No. 1-24-0437
IN THE APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

STEVEN DANIEL ANDERSON, CHARLES J. HOLLEY, JACK L. HICKMAN, RALPH E. CINTRON, and DARRYL P. BAKER, Petitioners-Appellees, v. DONALD J. TRUMP, Respondent-Appellant, and the ILLINOIS STATE BOARD OF ELECTIONS sitting as the State Officers Electoral Board, and its Members CASSANDRA B. WATSON, LAURA K. DONAHUE, JENNIFER M. BALLARD CROFT, CRISTINA D. CRAY, TONYA L. GENOVESE CATHERINE S. MCCRORY, RICK S. TERVIN, SR., and JACK VRETT, other Respondents below.	)	Appeal from the Circuit Court of Cook County, Illinois, County Department, County Division Circuit Court No.: 2024 COEL 13 Hon. Tracie R. Porter, Judge Presiding

NOTICE OF FILING

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PLEASE TAKE NOTICE that on March 12, 2024, the undersigned filed RESPONDENT-APPELLANT DONALD J. TRUMP'S MOTION TO VACATE BASED ON U.S. SUPREME COURT DECISION with the Clerk of the Illinois Appellate Court, First District, a copy of which is attached and hereby served upon you.

Dated: March 12, 2024

Respectfully submitted,

RESPONDENT-APPELLANT DONALD J. TRUMP

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

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FIRST DISTRICT

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v.

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Respondent-Appellant, and

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other Respondents below.</td><td>)
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Circuit Court No.: 2024 COEL 13

Hon. Tracie R. Porter,
Judge Presiding</td></tr>
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RESPONDENT-APPELLANT DONALD J. TRUMP'S MOTION TO VACATE BASED ON U.S. SUPREME COURT DECISION

This matter involves Petitioners' challenge, under Section Three of the Fourteenth Amendment to the U.S. Constitution, to President Trump's appearance on the Illinois primary ballot. The State Officers Electoral Board unanimously rejected Petitioners' challenge without making factual findings and without reaching any federal issues. Relying heavily on a Colorado decision from a similar proceeding, the Circuit Court held that it had jurisdiction to decide Section 3 issues, made new factual findings, reversed the Electoral Board, and ordered President Trump's name removed from the ballot. President Trump appealed to this Court. Four days later, the U.S. Supreme Court reversed the Colorado decision, holding that states have no authority to consider or adjudicate

Section Three challenges like this one. (*See* 3/12/2024 Affidavit of Adam Merrill ("Merrill Aff.") (attached hereto), ¶ 2.) The Supreme Court's decision resolves this case. Because states have no authority to consider Section Three challenges, the Circuit Court's judgment must be vacated and the Petitioners' objections dismissed without further action.

*

The Petitioners-Appellees in this case sought to remove President Donald J. Trump from the presidential primary ballot in Illinois on the theory that he "engaged in insurrection" and was therefore disqualified from the Presidency by Section Three of the Fourteenth Amendment. (Merrill Aff., ¶ 3.) Petitioners seek no other relief and assert no other basis for relief. (*See, e.g.,* Supp. R. 5,[1] Petitioners' 1/4/2024 Petition (attached as Exhibit A), ¶¶ 8-10, 55; Merrill Aff., ¶ 3.) Petitioners predicated their claims almost entirely on the Colorado Supreme Court's decision in *Anderson v. Griswold,* 2023 CO 63. (*See* Exhibit A, ¶ 11 (Colorado decision "present[ed] nearly identical legal and factual issues as this challenge"); *id.*, ¶¶ 17, 20-21, 44, 271, 284; Merrill Aff., ¶ 3.) Even the Circuit Court noted that "[t]he basis for the objections in Colorado are the same as [the basis for Petitioners' objections], which [are] based on the U.S. constitutional disqualification of Respondent-Candidate." (Supp. R. 112, 2/28/2024 Circuit Court Memorandum of Judgment and Order (the "Judgment") (attached as Exhibit C), at 24.) For instance, when Petitioners-Appellees presented their claims to the Electoral Board and in the Circuit Court, they submitted no new evidence, but sought simply to rely on the record compiled in the Colorado proceedings. (*Id.* at 9 (referencing stipulation "in lieu of live witnesses or presenting evidence outside of what" was presented in Colorado); *see also id.*, App'x A, at Supp. R. 153 (email confirming parties would not be calling live witnesses or presenting new evidence to the Electoral Board); Merrill Aff., ¶ 3.)

[1] Pursuant to Rule 361, on March 8, 2024, Respondent filed "an appropriate supporting record" in accordance with Rule 328, with pleadings, orders, *etc.*, marked as "Supp. R. __."

The eight members of the Electoral Board (four Democrats and four Republicans) unanimously dismissed the objection to President Trump's inclusion on the ballot, in part because "the Board lack[ed] jurisdiction to decide whether Section 3 of the 14th Amendment . . . bar[s] Candidate from the ballot in Illinois,"[2] but Petitioners-Appellees sought immediate review in the Circuit Court. (Merrill Aff., ¶ 4.) The Circuit Court, however, reversed the Electoral Board, agreed with Petitioners, and adopted the Colorado Supreme Court's factual record, reasoning, and holding. (Exhibit C at 24-31, 33, 36 n. 35 (citing and adopting Colorado Supreme Court factual findings, reasoning and holding, including by finding the Colorado Supreme Court's decision was "well-articulated, rational[] and established in historical context," and noting that it "finds [the Colorado Supreme Court's] rationale compelling"); Merrill Aff., ¶ 4.) The Circuit Court therefore ordered that the "Illinois State Board of Election[s] shall remove Donald J. Trump from the ballot for the General Primary Election on March 19, 2024, or cause any votes cast for him to be suppressed." (Exhibit C at 38.) President Trump appealed that decision to this Court. (Supp. R. 184 (2/28/2024 Notice of Appeal).)

On March 4, the U.S. Supreme Court unanimously reversed the Colorado Supreme Court's decision. *Trump v. Anderson*, No. 23-719 (U.S. Mar. 4, 2024) (attached as Exhibit E); Merrill Aff., ¶ 5. It held that "[s]tates have no power under the Constitution to enforce Section 3 with respect to federal offices, especially the Presidency." *Id.* at 6. The Supreme Court reasoned that "nothing in the Constitution delegates to the States any power to enforce Section 3 against federal officeholders and candidates," that "the text of the Fourteenth Amendment, on its face, does not affirmatively delegate such a power to the state," and that there is no "tradition of state enforcement of

[2] Supp. R. 92, 1/30/2024 Electoral Board Decision Overruling Petitioners' Objection (the "Electoral Board Decision") (attached as Exhibit B), ¶¶ 10.C, 10.D., and 10.E.

Section 3 against federal officeholders or candidates in the years following ratification of the Fourteenth Amendment." *Id.* at 7, 9.

Thus, it is now settled that neither the Electoral Board nor any Illinois court has the power to consider Petitioners' claims or grant the relief they seek. (Merrill Aff., ¶ 6.) "[D]ecisions issued without subject matter jurisdiction are void," *People v. Arriaga*, 2023 IL App (5th) 220076, ¶ 12, and so this Court "ha[s] an obligation to vacate any order the trial court entered without subject matter jurisdiction." *Anderson Dundee 53 L.L.C. v. Terzakis*, 363 Ill. App. 3d 145, 158, 160 (1st Dist. 2005), *as supplemented on denial of reh'g* (Dec. 2, 2005) (vacating corporate contempt order entered against a former officer).

Under Rule 361(h), a "dispositive motion" includes "any motion challenging the Appellate Court's jurisdiction" and is appropriate "[w]here a straightforward dispositive issue exists," such that "forcing [the parties] unnecessarily to brief and argue the merits of the appeal" would needlessly "delay[] the final resolution of the case and greatly increase[] the burden on all parties," and on this Court. Ill. Sup. Ct. R. 361, 2006 Committee Cmts. That is exactly the situation here. The U.S. Supreme Court has definitively resolved this controversy. (Merrill Aff., ¶ 7.)

Petitioners' counsel, in similar ballot-access cases in other states, have long contended that a U.S. Supreme Court decision concerning President Trump's eligibility in one case would "resolve the issue" nationwide, Pet'rs Reply Br. at 8, *Growe v. Simon*, No. A23-1354 (Minn.) (filed Oct. 23, 2023), and would be the "final decision" for the entire nation. Appellants' Br. at 39, *LaBrant v. Benson,* No. 368165 (Mich. Ct. App.) (filed Nov. 30, 2023); *see also* Mem. in Supp. of Mandamus at 69-70, *Nelson v. Griffin-Valade*, at 69 (Ore.) (filed Dec. 6, 2023) (same). (Supp. R. 102-11, select pages from Petitioners' counsel's briefs in other states (attached as Exhibit D) (highlighting added); Merrill Aff., ¶ 8.)

Nonetheless, when Respondent asked Petitioners, in light of *Trump v. Anderson*, to agree to the relief requested herein, Petitioners' counsel declined and indicated they intend to oppose this Motion. Although Petitioners concede they cannot "continu[e] [their] challenge to [President] Trump remaining on the ballot," Petitioners claim the case should be remanded to the Circuit Court for "clarification" of the standard the Electoral Board should apply in future cases involving allegations that a candidate falsely swore they were qualified for office. But except for vacating the Judgment, neither this Court nor the Circuit Court has jurisdiction to clarify any legal standard for the benefit of future litigants or decision makers. (Merrill Aff., ¶ 11.) Indeed, "the courts of Illinois do not issue advisory opinions to guide future litigation." *Golden Rule Ins. Co. v. Schwartz*, 203 Ill. 2d 456, 469 (2003) (vacating portion of Appellate Court judgment "comment[ing]" on issues likely to "reappear[] in the future"); *see also River Plaza Homeowner's Ass'n v. Healey*, 389 Ill. App. 3d 268, 282 (1st Dist. 2009) (affirming 2-619 dismissal based on lack of standing and refusing to issue an "advisory opinion" concerning other issues). Moreover, beyond vacating the portion of the Judgment that is barred by *Trump v. Anderson*, any further action by the Circuit Court would not only be improper, but also unnecessary since any "clarification" would have no precedential impact on "future litigation." *Delgado v. Bd. of Election Comm'rs*, 224 Ill. 2d 481, 488 (Ill. 2007) ("[u]nder Illinois law, the decisions of circuit courts have no precedential value"); Merrill Aff., ¶ 11.

Here, there is nothing left to litigate. As the U.S. Supreme Court held, no state has the "power under the Constitution to enforce Section 3" against Presidential candidates (Exhibit E at 6); thus, the Circuit Court lacked jurisdiction to issue its decision. And because Section 3 was the only basis on which Petitioners sought relief (*see, e.g.,* Exhibit A at ¶¶ 8-10, 55), the Circuit Court lacks jurisdiction to issue any additional rulings in this case, beyond vacating the Judgment and

dismissing the Circuit Court petition. The decision below must therefore be vacated and the case closed. (Merrill Aff., ¶ 9.)

This Court, therefore, should summarily vacate the Circuit Court's Judgment and remand with instructions to dismiss Petitioners' Circuit Court petition without further action. (Merrill Aff., ¶ 10.)

