merrill

Adam P. Merrill