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

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

RESPONDENT/CANDIDATE DONALD J. TRUMP'S OPPOSITION
TO MOTION FOR EXPEDITED CONSIDERATION

Petitioners seek "expedited" consideration of their petition to reverse the unanimous, bipartisan decision of the State Officers Electoral Board, which overruled Petitioners' objections to President Trump being on the March 19, 2024 Republican primary ballot. But under Illinois law, election cases are already expedited. Here, Petitioners ask for their appeal to be expedited even more—in short, they ask for a super-expedited case. This makes no sense, for three reasons. First, with argument in just three days, the U.S. Supreme Court will likely address the federal, constitutional issues in this case within a few short weeks in a decision that may dispose of Petitioners' claims entirely, a fact Petitioners' counsel has admitted in similar cases in other states. (*See infra* at 4.) Second, Petitioners have identified no harm that justifies a super-expedited schedule. And third, this Court should not be rushed into a decision in which Petitioners ask this Court to overturn the Board's decision, which included, not only a legal ruling, but also a ruling that the Petitioners had failed to establish a valid objection by a preponderance of the evidence.

It would be a waste of this Court's resources to duplicate the U.S. Supreme Court proceedings by expediting this case. Instead, this Court should stay the case as requested in President Trump's separately-filed motion for a stay. As an alternative, President Trump

proposes a briefing schedule that follows the already-expedited statutory framework for a ballot access case. *See* 10 ILCS 5/10-10.1(a).

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* Ex. A to Pres. Trump's stay motion, 1/30/2024 Electoral Board Decision Overruling Petitioners' Objection.)

Now, Petitioners ask the courts to overturn that decision. In doing so, they rely almost 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* Ex. B to Pres. Trump's stay motion, Candidate's counsel's 1/24/2024 email to the hearing officer with stipulation attached.) Specifically, Petitioners asked the 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 to Pres. Trump's stay motion, ¶ 10.G.)

1. There is no reason for this Court to duplicate the U.S. Supreme Court proceedings and analysis. 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. *Trump v. Anderson*, No. 23-719,

2024 WL 61814 (U.S. Jan. 5, 2024).[1] If the Supreme Court continues the expedited schedule it has followed so far, its decision will likely be issued before the end of February.

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);[2] *see* 2024 WL 61714 (granting petition in full). In this case, Petitioners seek the exact same relief that is under review by the Supreme Court.

Moreover, the issues before the Supreme Court are 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.

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

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

- "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 state appellate courts that a U.S. Supreme Court decision on President Trump's eligibility would "resolve the issue" nationwide, Pet'rs Reply Br. at 8, *Growe v. Simon*, No. A23-1354 (Minn.) (filed Oct. 23, 2023), and would be the "final decision" for the entire nation. Appellants' Br. at 39, *LaBrant v. Benson,* No. 368165 (Mich. Ct. App.) (filed Nov. 30, 2023); *see also* Mem. in Supp. of Mandamus at 69-70, *Nelson v. Griffin-Valade* (Ore.) (filed Dec. 6, 2023) (same). (*See* Ex. D. to Pres. Trump's stay motion (select pages from briefs) (highlighting added).)

In light of all that, it is very likely that the Supreme Court's ruling will immediately dispose of this case. Only if the Supreme Court rules against President Trump on every ground might this Court need to review the Electoral Board's dismissal on state-law grounds.

In that light, expediting this case as Petitioners request would waste this Court's and the parties' time and efforts, and would at best result in a rushed duplication of the U.S. Supreme Court litigation. Even operating at breakneck speed, this Court would be very hard pressed to issue any decision in this case more than a few days, or perhaps a week, ahead of the Supreme Court's likely decision. Whatever this Court would decide would of course be immediately appealed by the losing side—and it seems highly unlikely that any

appellate decision would come ahead of the Supreme Court's ruling. And of course, any decision from this Court would have to be immediately revisited, and potentially revised or reversed, once the Supreme Court rules.

Such an undertaking would offer virtually no benefit. Illinois' primary election date is March 19; early voting begins this coming Thursday, February 8, and many ballots are already printed. *See* 10 ILCS 5/7-16, 5/19-4, F/19A-15, 16-5.01. Thus, regardless of whether this Court rules after the Supreme Court or rushes to go first, this Court's decision will come in the middle of early voting. And, as noted, a decision from this Court that came right before a Supreme Court decision would create a risk of complicating the election with multiple, rapidly-changing sets of instructions to election officials.

In the meantime, by contrast, the Electoral Board's unanimous decision means that the *status quo* in Illinois is exactly the same as it is everywhere else in the nation: President Trump's name appears on the primary ballot, just as it does in Colorado, Maine, and every single other jurisdiction in the United States where President Trump has sought to appear on the ballot.