Dated: March 12, 2024

Respectfully submitted,

RESPONDENT-APPELLANT DONALD J. TRUMP

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

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Petitioners-Appellees,	)	Circuit Court No.: 2024 COEL 13
v.	)	Hon. Tracie R. Porter, Judge Presiding
DONALD J. TRUMP,	)	
Respondent-Appellant, and	)	
the ILLINOIS STATE BOARD OF ELECTIONS sitting as the State Officers Electoral Board, and its Members CASSANDRA B. WATSON, LAURA K. DONAHUE, JENNIFER M. BALLARD CROFT, CRISTINA D. CRAY, TONYA L. GENOVESE CATHERINE S. MCCRORY, RICK S. TERVIN, SR., and JACK VRETT,	)	
other Respondents below.	)	

AFFIDAVIT

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

1. I am a member of the bar of the State of Illinois. I am a Partner with the law firm of Watershed Law LLC ("Watershed"). I represent Respondent-Appellant in the above-captioned matter. I offer this affidavit in support of Respondent-Appellant's Donald J. Trump's Motion to Vacate Based on U.S. Supreme Court Decision (the "Motion").

Merrill Aff.

2. This matter involves Petitioners' challenge, under Section Three of the Fourteenth Amendment to the U.S. Constitution, to President Trump's appearance on the Illinois primary ballot. (*See* Supp. R. 5,[1] Petitioners' 1/4/2024 Objection, a true and correct copy of which is attached to the Motion as Exhibit A, ¶¶ 8-10, 55.) The State Officers Electoral Board unanimously rejected Petitioners' challenge without making factual findings and without reaching any federal issues. (*See* Supp. R. 92, 1/30/2024 Electoral Board Decision Overruling Petitioners' Objection, a true and correct copy of which is attached to the Motion as Exhibit B, ¶¶ 10.C, 10.D., and 10.E.) Relying heavily on a Colorado decision from a similar proceeding, the Circuit Court held that it had jurisdiction to decide Section 3 issues, made new factual findings, reversed the Electoral Board, and ordered President Trump's name removed from the ballot. (*See* Supp. R. 112, 2/28/2024 Circuit Court Memorandum of Judgment and Order (the "Judgment"), a true and correct copy of which is attached to the Motion as Exhibit C, at 24.) President Trump appealed to this Court. (*See* Supp. R. 184 (2/28/2024 Notice of Appeal).) Four days later, the U.S. Supreme Court reversed the Colorado decision, holding that states have no authority to consider or adjudicate Section Three challenges like this one. (*See* U.S. Supreme Court's 3/4/2024 decision in *Trump v. Anderson*, U.S. No. 23-719, a true and correct of which is attached to the Motion as Exhibit E).) The Supreme Court's decision resolves this case.

3. The Petitioners-Appellees in this case sought to remove President Donald J. Trump's name from the presidential primary ballot in Illinois, on the theory that he "engaged in insurrection" and was therefore disqualified from the Presidency by Section Three of the Fourteenth Amendment. Petitioners seek no other relief and assert no other basis for relief. (*See,*

[1] On March 8, 2024, pursuant to Rule 361, Respondent-Appellant filed "an appropriate supporting record" in accordance with Rule 328. "Supp. R. __" refers to that supporting record.

e.g., Exhibit A, ¶¶ 8-10, 55.) Petitioners predicated their claims almost entirely on the Colorado Supreme Court's decision in *Anderson v. Griswold*, 2023 CO 63. (*See id.*, ¶ 11 (Colorado decision "present[ed] nearly identical legal and factual issues as this challenge"); *id.*, ¶¶ 17, 20-21, 44, 271, 284.) Even the Circuit Court noted that "[t]he basis for the objections in Colorado are the same as [the basis for Petitioners' objections], which [are] based on the U.S. constitutional disqualification of Respondent-Candidate." (*See* Exhibit C at 24.) For instance, when Petitioners-Appellees presented their claims to the Electoral Board and in the Circuit Court, they submitted no new evidence but sought simply to rely on the record compiled in the Colorado proceedings. (*Id.* at 9; *see also id.*, App'x A, at Supp. R. 153.)

4. The eight members of the Electoral Board (four Democrats and four Republicans) unanimously dismissed the objection to President Trump's inclusion on the ballot, in part because "the Board lack[ed] jurisdiction to decide whether Section 3 of the 14th Amendment . . . bar[s] Candidate from the ballot in Illinois," but Petitioners-Appellees sought review in the Circuit Court. (*See* Exhibit B, ¶¶ 10.C, 10.D., and 10.E.) The Circuit Court, however, reversed the Electoral Board, agreed with Petitioners, and adopted the Colorado Supreme Court's factual record, reasoning, and holding. (*See* Exhibit C at 24-31, 33, 36 n. 35 (citing and adopting Colorado Supreme Court factual findings, reasoning and holding, including by finding the Colorado Supreme Court's decision was "well-articulated, rational[] and established in historical context," and noting that it "finds [the Colorado Supreme Court's] rationale compelling").) The Circuit Court therefore ordered that the "Illinois State Board of Election[s] shall remove Donald J. Trump from the ballot for the General Primary Election on March 19, 2024, or cause any votes cast for him to be suppressed." (*See id.* at 38.) President Trump appealed that decision to this Court. (*See* Supp. R. 184 (2/28/2024 Notice of Appeal).)

5. On March 4, the U.S. Supreme Court unanimously reversed the Colorado Supreme Court's decision. It held that "[s]tates have no power under the Constitution to enforce Section 3 with respect to federal offices, especially the Presidency." (*See* Exhibit E at 6.) The Court reasoned that "nothing in the Constitution delegates to the States any power to enforce Section 3 against federal officeholders and candidates," that "the text of the Fourteenth Amendment, on its face, does not affirmatively delegate such a power to the state," and that there is "no tradition of state enforcement of Section 3 against federal officeholders or candidates in the years following ratification of the Fourteenth Amendment." (*Id.* at 7, 9.)

6. Thus, it is now settled that neither the Electoral Board nor any Illinois court has the power to consider Petitioners' claims or grant the relief they seek.

7. Under Rule 361(h), a dispositive motion in an appeal is appropriate "[w]here a straightforward dispositive issue exists," such that "forcing [the parties] unnecessarily to brief and argue the merits of the appeal" would needlessly "delay[] the final resolution of the case and greatly increase[] the burden on all parties," and on this Court. R. 361, 2006 Committee Cmts. That is the situation here. The U.S. Supreme Court has definitively resolved this controversy.

8. Petitioners' counsel, in similar ballot-access cases in other states, have long contended that a U.S. Supreme Court decision concerning President Trump's eligibility in one case would "resolve the issue" nationwide, Pet'rs Reply Br. at 8, *Growe v. Simon*, No. A23-1354 (Minn.) (filed Oct. 23, 2023), and would be the "final decision" for the entire nation. Appellants' Br. at 39, *LaBrant v. Benson,* No. 368165 (Mich. Ct. App.) (filed Nov. 30, 2023); *see also* Mem. in Supp. of Mandamus at 69-70, *Nelson v. Griffin-Valade*, at 69 (Ore.) (filed Dec. 6, 2023) (same). (*See* Supp. R. 102, select pages from these briefs filed by Petitioners' counsel in other states, a true and correct copy of which is attached to the Motion as Exhibit D (with highlighting added).)

9. There is nothing left to litigate. As the Supreme Court held, no state has the "power" to enforce Section 3 against candidates for the Presidency (Exhibit E at 6); thus, the Circuit Court lacked jurisdiction to issue its decision. And because Section 3 was the only basis on which Petitioners sought relief (*see, e.g.,* Exhibit A at ¶¶ 8-10, 55), the Circuit Court lacks jurisdiction to issue any additional rulings in this case, beyond vacating the Judgment and dismissing the Circuit Court petition. The decision below should be vacated and the case closed.

10. This Court, therefore, should summarily vacate the Circuit Court's Judgment (Exhibit C) and remand with instructions to dismiss Petitioners' Circuit Court petition (Supp. R. 96) without further action.

11. Nonetheless, when Respondent asked Petitioners, in light of *Trump v. Anderson*, to agree to the relief requested herein, Petitioners' counsel declined and indicated they intend to oppose the Motion. Although Petitioners concede they cannot "continu[e] [their] challenge to [President] Trump remaining on the ballot," Petitioners claim the case should be remanded to the Circuit Court for "clarification" of the standard the Electoral Board should apply in future cases involving allegations that a candidate falsely swore they were qualified for office. But except for vacating the Judgment, neither this Court nor the Circuit Court has jurisdiction to clarify any legal standard for the benefit of future litigants or decision makers. Moreover, beyond vacating the portion of the Judgment that is barred by *Trump v. Anderson*, any further action by the Circuit Court would not only be improper, but also unnecessary since any "clarification" would have no precedential impact on "future litigation."

FURTHER AFFIANT SAYETH NOT.

/s/ Adam P. Merrill
Adam P. Merrill

FILED
2/5/2024 12:00 AM
Iris Y. Martinez
CIRCUIT CLERK
COOK COUNTY, IL
2024COEL000013

BEFORE THE STATE BOARD OF ELECTIONS SITTING AS THE STATE OFFICERS ELECTORAL BOARD FOR THE HEARING AND PASSING UPON OF OBJECTIONS TO THE CERTIFICATES OF NOMINATION AND NOMINATION PAPERS OF CANDIDATES FOR THE REPUBLICAN NOMINATION FOR THE OFFICE OF PRESIDENT OF THE UNITED STATES TO BE VOTED UPON AT THE MARCH 19, 2024 GENERAL PRIMARY ELECTION

Steven Daniel Anderson; Charles J. Holley;
Jack L. Hickman; Ralph E. Cintron;
Darryl P. Baker,

Petitioners-Objectors,

v. Case No.

Donald J. Trump,

Respondent-Candidate.

2024 JAN -4 AM 8:44

OBJECTORS' PETITION

Exhibit A

Supp. R. 5

TABLE OF CONTENTS

PAGE

OBJECTORS' NAME, ADDRESS, LEGAL VOTER STATUS, INTEREST, AND RELIEF REQUESTED 1

NATURE OF OBJECTION 2

AUTHORITY AND DUTY OF BOARD TO HEAR OBJECTION 13

STATEMENT OF FACTS 17

I. TRUMP TOOK AN OATH TO UPHOLD THE U.S. CONSTITUTION. 18

II. TRUMP'S SCHEME TO OVERTURN THE GOVERNMENT 18

A. Trump Sought Re-Election but Prepared to Retain Power Even if He Lost. 18

B. Trump Attempted to Enlist Government Officials to Illegally Overturn the Election. 22

C. Trump Urged His Supporters to Amass at the Capitol. 31

D. In Response to Trump's Call for a "Wild" Protest, Trump's Supporters Planned Violence. 32

E. Trump and his Administration Knew of Supporters' Plans to Use Violence and/or to Forcefully Prevent Congress from Certifying the Election Results. 39

III. THE JANUARY 6, 2021 INSURRECTION. 41

A. The Two Demonstrations 41

B. Trump's Preparations as the Demonstrations Began 42

C. The Increasingly Apocalyptic Demonstration at the Ellipse. 43

D. Insurrectionists Prepared for Battle at the Capitol 45

E. Trump Directed Supporters to March on the Capitol and Intimidate Pence and Congress. 46

F. Trump Intended to March on the Capitol and Capitalize on the Unfolding Chaos. 48

G. Pro-Trump Insurrectionists Violently Attacked the Capitol 49

H. The Fall of the United States Capitol. 52

I. Trump Reveled in, and Deliberately Refused to Stop, the Insurrection. 54

IV. MULTIPLE JUDGES AND GOVERNMENT OFFICIALS HAVE DETERMINED THAT JANUARY 6 WAS AN INSURRECTION AND THAT TRUMP WAS RESPONSIBLE. 60

V. TRUMP ACKNOWLEDGES THAT HE WAS IN COMMAND OF INSURRECTIONISTS AND CALLS THEM PATRIOTS. 69

VI. TRUMP REMAINS UNREPENTANT AND WOULD DO IT AGAIN 71

VII. THE CONSTITUTION DISQUALIFIES INSURRECTIONISTS FROM OFFICE. 73

VIII. TRUMP ENGAGED IN INSURRECTION OR REBELLION. 74

IX. TRUMP GAVE "AID OR COMFORT TO THE ENEMIES OF" THE U.S. CONSTITUTION. 77

X. TRUMP IS DISQUALIFIED FROM PUBLIC OFFICE. 78

Petitioners-Objectors Steven Daniel Anderson, Charles Holley, Jack L. Hickman, Ralph Cintron, and Darryl Baker ("Objectors") hereby file this Objectors' Petition pursuant to Article 10 of the Election Code and 10 ILCS 5/10-8 challenging the legal and factual sufficiency of the nomination papers of Respondent-Candidate Donald J. Trump ("Candidate" or "Trump") as a candidate for the Republican Nomination for the Office of the President of the United States, and in support of their Petition state the following:

OBJECTORS' NAME, ADDRESS, LEGAL VOTER STATUS, INTEREST, AND RELIEF REQUESTED

1. Objector Steven Daniel Anderson resides at 2857 Falling Waters Drive, Lindenhurst, Illinois 60046 and is a duly qualified, legal, and registered voter at this same address within the State of Illinois.

2. Objector Charles J. Holley resides at 7343 S Euclid Avenue, Chicago Illinois 60649, and is a duly qualified, legal, and registered voter at this same address within the State of Illinois.

3. Objector Jack L. Hickman resides at 39 Wilshire Drive, Fairview Heights, Illinois 62208, and is a duly qualified, legal, and registered voter at this same address within the State of Illinois.

4. Objector Ralph E. Cintron resides at 720 S Dearborn Street, Apt. 504, Chicago Illinois, 60605, and is a duly qualified, legal, and registered voter at this same address within the State of Illinois.

5. Objector Darryl P. Baker resides at 401 S. Maple Street, Colfax, Illinois, and is a duly qualified, legal, and registered voter at this same address within the State of Illinois.

6. The Objectors' interest in filing this objection is that of citizens and voters desirous of seeing to it that the election laws of Illinois are properly complied with and that only duly

qualified candidates for the Republican Nomination for the Office of the President of the United States shall appear on the ballot for the General Primary Election on March 19, 2024.

7. Objectors request the following: (a) a hearing on the objection set forth herein; (b) a determination that the Nomination Papers of Candidate are legally and factually insufficient; and (c) a decision that the name of Candidate "Donald J. Trump" shall not be printed on the official ballot as a candidate for the Republican Nomination for the Office of the President of the United States for the March 19, 2024 General Primary or the November 5, 2024 General Election.

NATURE OF OBJECTION

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

U.S. Const. amend. XIV, § 3.

8. Candidate's nomination papers are not valid because when he swore in his Statement of Candidacy that he is "qualified" for the office of the presidency as required by 10 ILCS 5/7-10, he did so falsely. Trump cannot satisfy the eligibility requirements for the Office of the President of the United States established in Section 3 of the Fourteenth Amendment of the U.S. Constitution.

9. Under Section 3 of the Fourteenth Amendment to the U.S. Constitution, known as the Insurrectionist Disqualification Clause, "No person shall . . . hold any office, civil or military, under the United States, . . . who, having previously taken an oath, . . . as an officer of the United

States, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof."

10. As set forth below, after having sworn an oath to support the Constitution of the United States,[1] Trump has "engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof" and is therefore disqualified from public office under Section 3 of the Fourteenth Amendment.

11. On December 19, 2023, the Colorado Supreme Court decided, in a detailed 133-page opinion, a case presenting nearly identical legal and factual issues as this challenge. *See Anderson v. Griswold*, __ P.3d __, 2023 CO 63, 2023 WL 8770111 (Colo. Dec. 19, 2023). (The Colorado Supreme Court decision is attached as Exhibit A, and the trial court's Final Order dated Nov. 17, 2023 is attached as Exhibit B.) Candidate Trump was a party to that proceeding and participated fully both in the trial court proceedings (including a five-day bench trial) and on appeal. The Court held that:

a. "Congress does not need to pass implementing legislation for Section Three's disqualification provision to attach, and Section Three is, in that sense, self-executing."
b. "Judicial review of President Trump's eligibility for office under Section Three is not precluded by the political question doctrine."
c. "Section Three encompasses the office of the Presidency and someone who has taken an oath as President."
d. The trial court did not err in concluding that "the events at the U.S. Capitol on January 6, 2021, constituted an 'insurrection.'"
e. The trial court did not err in concluding that Trump "'engaged in' that insurrection through his personal actions."
f. "President Trump's speech inciting the crowd that breached the U.S. Capitol on January 6, 2021, was not protected by the First Amendment."

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[1] Trump White House Archived, *The Inauguration of the 45th President of the United States*, YOUTUBE (Jan. 20, 2017), https://www.youtube.com/watch?v=4GNWldTc8VU; *see also* U.S. Const. art. II, § 1, cl. 8.

Thus, it concluded, "Trump is disqualified from holding the office of President under Section Three; because he is disqualified, it would be a wrongful act under [Colorado law] for the Secretary to list him as a candidate on the presidential primary ballot." *Griswold*, 2023 WL 8770111, at *2-3 (Ex. A).

12. On December 28, 2023, the Maine Secretary of State also determined, following briefing and an evidentiary hearing, that Candidate Trump's Maine "primary petition is invalid" based on his false declaration that he is qualified to hold office when he, in fact, is constitutionally disqualified under Section 3 of the Fourteenth Amendment. *See* Ruling of the Secretary of State, *In re: Challenges to Primary Nomination Petition of Donald J. Trump, Republican Candidate for President of the United States*, (Dec. 28, 2023) ("Maine Sec. of State Ruling," attached as Exhibit C). The decision recognized:

a. The administrative authority of the Secretary of State to assess whether a candidate is "qualified" for office, and thus can be included on the state ballot, encompasses constitutional qualifications, including under Section 3.
b. Section Three is self-executing without Congressional action and applies to the office of President.
c. The "events of January 6, 2021 were an insurrection."
d. "Trump engaged in the insurrection of January 6, 2021."
e. There is no precedent to support Trump's argument that the First Amendment can "override" Section 3 or any other qualification for public office.
f. Trump's speech, in any case, "is unprotected by the First Amendment," because it was intended to incite lawless action.

Like in Colorado, Trump was a party to the proceeding and fully participated, including through the opportunity to present evidence; call witnesses; cross-examine; and argue legal and factual issues. *Id* at 17.

13. Thus, the only two decisions evaluating Section 3 challenges that reached the *merits* of the challenge and assessed evidence from both Candidate Trump and objectors, determined that Trump is constitutionally barred from office.

14. "*The oath to support the Constitution is the test*. The idea being that one who had taken an oath to support the Constitution and violated it, ought to be excluded from taking it again, until relieved by Congress." *Worthy v. Barrett*, 63 N.C. 199, 204 (1869). Persons who are disqualified by Section 3 are thus ineligible to hold the presidency, just like those who fail to meet the age, residency, or natural-born citizenship requirements of Article II, Section 1 of the Constitution, or those who have already served two terms, as provided by the Twenty-Second Amendment.

15. The events of January 6, 2021 were an insurrection or a rebellion under Section 3: a violent, coordinated effort to storm the Capitol to obstruct and prevent the Vice President of the United States and the United States Congress from fulfilling their constitutional roles by certifying President Biden's victory, and to illegally extend then-President Trump's tenure in office.

16. The effort to overthrow the results of the 2020 election by unlawful means, from on or about November 3, 2020, through at least January 6, 2021, constituted a rebellion under Section 3: an attempt to overturn or displace lawful government authority by unlawful means.

17. Candidate Trump, during his impeachment proceedings, admitted the events of January 6 constituted "insurrection": his defense lawyer acknowledged "everyone agrees," "there was a violent insurrection of the Capitol."[2] Indeed, by overwhelming majorities, both chambers of Congress declared those who attacked the Capitol on January 6, 2021 "insurrectionists." Act of Aug. 5, 2021, Pub. L. No. 117-32, 135 Stat 322. Just days afterward, the U.S. Department of Justice under the Trump administration labeled it an "insurrection" in federal court.[3] So have at least

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[2] 167 Cong. Rec. S729 (daily ed. Feb. 13, 2021), https://www.govinfo.gov/content/pkg/CREC-2021-02-13/pdf/CREC-2021-02-13.pdf.

[3] Government's Br. in Supp. of Detention at 1, *United States v. Chansley*, No. 2:21-MJ-05000-DMF, ECF No. 5 (D. Ariz. Jan. 14, 2021).

fifteen federal judges.[4] And both courts that have addressed the question of whether the January 6 attack constituted an "insurrection" within the meaning of Section 3 have held that it did. *See Griswold*, 2023 WL 8770111, at *37-39 (Ex. A); *State ex rel. White v. Griffin*, No. D-101-CV-2022-00473, 2022 WL 4295619, at *17-19 (N.M. 1st Jud. Dist., Sept. 6, 2022), appeal dismissed, No. S-1-SC-39571 (N.M. Nov. 15, 2022), cert. filed May 18, 2023.

18. Under Section 3, to "engage" means "a voluntary effort to assist the Insurrection . . . and to bring it to a successful [from the insurrectionists' perspective] termination." *United States v. Powell*, 27 F. Cas. 605, 607 (C.C.D.N.C. 1871); *Worthy*, 63 N.C. at 203 (defining "engage" under Section 3 to mean "[v]oluntarily aiding the rebellion, by personal service, or by contributions, other than charitable, of any thing that was useful or necessary"); Att'y Gen. Henry Stanbery, *The Reconstruction Acts*, 12 U.S. Op. Att'y. Gen. 141, 161-62 (1867) (defining "engage" in similarly-worded statute to include "persons who . . . have done any overt act for the purpose of promoting the rebellion"); Att'y Gen. Henry Stanbery, *The Reconstruction Acts,* 12 U.S. Op. Att'y. Gen. 182, 204 (1867) (defining "engage" in similarly-worded statute to require "an overt and voluntary act, done with the intent of aiding or furthering the common unlawful purpose").

19. An individual need not personally commit an act of violence to have "engaged" in insurrection. *Powell*, 27 F. Cas. at 607 (defendant paid to avoid serving in Confederate Army); *Worthy*, 63 N.C. at 203 (defendant simply served as county sheriff). Indeed, Jefferson Davis—the president of the Confederacy—never fired a shot.