2. Petitioners cannot justify a super-expedited proceeding. The Petitioners do not, and cannot, cite any harm that would justify a departure from Illinois' already expedited procedures. Critically, the only dates Petitioners mention (February 2 and February 8, 2024, *see* Mot., ¶¶ 8-9) will pass before the merits of Petitioners' appeal are briefed. And the current election deadlines—such as printing and mailing ballots—cannot justify a departure from the normal statutory procedures for appeals because the Illinois legislature established both the current challenge procedures and the administrative appeal deadlines as part of an overall framework for including candidates on Illinois ballots. Procedurally, this case presents nothing new or unusual.

Regardless of the outcome of this appeal, Illinois voters will receive printed ballots with President Trump's name (and with the names of President Trump's delegates) on the Republican Primary ballot. Indeed, Illinois election officials have already printed and mailed ballots to military and overseas voters, and the process of printing millions of ballots is well underway and will be completed within days – and in fact, all ballots may have already been printed. At this point, the only relief that Petitioners can possibly obtain is an Order prohibiting Illinois election officials from counting votes cast for President Trump. A stay of proceedings until the U.S. Supreme Court issues its decision would allow adequate time to resolve this matter under Illinois' normal, but still expedited, election schedule.

Denial of Petitioners' motion to expedite would also be consistent with how courts are handling similar proceedings in other states. Even in Colorado and Maine, the only two states to have sustained objections similar to Petitioners' objections, election officials are currently printing Presidential ballots that ***include*** President Trump's name. That is because both the Colorado courts and the Maine Secretary of State 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 to Candidate's motion to stay 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*").

3. This Court should not be rushed into a decision in light of the Board's ruling that the Petitioners' claims failed under a preponderance of the evidence standard. Lastly, the Electoral Board ruled, in part, that the Petitioners failed to establish their

objections by a preponderance of the evidence. Although earlier today, the Board filed the common law record and the record of proceedings, the Electoral Board has not yet filed the exhibits the parties provided to the Hearing Officer below. Even if the entire record is on file when the motion to expedite is argued on February 7, the record is thousands of pages long and includes dozens of electronic exhibits, primarily videos. Thus, even with a normally expedited schedule, it will be difficult for the parties to brief and the Court to review and decide the merits of Petitioners' appeal. It would be exponentially more difficult to do so under the super-expedited schedule Petitioners seek, which would leave scant time for careful and thoughtful decision-making.

4. If this Court does not stay the proceedings, it should enter a briefing schedule that allows the U.S. Supreme Court to decide first. The most sensible course, therefore, is for this Court to stay the case as requested in President Trump's separately-filed motion. In the alternative, if the Court does not enter a stay, it should set a briefing and hearing schedule that allows for a prompt decision in this case, consistent with 10 ILCS 5/10-10.1(a), ***after*** the Supreme Court issues its decision. Following that timeframe likely will allow the Supreme Court to resolve the issues and eliminate any need for further briefing or decision in this case. At minimum, it likely will allow the parties and the Court to address the case with the benefit of the Supreme Court's decision. Therefore, if this Court does not stay these proceedings, it should simply set a hearing within thirty days as required by the Election Code, with briefing to take place the week or so before the hearing.

That timeframe will allow a prompt decision while also likely allowing the Supreme Court to decide first. To that end, to the extent the case is not stayed, this Court should direct briefing on the following schedule:

- Petitioners file their merits brief on February 21, 2024; or within three business days of the Supreme Court's decision, whichever is sooner;

- Respondents file their merits briefs on February 26, 2024, or within six business days of the Supreme Court's decision, whichever is sooner; and

- A hearing on February 29, 2024, or on an earlier date set by the Court following the Supreme Court's decision.

In sum, if the Court enters a stay or enters a schedule that includes these dates, it is likely that no further action will need to be taken. The Supreme Court will decide, and the parties likely will be able to agree on how that ruling impacts this case. In the unlikely event that any issues remain for this Court's decision, entering a stay or an Order adopting Candidate's proposed schedule will allow for prompt resolution of those issues.

CONCLUSION

The Court should enter an order staying proceedings as requested in the Candidate's separately filed motion. In the alternative, the Court should enter an Order, consistent with Election Code Section 10-10.1(a), that schedules a hearing within 30 days.

Dated: February 5, 2024

Respectfully submitted,

RESPONDENT/CANDIDATE DONALD J. TRUMP

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

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CERTIFICATE OF SERVICE

I, Adam P. Merrill, hereby certify that on February 5, 2024, I caused a true and correct copy of the foregoing **RESPONDENT/CANDIDATE DONALD J. TRUMP'S OPPOSITION TO MOTION TO EXPEDITE** to be served upon all parties/counsel of record via the Court's Electronic Filing System.

/s/ Adam P. Merrill
Adam P. Merrill