20. All three modern judicial decisions to construe "engage" under Section 3 have adopted this standard. *See Griswold*, 2023 WL 8770111, at *39-45 (Colorado Supreme Court summarizing definition as "an overt and voluntary act, done with the intent of aiding or furthering

[4] *See infra* notes 219-228.

the common unlawful purpose"); *White*, 2022 WL 4295619, at *19; *Rowan v. Greene*, Case No. 2222582-OSAH-SECSTATE-CE-57-Beaudrot (Ga. Off. of State Admin. H'gs, May 6, 2022), slip op. at 13-14. The only courts and election officials that have addressed the merits of a Section 3 challenge to Trump's eligibility have concluded that Trump "engaged" in the January 6 insurrection.

21. "Engagement" does not require previous conviction, or even charging, of any criminal offense. *See, e.g.*, *Griswold*, 2023 WL 8770111, at *23, *39-40 (Ex. A) (recognizing charging and conviction is not required and defining standard for "engage"); *Powell*, 27 F. Cas. at 607 (defendant not charged with any prior crime); *Worthy*, 63 N.C. at 203 (defendant not charged with any crime); *In re Tate*, 63 N.C. 308 (1869) (defendant not charged with any crime); *see also* Gerard N. Magliocca, *Amnesty and Section 3 of the Fourteenth Amendment*, 36 Const. Comment. 87, 98-99 (2021) (describing special congressional action in 1868 to enforce Section 3 and remove Georgia legislators, none of whom had been charged criminally); William Baude & Michael Stokes Paulsen, *The Sweep and Force of Section Three*, 172 U. Pa. L. Rev. __ (forthcoming), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4532751, at 16-22.

22. Most of the House and Senate candidates-elect that Congress excluded from their seats during Reconstruction for engagement in insurrection had never been charged or convicted of any crimes.

23. Indeed, the vast majority of disqualified ex-Confederates were never charged with any crimes.

24. Modern authority agrees that no evidence or authority suggests that a prior criminal conviction—whether under 18 U.S.C. § 2383 (insurrection) or any other statute—was ever

considered necessary to trigger Section 3. *Griswold,* 2023 WL 8770111, at *23 (Ex. A); *White*, 2022 WL 4295619, at *16, *24; *Greene*, *supra* ¶ 20, slip op., at 13.

25. As set forth in detail below and in the reports of publicly available investigations, in the months leading up to January 6, 2021, then-President Donald Trump, who was a candidate for re-election in 2020, plotted to overturn the 2020 presidential election outcome. Indeed, as detailed below, Trump has repeatedly admitted that he actively sought to prevent the certification of the results of that election.

26. First, he disseminated false allegations of fraud and challenged election results through baseless litigation. When his and his allies' 62 separate election lawsuits failed, he attempted unlawful schemes, including repeatedly pressuring then-Vice President Mike Pence to discard electoral votes from states that had voted for President-elect Biden.

27. After votes in the 2020 election were cast, Trump repeatedly exhorted his followers to "stop the fraud" and "stop the count" and falsely told them that he had won the election.[5]

28. On December 14, 2020, presidential electors convened in all 50 states and in D.C. to cast their official electoral votes. They voted 306-232 against Trump.[6]

29. To pressure then-Vice President Mike Pence to discard electoral votes from states that had voted for then-President-elect Biden, Trump summoned tens of thousands of supporters

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[5] *See, e.g.*, Donald J. Trump (@realDonaldTrump), TWITTER (Nov. 4, 2020 at 12:49 AM ET), https://twitter.com/realDonaldTrump/status/1323864823680126977, attached hereto as part of a Group Exhibit E, which is also referred to hereinafter as "Trump Tweet Compilation." *See also id.* at 2 (Nov. 5, 2020 at 12:21 PM ET), https://twitter.com/realDonaldTrump/status/1324401527663058944?lang=en; *id.* at 1 (Nov. 5, 2020 at 9:12 AM ET), https://twitter.com/realDonaldTrump/status/1324353932022480896; *id.* at 2 (Nov. 7, 2020 at 10:36 AM ET), https://twitter.com/realDonaldTrump/status/1325099845045071873.

[6] National Archives, *2020 Electoral College Results*, https://www.archives.gov/electoral-college/2020.

to Washington for a violent protest on January 6, 2021, the day that Congress would count and certify the electoral votes.

30. Trump encouraged his supporters to dispute the election results, and on December 19, 2020, he tweeted: "Big protest in D.C. on January 6th. Be there, will be wild!"[7]

31. Armed and militant supporters, including the Proud Boys and Oath Keepers, mobilized in response to Trump's "wild" tweet and reported for duty at the Capital on January 6, 2021.[8]

32. Although Trump knew that these supporters were angry and that many were armed, Trump incited them to a violent insurrection and instructed them to march to the Capitol to "take back" their country.

33. His campaign was directly involved in organizing and selecting speakers for a demonstration at a park near the Capitol on January 6, 2021.[9]

34. As his supporters assembled at the Ellipse, Trump learned that approximately 25,000 people refused to walk through the magnetometers at the entrance—because they had weapons that they did not want confiscated by the Secret Service. In response, Trump ordered his team to remove the magnetometers shouting "I don't [fucking] care that they have weapons.

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[7] *See* Trump Tweet Compilation, *supra* note 5, at 6 (Group Ex. E) (Dec. 19, 2020 at 1:42 AM ET), https://twitter.com/realDonaldTrump/status/1340185773220515840.

[8] Indictment at 9, *U.S. v. Thomas Caldwell et al.*, 21-cr-28-APM (2021), https://www.justice.gov/usao-dc/case-multi-defendant/file/1369071/download; Indictment at 7-8, *U.S. v. Hostetter et al.*, 1:21-cr-00392, (D.D.C. 2021), https://www.justice.gov/opa/press-release/file/1403191/download; Affidavit in Support of Criminal Complaint and Arrest Warrant at 7, *U.S. v. Derrick Evans*, 1:21-cr-337, https://www.justice.gov/usao-dc/press-release/file/1351946/download. (pleaded guilty 3/18/22); *see also* Ex. H, H.R. REP. NO. 117-663, at 500-15 (2022) [hereinafter January 6th Report]; Ex. M, Proceedings Day 5 Tr., at 200:3-21 (Nov. 3, 2023) [hereinafter Day 5 Transcript] (Heaphy Testimony); *see also* Ex. J, Proceedings Day 2 Tr., at 79:5-80:22 (Oct. 31, 2023) [hereinafter Day 2 Transcript] (Simi Testimony).

[9] *See* January 6th Report, *supra* note 8, at 533-36 (Ex. H); Anna Massoglia, *Trump's political operation paid more than $3.5 million to Jan. 6 organizers*, OPEN SECRETS (Feb. 10, 2021), https://www.opensecrets.org/news/2021/02/jan-6-protests-trump-operation-paid-3p5mil/.

They're not here to hurt me. . . . Let my people in. They can march to the Capitol from here. Take the [fucking] mags away."[10]

35. The speakers who preceded Trump on the stage at this demonstration prepped the crowd with violent rhetoric. Trump's lawyer, Rudy Giuliani, called for "trial by combat,"[11] and Representative Mo Brooks of Alabama urged the crowd to "start taking down names and kicking ass" and to be prepared to sacrifice their "blood" and "lives" and "do what it takes to fight for America" by "carry[ing] the message to Capitol Hill," since "the fight begins today."[12]

36. During Trump's speech at the demonstration, he said, "We fight. We fight like hell. And if you don't fight like hell, you're not going to have a country anymore."[13] Trump then instructed the crowd to march on the Capitol.[14]

37. What followed was a searing image of violence Americans will always remember: violent insurrectionists flooding the Capitol, brandishing the Confederate flag and other symbols of insurrection and white supremacism, beating law enforcement, breaking into the chambers, threatening to kill Vice President Pence, Speaker of the House Nancy Pelosi, and other leaders,

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[10] *See* January 6th Report, *supra* note 8, at 585 (Ex. H).

[11] Wash. Post, *Trump, Republicans incite crowd before mob storms Capitol*, YOUTUBE (Jan. 6, 2021), https://youtu.be/mh3cbd7niTQ.

[12] The Hill, *Mo Brooks gives FIERY speech against anti-Trump Republicans, socialists*, YOUTUBE (Jan. 6, 2021), https://youtu.be/ZKHwV6sdrMk.

[13] *Rally on Electoral College Vote Certification*, at 4:41:25, C-SPAN (Jan. 6, 2021), https://www.c-span.org/video/?507744-1/rally-electoral-college-vote-certification; *see also Donald Trump Speech "Save America" Rally Transcript January 6*, at 1:12:43, REV (Jan. 6, 2021), https://bit.ly/3GheZid [hereinafter *Donald Trump Speech*]; Brian Naylor, *Read Trump's Jan. 6 Speech, A Key Part Of Impeachment Trial*, NPR (Feb. 10, 2021), https://n.pr/3G1K2ON.

[14] *Rally on Electoral College Vote Certification*, *supra* note 13, at 3:46:55; *Donald Trump Speech*, *supra* note 13, at 16:25; Naylor, *supra* note 13.

and ultimately overwhelming law enforcement and successfully seizing control of the Capitol building.[15]

38. The insurrectionists shared the common purpose of preventing Congress from certifying the electoral vote.[16] And the attack forced members of Congress and Vice President Pence to flee and suspended Congress' count of the electoral vote.[17]

39. Trump watched on television as the insurrectionists demanded Pence's murder (chanting "hang Mike Pence!"),[18] Trump then goaded them further. Knowing that his supporters' violent attack on the Capitol was underway and knowing that his words would aid and encourage the insurrectionists and induce further violence, at 2:24 PM Trump sent a widely-read social media

[15] Ex. F, Staff of S. Comm. on Rules & Admin., 117th Cong., A Review of the Security, Planning, and Response Failures on January 6, at 28 (June 1, 2021) [hereinafter Rules & Admin. Review]; *see* January 6th Report, *supra* note 8, at 651-59 (Ex. H); Ex. I, Proceedings Day 1 Tr., at 142:9–143:2, 144:11–23, 146:16–18 (Oct. 30, 2023) [hereinafter Day 1 Transcript] (Swalwell Testimony); *see also* Day 1 Transcript, *supra* at 197:8-13, 199:8-200:8 (Ex. I) (Pingeon Testimony); Ex. L, Proceedings Day 4 Tr., at 192:10–195:24 (Nov. 2, 2023) [hereinafter Day 4 Transcript] (Buck Testimony); H.R. REP. NO. 117-2, at 16 (2021), https://www.govinfo.gov/app/details/CRPT-117hrpt2/CRPT-117hrpt2; Audie Cornish et al., *Transcript: 2 reporters who were in the Capitol on Jan. 6 talk about media coverage of the attack*, NPR (Jan. 5, 2022), https://www.npr.org/2022/01/05/1070700663/2-reporters-who-were-in-the-capitol-on-jan-6-talk-about-media-coverage-of-the-at; Jacqueline Alemany et al., *What Happened on Jan. 6*, WASH. POST (Oct. 31, 2021), https://wapo.st/3eSdf2y; Kelsie Smith & Travis Caldwell, *Disturbing video shows officer crushed against door by mob storming the Capitol*, CNN (Jan. 9, 2021), https://cnn.it/3eAmdSc; Clare Hymes & Cassidy McDonald, *Capitol riot suspect accused of assaulting cop and burying officer's badge in his backyard*, CBS NEWS (Mar. 13, 2021), https://cbsn.ws/3eFAaxS.

[16] *See Rally on Electoral College Vote Certification*, *supra* note 13, at 4:34:53; *Donald Trump Speech*, *supra* note 13, at 1:05:43; Naylor, *supra* note 13; *see also* Day 4 Transcript, *supra* note 15, at 230:3-7, 341:24-342:8 (Ex. L) (Buck Testimony); Day 1 Transcript, *supra* note 15, at 197:8-13, 199:8-200:8 (Ex. I) (Pingeon Testimony).

[17] *See* January 6th Report, *supra* note 8, at 466 (Ex. H); Martha Mendoza & Juliet Linderman, *Officers maced, trampled: Docs expose depth of Jan. 6 chaos*, ASSOCIATED PRESS (Mar. 10, 2021), https://bit.ly/3F2Hi26; Alemany, *supra* note 15.

[18] *See* January 6th Report, *supra* note 8, at 449 n.171 (Ex. H).

message publicly condemning Pence. He said, "Mike Pence didn't have the courage to do what should have been done to protect our Country and our Constitution."[19]

40. During the attack, contrary to his staff's urging, Trump did not order any federal law enforcement or the D.C. National Guard to help retake the Capitol or protect Pence or Congress from the attackers.[20]

41. Despite knowing that violence was ongoing at the Capitol and that his violent supporters would have heeded a call from him to withdraw, for 187 minutes, Trump refused repeated requests that he instruct his violent supporters to disperse and leave the Capitol. Instead, he reveled in the violent attack as it unfolded on television.

42. When he finally made a public statement at 4:17 PM, he said: "we love you, you're very special, you've seen what happens, you've seen the way others are treated . . . I know how you feel, but go home, and go home in peace."[21]

43. The insurrection overwhelmed and defeated the forces of civilian law enforcement; forced the United States Congress to go into recess; stopped the fundamental and essential constitutional process of certifying electoral votes; forced the Vice President, Senators, Representatives, and staffers into hiding; occupied the United States Capitol, a feat never before

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[19] This tweet was removed. It is archived on the American Oversight website. *2:24 PM-2:24 PM*, AMERICAN OVERSIGHT, https://www.americanoversight.org/timeline/224-p-m (archived); *see also* Trump Tweet Compilation, *supra* note 5, at 9 (Group Ex. E) (Jan. 6, 2021 at 2:24 PM ET); January 6th Report, *supra* note 8, at 429, 596 (Ex. H).

[20] *See* January 6th Report, *supra* note 8, at 6-7, 595 (Ex. H); Ex. G, The Daily Diary of President Donald J. Trump, January 6, 2021 [Hereinafter Trump Daily Diary]; *READ: Transcript of CNN's town hall with former President Donald Trump*, CNN (May 11, 2023), https://www.cnn.com/2023/05/11/politics/transcript-cnn-town-hall-trump/index.html; *see also* Day 2 Transcript, *supra* note 8, at 245:19-250:16, 259:20-260:11 (Ex. J) (Banks Testimony).

[21] *See* January 6th Report, *supra* note 8, at 579-80 (Ex. H); *President Trump Video Statement on Capitol Protestors*, C-SPAN (Jan. 6, 2021), https://www.c-span.org/video/?507774-1/president-trump-video-statement-capitol-protesters.

achieved in the history of our country, by the Confederate rebellion or otherwise; held the Capitol for hours; and blocked the peaceful transition of power in the United States of America, another feat never achieved by the Confederate rebellion.

44. The Colorado Supreme Court recently confirmed that Trump's action and inaction during the January 6, 2021 insurrection met the definition of "engag[ing]" in "insurrection" as set out in Section 3 of the Fourteenth Amendment. *Griswold*, 2023 WL 8770111 at *37-44 (Ex. A). The Maine Secretary of State did the same, finding that Trump engaged in insurrection and was thus disqualified from the office of presidency and could not appear on the Maine presidential primary ballot. *See* Ex. C.

45. Donald J. Trump, through his words and actions, after swearing an oath as an officer of the United States to support the Constitution, engaged in insurrection or rebellion, or gave aid and comfort to its enemies, as defined by Section 3 of the Fourteenth Amendment. He is disqualified from holding the presidency or any other office under the United States unless and until Congress provides him relief, which it has not done.

AUTHORITY AND DUTY OF BOARD TO HEAR OBJECTION

46. The Electoral Board's authority and mandatory statutory duty indisputably includes determinations of whether candidates meet the eligibility requirements for their office. As dictated by the Illinois Election Code, "[t]he electoral board *shall* take up the question as to whether or not the certificate of nomination or nomination papers or petitions are in proper form, and whether or not they were filed within the time and under the conditions required by law, . . . and in general *shall* decide whether or not the certificate of nomination or nominating papers or petitions on file are valid or whether the objections thereto should be sustained . . . ." 10 ILCS 5/10-10 (emphasis added).

47. Under the Illinois Election Code, presidential primary candidates, like candidates for other offices, *must include* with their nomination papers a statement of candidacy that, among other things, states that the candidate "is qualified for the office specified." 10 ILCS 5/7-10. The Election Code specifies candidate qualifications, as do the constitutions of the State of Illinois and the United States. *See, e.g., Goodman v. Ward*, 241 Ill. 2d 398, 407 (2011) (holding electoral board erred in denying objection and striking candidate's name from ballot where candidate falsely stated he was "qualified" for office despite not meeting eligibility requirements set forth in Illinois Constitution); U.S. Const. art. II, § 1, cl. 5 (specifying age, residency, and citizenship qualifications for Office of President); U.S. Const. Amend. XXII, § 1 (forbidding the election of a person to the office of President more than twice); U.S. Const. Amend. XIV, § 3 (requiring disqualification of candidates for public office who took an oath to uphold the Constitution and then engaged in or supported insurrection against the United States or gave aid or comfort to those who have).

48. The Illinois Supreme Court in *Goodman* directed that objections based on constitutionally-specified qualifications *must be evaluated*, including objections that a candidate has improperly sworn that they meet constitutional qualifications for the office for which they seek candidacy. *Goodman*, 241 Ill. 2d at 409-10 ("The statutory requirements governing statements of candidacy and oaths are mandatory . . . . If a candidate's statement of candidacy does not substantially comply with the statute, the candidate is not entitled to have his or her name appear on the primary ballot").

49. Decisions of other Illinois courts track *Goodman* and recognize that electoral boards *must apply* constitutional criteria governing ballot placement. *See Harned v. Evanston Mun. Officers Electoral Bd.*, 2020 IL App (1st) 200314, ¶ 23 ("While petitioner is correct that electoral boards do not have authority to declare statutes unconstitutional, they are required to decide, in the

first instance, if a proposed referendum is permitted by law, even where constitutional provisions are implicated"); *Zurek v. Peterson*, 2015 IL App (1st) 150456, ¶ 33-35 (unpublished) (recognizing that while "the Board does not have the authority to declare a *statute* unconstitutional[, this] does not mean that the Board had no authority to consider the constitutionally-based challenges" and that to determine whether the referendum "was valid and whether the objections should be sustained or overruled, the Board was required to determine if the referendum was authorized by a statute or the constitution").

50. Consistent with these decisions, Illinois electoral boards have frequently evaluated objections based on constitutional candidacy requirements. *See, e.g., Freeman v. Obama*, No. 12 SOB GP 103 (Feb. 2, 2012) (evaluating objection that candidate did not meet qualifications for office of President of the United States set out in Article II, Section 1 of the U.S. Constitution); *Jackson v. Obama*, No. 12 SOEB GP 104 (Feb. 2, 2012) (same); *Graham v. Rubio*, No, 16 SOEB GP 528 (February 1, 2016) (State Officers Electoral Board determining eligibility based on whether facts presented about candidate established he met natural born citizen requirement of U.S. Constitution); *Graham v. Rubio*, No. 16 SOEB GP 528 (Hearing Officer Findings and Recommendations, adopted by the Electoral Board, determining that the Electoral Board was acting within the scope of its authority in reviewing the adequacy of the Candidate's Statement of Candidacy and evaluating whether it was "invalid because the Candidate is not legally qualified to hold the office of President" based on criteria in the U.S. Constitution); *see also Socialist Workers Party of Illinois v. Ogilvie*, 357 F. Supp. 109, 113 (N.D. Ill. 1972) (approving Electoral Board's decision not to place presidential candidate who did not meet constitutional age qualification on ballot and denying motion for preliminary injunction to enjoin decision). (Electoral board decisions cited here are attached hereto as part of Group Exhibit D.)

51. Article II, Section 1, Clause 5 of the U.S. Constitution requires the President to be a natural-born citizen, at least thirty-five years of age, and a resident of the United States for at least fourteen years. Section 1 of the Twenty-Second Amendment provides that no person can be elected President more than twice. Section 3 of the Fourteenth Amendment disqualifies from public office any individual who has taken an oath to uphold the U.S. Constitution and then engages in insurrection or rebellion against the United States, or gives aid or comfort to those who have. Objections to a candidate's inclusion on the primary ballot, asking the Electoral Board to apply these constitutional requirements, fall directly within the Electoral Board's jurisdiction and mandatory duties.

52. The Board's evaluation of this objection to the Candidate's constitutional eligibility criteria follows the Election Code and the Illinois Supreme Court's direction in *Goodman* that the board *must* evaluate a candidate's statement of candidacy that they are "qualified" for the office at the time the nomination papers are filed because "statutory requirements governing statements of candidacy and oaths are mandatory." 241 Ill. 2d at 409-10; *see also Delgado v. Bd. of Election Comm'rs of City of Chicago*, 224 Ill. 2d 481, 485-86 (2007) (differentiating the impermissible action of an electoral board's "question[ing] its validity" of underlying legal prerequisites from the required action of an electoral board *applying* a constitutional provision). *Accord* Maine Sec. of State Ruling, Ex. C at 12-13 (evaluating Section 3 challenge and recognizing that the statutory obligation to determine if a candidate's nomination petition meets election code requirements requires limiting ballot access to qualified candidates under the U.S. Constitution).

53. To do so, the Electoral Board has the ability, and indeed the clear obligation, when necessary to evaluate evidence and resolve complex factual issues. The Board is obligated to "decide whether or not the certificate of nomination or nominating papers or petitions on file are

valid or whether the objections thereto should be sustained . . . ." 10 ILCS 5/10-10. To fulfill that responsibility, the Board "shall have the power to administer oaths and to subpoena and examine witnesses" and to require "the production of such books, papers, records, and documents as may be evidence of any matter under inquiry . . . ." *Id.* Electoral boards and their hearing officers indeed utilize this power to hear and evaluate the credibility of high volumes of witness testimony and documentary evidence in an expedited manner whenever necessary to fulfill their mandate. *See, e.g., Raila v. Cook Cnty. Officers Electoral Bd.*, 2018 IL App (1st) 180400-U, ¶¶ 17-27 (unpublished) ("the hearing officer heard testimony from over 25 witnesses and the parties introduced over 150 documents and a short video clip" and "issued a 68-page written recommendation that contained his summary of the testimony and documentary evidence"); *Muldrow v. Barron*, 2021 IL App (1st) 210248, ¶¶ 28-30 (electoral board properly made factual finding of widespread fraud based on determinations as to the credibility of witnesses' testimony). *Accord* Maine Sec. of State Ruling, Ex. C at 16-17 (recognizing that determining the validity of a nomination petition can range from straightforward to complex, and may require review of evidentiary records and application of governing law).

54. This Objection asks the Electoral Board to fulfill its obligation to enforce candidate qualification requirements spelled out in the U.S. Constitution, a task for which it has both the authority and duty to undertake. 10 ILCS 5/10-10; *Goodman,* 241 Ill. 2d at 409-10.

STATEMENT OF FACTS

55. The facts set out below clearly show that the Candidate cannot meet the eligibility requirements for office as set out in Section 3 of the Fourteenth Amendment because he: (1) was an officer of the United States; (2) took an oath to support the Constitution of the United States, and (3) engaged in insurrection or rebellion or gave aid or comfort to insurrectionists.

I. TRUMP TOOK AN OATH TO UPHOLD THE U.S. CONSTITUTION.

56. On January 20, 2017, Donald Trump was sworn in as forty-fifth president of the United States.

57. On that day, Trump swore the presidential oath of office required by Article II, section 1, of the Constitution: "I, Donald John Trump, do solemnly swear that I will faithfully execute the office of President of the United States, and will to the best of my Ability preserve, protect, and defend the Constitution of the United States."[22]

58. After taking the oath, Trump gave an inaugural speech, in which he stated, "Every four years, we gather on these steps to carry out the orderly and peaceful transfer of power."[23] Less than four years later, he sought to do exactly the opposite.

II. TRUMP'S SCHEME TO OVERTURN THE GOVERNMENT.

A. Trump Sought Re-Election but Prepared to Retain Power Even if He Lost.

59. On June 18, 2019, at a rally in Florida, Trump officially launched his campaign for election to a second term as President.[24]

60. During his campaign, Trump repeatedly stated that fraudulent voting activity would be the only possible reason for electoral defeat (rather than not receiving enough votes). For example:

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[22] Trump White House Archived, *supra* note 1, at 26:36; *see also* U.S. Const. art. II, § 1, cl. 8.

[23] Trump White House Archived, *supra* note 1, at 29:52; *see also* Ex. K, Proceedings Day 3 Tr., at 59:17-62.6 (Nov. 1, 2023) (Magliocca Testimony) (testimony that Presidency is historically understood as an "office" within the scope of the Fourteenth Amendment).

[24] *Donald Trump formally launches 2020 re-election bid*, BBC (June 18, 2019), https://www.bbc.com/news/world-us-canada-48681573.

a. On August 17, 2020, Trump spoke to a crowd in Oshkosh, Wisconsin and stated: "The only way we're going to lose this election is if the election is rigged."[25]

b. On August 24, 2020, during his Republican National Convention acceptance speech, Trump stated: "The only way they can take this election away from us is if this is a rigged election."[26]

c. On September 24, 2020, Trump stated: "We want to make sure the election is honest, and I'm not sure that it can be. I don't know that it can be with this whole situation [of] unsolicited ballots."[27]

61. In particular, Trump claimed that this "fraud" occurred or would occur in cities and states with majority or substantial Black populations.

62. In parallel, Trump aligned himself with violent extremist and white supremacist organizations and suggested they should be prepared to act on his behalf.

63. For example, on September 29, 2020, Trump was asked if he would disavow the Proud Boys. Instead, he stated: "Proud Boys, stand back and *stand by*," later adding "somebody's got to do something about Antifa and the left."[28]

64. The Proud Boys celebrated this as a call to "stand by" to be ready for future action:

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[25] Kevin Liptak, *Trump warns of 'rigged election' as he uses conspiracy and fear to counter Biden's convention week*, CNN (Aug. 18, 2020), https://www.cnn.com/2020/08/17/politics/donald-trump-campaign-swing/index.html.

[26] *RNC 2020: Trump warns Republican convention of 'rigged election'*, BBC (Aug. 25, 2020), https://www.bbc.com/news/election-us-2020-53898142.

[27] *President Trump Departs White House*, C-SPAN (Sept. 24, 2020), https://www.c-span.org/video/?476212-1/president-trump-departs-white-house#.

[28] Associated Press, *Trump tells Proud Boys: 'Stand back and stand by'*, YOUTUBE (Sept. 29, 2020), https://www.youtube.com/watch?v=qIHhB1ZMV_o.

a. On the social media site Parler, Proud Boys leader Henry "Enrique" Tarrio responded, "Standing by sir."[29] (Tarrio was convicted of seditious conspiracy on May 4, 2023 and sentenced to 22 years in prison for his role on January 6.[30])

b. Another Proud Boys leader, Joseph Biggs, posted, "President Trump told the proud boys to stand by because someone needs to deal with ANTIFA...well sir! We're ready!!" and "Trump basically said to go fuck them up! this makes me so happy."[31] (Biggs was convicted of seditious conspiracy and sentenced to 17 years in prison for his role on January 6.[32])

c. That same night, the Proud Boys began making and selling merchandise with the slogan "Stand Back and Stand By."

65. Meanwhile, before November 3, 2020 ("Election Day"), Trump was advised by his campaign manager William Stepien not to prematurely declare victory while lawful votes, including mail-in and absentee ballots, were still being counted.[33]

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[29] *See* January 6th Report, *supra* note 8, at 507-08 (Ex. H); Mike Baker (@ByMikeBaker), TWITTER (Sept. 29, 2020 at 9:28 PM), https://twitter.com/ByMikeBaker/status/1311130735584051201 [hereinafter Baker Tweet].

[30] *Proud Boys Leader Sentenced to 22 Years in Prison on Seditious Conspiracy and Other Charges Related to U.S. Capitol Breach*, DEP'T. OF JUSTICE (Sept. 5, 2023), https://www.justice.gov/usao-dc/pr/proud-boys-leader-sentenced-22-years-prison-seditious-conspiracy-and-other-charges.

[31] *See* January 6th Report, *supra* note 8, at 507-08 (Ex. H); Baker Tweet, *supra* note 29.

[32] *Two Leaders of the Proud Boys Sentenced to Prison on Seditious Conspiracy and Other Charges Related to U.S. Capitol Breach*, DEP'T. OF JUSTICE (Aug. 31, 2023), https://www.justice.gov/usao-dc/pr/two-leaders-proud-boys-sentenced-prison-seditious-conspiracy-and-other-charges-related-us.

[33] Hearing Before the Select Comm. to Investigate the January 6th Attack on the United States Capitol, 117th Cong., 2d sess., at 7 (June 13, 2022), https://www.govinfo.gov/content/pkg/CHRG-117hhrg48999/pdf/CHRG-117hhrg48999.pdf [hereinafter Second Jan. 6 Hearing Transcript].

66. Notwithstanding Stepien's advice, Trump and his associates planned to declare victory before all ballots were counted. For instance:

a. On November 1, 2020, Trump told close associates that he would declare victory on election night if it looked as if he was "ahead."[34]

b. Around the same time, Steve Bannon, former White House strategist and advisor to Trump told a group of associates: "And what Trump's going to do is just declare victory, right? He's gonna declare victory, but that doesn't mean he's the winner. He's just gonna say he's a winner."[35]

67. On November 3, 2020, the United States held its fifty-ninth presidential election.

68. That evening, media outlets projected Biden was in the lead.[36]

69. Trump falsely and without any factual basis alleged that widespread voter fraud had compromised the validity of such results. For example:

a. On November 4, 2020, he tweeted: "We are up BIG, but they are trying to STEAL the Election. We will never let them do it. Votes cannot be cast after the Polls are closed!"[37]

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[34] Jonathan Swan, *Scoop: Trump's plan to declare premature victory*, AXIOS (Nov. 1, 2020), https://www.axios.com/2020/11/01/trump-claim-election-victory-ballots.

[35] Hearing Before the Select Comm. To Investigate the January 6th Attack on the United States Capitol, 117th Cong., 2d sess., at 38 (July 21, 2022), https://www.govinfo.gov/content/pkg/CHRG-117hhrg49356/pdf/CHRG-117hhrg49356.pdf.

[36] Meg Wagner et al., *Election 2020 presidential results*, CNN (Nov. 5, 2020), https://www.cnn.com/politics/live-news/election-results-and-news-11-04-20/index.html.

[37] *See* Trump Tweet Compilation, *supra* note 5, at 1 (Group Ex. E) (Nov. 4, 2020 at 12:49 AM ET), https://twitter.com/realDonaldTrump/status/1323864823680126977.

b. On November 5, 2020, he tweeted: "STOP THE FRAUD!" and, "STOP THE COUNT!"[38]

70. On November 7, 2020, news organizations across the country declared that Joseph Biden won the 2020 presidential election.[39]

71. That same day, Trump falsely tweeted: "I WON THIS ELECTION, BY A LOT!"[40]

B. Trump Attempted to Enlist Government Officials to Illegally Overturn the Election.

72. After Election Day, several aides and advisors close to Trump investigated his election fraud claims and informed Trump that such allegations were unfounded. For example:

a. Days after the election, lead data expert Matt Oczkowski informed Trump that he would lose because not enough votes were in his favor.[41]

b. At approximately the same time, former Attorney General William Barr told Trump he did not agree with the idea of saying the election was stolen.[42]

c. On November 23, 2020, Barr again informed Trump that his claims of fraud were not meritorious.[43]

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[38] *Id.* (Nov. 5, 2020 at 9:12 AM ET), https://twitter.com/realDonaldTrump/status/1324353932022480896; *id.* at 2, (Nov. 5th, 2020 at 12:21 PM ET), https://twitter.com/realDonaldTrump/status/1324401527663058944?lang=en.

[39] *See, e.g.*, Bo Erickson, *Joe Biden projected to win presidency in deeply divided nation*, CBS NEWS (Nov. 7, 2020), https://www.cbsnews.com/news/joe-biden-wins-2020-election-46th-president-united-states/; Scott Detrow & Asma Khalid, *Biden Wins Presidency, According to AP, Edging Trump in Turbulent Race*, NPR (Nov. 7, 2020), https://www.npr.org/2020/11/07/928803493/biden-wins-presidency-according-to-ap-edging-trump-in-turbulent-race.

[40] *See* Trump Tweet Compilation, *supra* note 5, at 2 (Group Ex. E) (Nov. 7, 2020 at 10:36 AM ET), https://twitter.com/realDonaldTrump/status/1325099845045071873.

[41] Hearing Before the Select Comm. to Investigate the January 6th Attack on the United States Capitol, No. 117-2, at 6 (June 9, 2022), https://www.govinfo.gov/content/pkg/CHRG-117hhrg48998/pdf/CHRG-117hhrg48998.pdf [hereinafter First Jan. 6 Hearing Transcript].

[42] Second Jan. 6 Hearing Transcript, *supra* note 33, at 13.

[43] Select Comm. to Investigate the Jan. 6 Attack on the U.S. Capitol, Transcribed Interview of William Barr, at 18 (June 2, 2022), https://www.govinfo.gov/content/pkg/GPO-J6-TRANSCRIPT-

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C-298 V2

d. In mid to late November, campaign lawyer Alex Cannon told Trump's Chief of Staff Mark Meadows that he had not found evidence of voter fraud sufficient to change the results in any of the key states.[44]

73. On December 1, 2020, Attorney General William Barr publicly declared that the U.S. Justice Department found no evidence of voter fraud that would warrant a change of the election result.[45]

74. Sometime between the election and December 14, 2020, Trump asked Barr to instruct the Department of Justice to seize voting machines.[46]

75. Barr refused, citing a lack of legal authority.[47]

76. Around December 6, 2020, Trump called the Chairwoman of the Republican National Committee Ronna Romney McDaniel to enlist the Committee's support in gathering a slate of electors for Trump in states where President-elect Biden had won the election but legal challenges to the election results were underway.[48]

77. On December 8, 2020, a senior campaign advisor to Trump wrote in an internal campaign email: "When our research and campaign legal team can't back up any of the claims made by our Elite Strike Force Legal Team, you can see why we're 0-32 on our cases. I'll

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CTRL0000083860/pdf/GPO-J6-TRANSCRIPT-CTRL0000083860.pdf [hereinafter Interview of William Barr].

[44] First Jan. 6 Hearing Transcript, *supra* note 41, at 6.

[45] Michael Balsamo, *Disputing Trump, Barr says no widespread election fraud*, ASSOCIATED PRESS (June 28, 2022), https://apnews.com/article/barr-no-widespread-election-fraud-b1f1488796c9a98c4b1a9061a6c7f49d.

[46] Interview of William Barr, *supra* note 43, at 40-41.

[47] *Id.*

[48] Select Comm. to Investigate the Jan. 6th Attack on the U.S. Capitol, Transcribed Interview of Ronna Romney McDaniel, at 8 (June 1, 2022), https://www.documentcloud.org/documents/23559939-transcript-of-ronna-mcdaniels-interview-with-house-january-6-committee.

obviously hustle to help on all fronts, but it's tough to own any of this when it's all just conspiracy shit beamed down from the mothership."[49]

78. On December 14, 2020, presidential electors convened in all 50 states and D.C. to cast their official electoral votes. They voted 306-232 for President Biden and against Trump.[50]

79. On December 14, 2020, at Trump's direction, fraudulent electors convened sham proceedings in seven targeted states where President-elect Biden had won a majority of the votes (Arizona, Georgia, Michigan, Nevada, New Mexico, Pennsylvania, and Wisconsin) and cast fraudulent electoral ballots in favor of Trump.

80. Also on December 14, 2020, Attorney General Barr resigned as head of the Department of Justice ("DOJ") and Trump appointed Jeffrey Rosen as acting attorney general and Richard Donoghue as acting deputy attorney general.[51]

81. During Rosen's term, Trump requested that the DOJ file a lawsuit challenging the election before the U.S. Supreme Court as an exercise of its original jurisdiction.[52]

82. The DOJ declined because it did not have legal authority to challenge state electoral procedures.[53]

83. On December 18, 2020, at a meeting in the Oval Office which included Trump, Sidney Powell, Mike Flynn, Patrick Byrne, Rudy Giuliani, Mark Meadows, and other Trump advisors, Powell, Flynn, and Byrne attempted to persuade Trump to issue an executive order that

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[49] Indictment at 13-14, *U.S. v. Trump*, Case No. 1:23-cr-00257-TSC, ECF No. 1 (D.D.C., Aug. 1, 2023), https://www.justice.gov/storage/US_v_Trump_23_cr_257.pdf [hereinafter August 1, 2023 Indictment].

[50] National Archives, *supra* note 6.

[51] Hearing Before the Select Comm. to Investigate the January 6th Attack on the United States Capitol, 117th Cong., 2d sess., at 1, 7 (June 23, 2022), https://www.govinfo.gov/content/pkg/CHRG-117hhrg49353/pdf/CHRG-117hhrg49353.pdf [hereinafter Fifth Jan. 6 Hearing Transcript].

[52] *Id.* at 8-9.

[53] *Id.*

would, among other things, direct the seizure of voting machines by either the Department of Homeland Security or the Department of Defense.

84. White House Counsel Pat Cipollone, Eric Herschmann (a lawyer in the White House Counsel's office and senior advisor to Trump), and Giuliani dissuaded Trump from ordering the seizure of voting machines using his official authority.

85. However, as the meeting continued, Giuliani and others stated in Trump's presence that they could instead obtain access to voting machines through "voluntary" means.[54]

86. On December 31, 2020, Trump asked Rosen and Donoghue to direct the Department of Justice to seize voting machines.[55]

87. Rosen and Donoghue rejected Trump's request, again for lack of authority.[56]

88. Meanwhile, just as Giuliani and others had told Trump, teams coordinated by Powell, Giuliani, and other Trump advisors illegally accessed or attempted to illegally access voting machines in multiple battleground states. These included:

89. Fulton County, Pennsylvania (successfully breached Dec. 31, 2020);

90. Coffee County, Georgia (successfully breached Jan. 7, 2021); and

91. Cross County, Michigan (attempted breach Jan. 14, 2021).

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[54] Select Comm. to Investigate the Jan. 6th Attack on the U.S. Capitol, Transcribed Interview of Derek Lyons, at 113-116 (Mar. 17, 2022), https://www.govinfo.gov/content/pkg/GPO-J6-TRANSCRIPT-CTRL0000055541/pdf/GPO-J6-TRANSCRIPT-CTRL0000055541.pdf; Select Comm. to Investigate the Jan. 6th Attack on the U.S. Capitol, Deposition of Rudolph Giuliani, at 179-181 (May 20, 2022), https://www.govinfo.gov/content/pkg/GPO-J6-TRANSCRIPT-CTRL0000083774/pdf/GPO-J6-TRANSCRIPT-CTRL0000083774.pdf.

[55] Fifth Jan. 6 Hearing Transcript, *supra* note51, at 23-24.

[56] *Id.*

92. A purpose of these illegal breaches or attempted breaches was to support Trump's efforts to overturn the 2020 election by generating supposed "proof" of "fraud," even (in the Coffee County, Georgia and Cross County, Michigan instances) after the violent January 6, 2021 attack.[57]

93. Between December 23, 2020, and early January 2021, Trump attempted to speak with Rosen on the matter of purported election fraud nearly every day.[58]

94. According to Rosen, "the President's entreaties became more urgent," and Trump "became more adamant that we weren't doing our job."[59]

95. On December 25, 2020, Trump called Pence to wish him a Merry Christmas and to request that Pence reject the electoral votes on January 6, 2021.[60]

96. Pence responded, "You know I don't think I have the authority to change the outcome."

97. On December 27, 2020, Rosen told Trump that "DOJ can't and won't snap its fingers and change the outcome of the election."[61]

98. Trump responded to Rosen along the lines of, "just say [the election] was corrupt and leave the rest to me [Trump] and the Republican Congressmen."[62]

99. On January 2, 2021, Jeffrey Clark, the acting head of the Civil Division and head of the Environmental and Natural Resources Division at the DOJ, and who had met with Trump

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[57] See, e.g., Select Comm. to Investigate the Jan. 6th Attack on the U.S. Capitol, Transcribed Interview of Christina Bobb, at 96-97 (Apr. 21, 2022), https://www.govinfo.gov/content/pkg/GPO-J6-TRANSCRIPT-CTRL0000071088/pdf/GPO-J6-TRANSCRIPT-CTRL0000071088.pdf.

[58] Fifth Jan. 6 Hearing Transcript, *supra* note 51, at 8-9.

[59] *Id.* at 10; *see also* Katie Benner, *Trump and Justice Dept. Lawyer Said to Have Plotted to Oust Acting Attorney General*, N.Y. TIMES (Jan. 22, 2021), https://www.nytimes.com/2021/01/22/us/politics/jeffrey-clark-trump-justice-department-election.html.

[60] August 1, 2023 Indictment, *supra* note 49, at 33.

[61] Fifth Jan. 6 Hearing Transcript, *supra* note 51, at 13.

[62] *Id.*

without prior authorization from the DOJ, told Rosen and Donoghue that Trump was prepared to fire them and to appoint Clark as the acting attorney general.[63]

100. Clark asked Rosen and Donoghue if they would sign a draft letter to state officials recommending that the officials send an alternate slate of electors to Congress, and if they did so, then Clark would turn down Trump's offer and Rosen would remain in his position.[64]

101. Rosen refused.[65]

102. On January 3, 2021, Clark—again without authorization—met with Trump and accepted Trump's offer to become Acting Attorney General in light of Rosen and Donoghue's refusal to sign the draft letter.[66]

103. That afternoon, Clark attempted to fire Rosen, but Rosen refused to be fired by a subordinate.[67]

104. That evening, when told that Rosen's departure would result in mass resignations at the DOJ and his own White House Counsel, Trump relented on his plan to replace Rosen with Clark.[68]

105. Trump's efforts to coerce public officials to assist in his scheme to unlawfully overturn the election were not limited to federal officials. Following his election loss, Trump publicly and privately pressured state officials in various states around the country to unlawfully overturn the election results. For example, on January 2, 2021, in a recorded telephone

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[63] *See* January 6th Report, *supra* note 8, at 397 (Ex. H).

[64] Fifth Jan. 6 Hearing Transcript, *supra* note 51, at 28-29.

[65] *Id.*

[66] *See* January 6th Report, *supra* note 8, at 398 (Ex. H).

[67] Fifth Jan. 6 Hearing Transcript, *supra* note 51, at 28.

[68] Select Comm. to Investigate the Jan. 6th Attack on the U.S. Capitol, Transcribed Interview of Richard Peter Donoghue, at 125-27 (Oct. 1, 2021), https://www.govinfo.gov/content/pkg/GPO-J6-TRANSCRIPT-CTRL0000034600/pdf/GPO-J6-TRANSCRIPT-CTRL0000034600.pdf.

conversation, Trump pressured Georgia Secretary of State Brad Raffensperger to "find 11,780 votes" for him, and thereby fraudulently and unlawfully turn his electoral loss in Georgia to an electoral victory.

106. Trump's relentless false claims about election fraud and his public pressure and condemnation of election officials resulted in threats of violence against election officials around the country.

107. Trump knew about the threats of violence that he was provoking and, in the face of pleas from public officials to denounce the violence, instead further encouraged it with inflammatory tweets.

108. During the weeks leading up to January 6, 2021, Trump oversaw, directed, and encouraged a "fake elector" scheme under which seven states that Trump lost would submit an "alternate" slate of electors as a pretext for Vice President Pence to decline to certify the actual electoral vote on January 6.

109. Trump's efforts to unlawfully overturn the results of the 2020 presidential election are the subjects of criminal indictments pending against him in the United States District Court for the District of Columbia and in the State of Georgia.

110. On January 3, 2021, Trump again told Pence that Pence had the right to reject the electoral vote on January 6.[69]

111. Pence again rejected Trump's request.[70]

112. On January 4, 2021, Trump and his then-attorney John Eastman met with then-Vice President Mike Pence and his attorney Greg Jacob to discuss Eastman's legal theory that Pence

[69] August 1, 2023 Indictment, *supra* note 49, at 33.

[70] *Id.*

might either reject votes on January 6 during the certification process, or suspend the proceedings so that states could reexamine the results.[71]

113. Later, Trump admitted that the decision to continue seeking to overturn the election after the failure of legal challenges was his alone. On a September 17, 2023 broadcast of NBC's "Meet the Press," moderator Kristen Welker asked Trump: "The most senior lawyers in your own administration and on your campaign told you that after you lost more than 60 legal challenges that it was over. Why did you ignore them and decide to listen to a new outside group of attorneys?" Trump responded, "I didn't respect them as lawyers. . . . You know who I listen to? Myself." [72] When Welker asked, "Were you calling the shots, though, Mr. President, ultimately?", Trump replied, "As to whether or not I believed it was rigged? Oh, sure. It was my decision."[73]

114. On January 5, 2021, Eastman met privately with Jacob.[74]

115. Eastman expressly requested that Pence reject the certification of election results.[75]

116. During that meeting, Eastman acknowledged that what he was requesting that Pence do for Trump was clearly unlawful, stating that vice presidents both before and after Pence would not have the legal authority to do so under the Electoral Count Act, and that this purported legal theory would lose in the Supreme Court without a single justice in agreement.[76]

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[71] Hearing Before the Select Comm. To Investigate the January 6th Attack on the United States Capitol, No. 117-4, at 17-18 (June 16, 2022), https://www.govinfo.gov/content/pkg/CHRG-117hhrg49351/pdf/CHRG-117hhrg49351.pdf [hereinafter Third Jan. 6 Hearing Transcript]; *see also* Order Re Privilege of Documents, *Eastman v. Thompson*, No. 8:22-cv-00099, ECF No. 260 at 7 (C.D. Cal. March 28, 2022).

[72] *Full transcript: Read Kristen Welker's interview with Trump*, NBC NEWS (Sept. 17, 2023), https://www.nbcnews.com/meet-the-press/transcripts/full-transcript-read-meet-the-press-kristen-welker-interview-trump-rcna104778.

[73] *Id.*

[74] Third Jan. 6 Hearing Transcript, *supra* note 71, at 19-20.

[75] *Id.*

[76] *Id.* at 15-16, 21.

117. All the while, Trump continued to publicly and falsely maintain that the 2020 presidential election results were illegitimate due to fraud, and set the false expectation that Pence had the authority to overturn the election. For example:

a. On December 4, 2020, Trump tweeted: "RIGGED ELECTION!"[77]

b. On December 10, 2020, Trump tweeted: "How can you give an election to someone who lost the election by hundreds of thousands of legal votes in each of the swing states. How can a country be run by an illegitimate president?"[78]

c. On December 15, 2020, Trump tweeted: "Tremendous evidence pouring in on voter fraud. There has never been anything like this in our Country!"[79]

d. On December 23, 2020, Trump retweeted a memo titled "Operation 'PENCE' CARD," which falsely asserted that the Vice President could disqualify legitimate electors.[80]

e. On January 5, 2021, Trump tweeted: "The Vice President has the power to reject fraudulently chosen electors."[81]

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[77] *See* Trump Tweet Compilation, *supra* note 5, at 3 (Group Ex. E) (Dec. 4, 2020 at 8:55 AM ET), https://twitter.com/realDonaldTrump/status/1334858852337070083.

[78] *Id.* (Dec. 10, 2020 at 9:26 AM ET), https://twitter.com/realDonaldTrump/status/1337040883988959232.

[79] *Id.* at 5 (Dec. 15, 2020 at 10:41 AM ET), https://twitter.com/realDonaldTrump/status/1338871862315667456.

[80] Mike Pence, *Mike Pence: My Last Days With Donald Trump*, WALL STREET JOURNAL (Nov. 9, 2022) https://www.wsj.com/articles/donald-trump-mike-pence-jan-6-president-rally-capitol-riot-protest-vote-count-so-help-me-god-stolen-election-11668018494?st=rna6xw1pmjmaoss.

[81] *See* Trump Tweet Compilation, *supra* note 5, at 7 (Group Ex. E) (Jan. 5, 2021 at 11:06 AM ET), https://twitter.com/realDonaldTrump/status/1346488314157797389?s=20.

C. Trump Urged his Supporters to Amass at the Capitol.

118. On December 11, 2020, the Supreme Court rejected a lawsuit brought by the State of Texas alleging that election procedures in four states had resulted in illegitimate votes.[82]

119. The next morning, on December 12, 2020, Trump tweeted that the Supreme Court order was "a great and disgraceful miscarriage of justice," and "WE HAVE JUST BEGUN TO FIGHT!!!"[83]

3. That same day, Ali Alexander of Stop the Steal, and Alex Jones and Owen Shroyer of Infowars led a march on the Supreme Court.[84]

120. The crowd at the march chanted slogans such as "Stop the Steal!" "1776!" "Our revolution!" and Trump's earlier tweet, "The fight has just begun!"[85]

121. On that day, Trump tweeted: "Wow! Thousands of people forming in Washington (D.C.) for Stop the Steal. Didn't know about this, but I'll be seeing them! #MAGA."[86]

122. Later that day, Trump flew over the crowd in Marine One.[87]

123. On December 18, 2020, Trump tweeted: ".@senatemajldr and Republican Senators have to get tougher, or you won't have a Republican Party anymore. We won the Presidential Election, by a lot. FIGHT FOR IT. Don't let them take it away!"[88]

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[82] *Texas v. Pennsylvania, et al.*, No. 22-155, Order (U.S. Sup. Ct., Dec. 11, 2020).

[83] *See* Trump Tweet Compilation, *supra* note 5, at 4, (Group Ex. E) (Dec 12, 2020 at 7:58 AM ET), https://twitter.com/realDonaldTrump/status/1337743516294934529; *id.* (Dec 12, 2020 at 8:47 AM ET), https://twitter.com/realDonaldTrump/status/1337755964339081216.

[84] *See* January 6th Report, *supra* note 8, at 505 (Ex. H).

[85] *Id.*

[86] *See* Trump Tweet Compilation, *supra* note 5, at 5 (Group Ex. E) (Dec. 12, 2020 at 9:59 AM ET), https://twitter.com/realDonaldTrump/status/1337774011376340992.

[87] *See* January 6th Report, *supra* note 8, at 506 (Ex. H).

[88] *See* Trump Tweet Compilation, *supra* note 5, at 6 (Group Ex. E) (Dec 18, 2020 at 9:14 AM ET), http://www.twitter.com/realDonaldTrump/status/1339937091707351046.

124. On December 19, 2020, Trump tweeted "Big protest in D.C. on January 6th. Be there, will be wild!"[89]

D. <u>In Response to Trump's Call for a "Wild" Protest, Trump's Supporters Planned Violence.</u>

125. In response to Trump's "wild" tweet, Twitter's Trust and Safety Policy team recorded a "'fire hose' of calls to overthrow the U.S. government."[90]

126. Other militarized extremist groups began organizing for January 6 after Trump's "will be wild" tweet. These include the Oath Keepers, the Proud Boys, the Three Percenter militias, and others.[91]

127. An analyst at the National Capital Region Threat Intelligence Consortium observed that Trump's tweet led to "a tenfold uptick in violent online rhetoric targeting Congress and law enforcement" and noticed "violent right-wing groups that had not previously been aligned had begun coordinating their efforts."[92]

128. For example:

a. Kelly Meggs of the Oath Keepers Florida Chapter read Trump's tweet and commented in a Facebook post: "Trump said It's gonna be wild!!!!!!! It's gonna be wild!!!!!!! He wants us to make it WILD that's what he's saying. He called us all to the Capitol and wants us to make it wild!!! Sir Yes Sir!!! Gentlemen we are heading to DC pack your shit!!"[93]

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[89] *Id.* (Dec. 19, 2020 at 1:42 AM ET), https://twitter.com/realDonaldTrump/status/1340185773220515840.

[90] *See* January 6th Report, *supra* note 8, at 499 (Ex. H).

[91] *See* Day 5 Transcript, *supra* note 8, at 200:3-21, 200:5-202:22, 218:7-16 (Ex. M) (Heaphy Testimony).

[92] *See* January 6th Report, *supra* note 8, at 694 (Ex. H).

[93] Third Superseding Indictment at ¶ 37, *United States v. Crowl et al.*, No. 1:21-cr-28, ECF No. 127 (D.D.C. Mar. 31, 2021); *see also* January 6th Report, *supra* note 8, at 515 (Ex. H).

b. Meggs was later convicted by a federal jury for seditious conspiracy under 18 U.S.C. § 2384 after the January 6 attack, and sentenced to 12 years in prison.[94]

c. Oath Keepers from various states had established a "Quick Reaction Force" plan where they cached weapons for January 6, 2021 at hotels in Ballston and Vienna in Virginia.[95]

d. Henry "Enrique" Tarrio, a leader of the Proud Boys, sent encrypted messages to others that they should "storm the Capitol."[96]

e. The Proud Boys received and had been in possession of a document titled "1776 Returns" where the initial authors divided their plan to overtake federal government buildings into five parts: "Infiltrate," "Execution," "[D]istract," "Occupy," and "Sit In."[97]

f. Members of the Proud Boys were also convicted of seditious conspiracy after the January 6 attack.[98]

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[94] *United States v. Rhodes, III et al.*, No. 1:22-cr-00015, ECF No. 626 (D.D.C. Nov. 29, 2022).

[95] Superseding Indictment at ¶ 45, *United States v. Rhodes, III et al.*, No. 1:22-cr-15, ECF No. 167 (D.D.C. June 22, 2022); Select Comm. to Investigate the Jan. 6th Attack on the U.S. Capitol, Transcribed Interview of Frank Anthony Marchisella, at 34 (Apr. 29, 2022), https://www.govinfo.gov/content/pkg/GPO-J6-TRANSCRIPT-CTRL0000071096/pdf/GPO-J6-TRANSCRIPT-CTRL0000071096.pdf.

[96] Second Superseding Indictment at ¶ 50, *United States v. Nordean, et al.*, No. 1:21-cr-00175, ECF No. 305 (D.D.C. Mar. 7, 2022).

[97] Zachary Rehl's Motion to Reopen Detention Hearing and Request for a Hearing, Ex. 1: "1776 Returns," *United States v. Nordean, et al.*, No. 1:21-cr-00175-TJK, ECF No. 401-1 (D.D.C. June 15, 2022), https://s3.documentcloud.org/documents/22060615/1776-returns.pdf.

[98] *Jury Convicts Four Leaders of the Proud Boys of Seditious Conspiracy Related to U.S. Capitol Breach*, U.S. DEP'T OF JUSTICE (May 4, 2023), https://www.justice.gov/opa/pr/jury-convicts-four-leaders-proud-boys-seditious-conspiracy-related-us-capitol-breach.

g. Matt Bracken, a host for Infowars, a website specializing in disinformation and false election fraud theories, told viewers that it may be necessary to storm the Capitol, and that "we're going to only be saved by millions of Americans . . . occupying the entire area, if—if necessary storming right into the Capitol. . . we know the rules of engagement. If you have enough people, you can push down any kind of a fence or a wall."[99]

h. QAnon, an online false theory group, shared online a digital banner of "Operation Occupy the Capitol," which depicted the U.S. Capitol being torn in two.[100]

i. The Three Percenter militias, a far-right, anti-government movement, tried to share online "#OccupyCongress" memes with text that say, "If they Won't Hear Us" and "They Will Fear Us."[101]

129. On January 1, 2021, a supporter tweeted to Trump that "The calvary [sic] is coming, Mr. President!"[102]

130. Trump quoted that tweet and wrote back, "A great honor!"[103]

131. Organizers planned two separate demonstrations for January 6, 2021.

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[99] The Alex Jones Show, "January 6th Will Be a Turning Point in American History," BANNED.VIDEO, at 16:29 (Dec. 31, 2020), https://www.bitchute.com/video/XBllZYTRfaIB/; *See* January 6th Report, *supra* note 8, at 507 (Ex. H).

[100] Ben Collins & Brandy Zadrozny, *Extremists made little secret of ambitions to 'occupy' Capitol in weeks before attack,* NBC (Jan. 8, 2021), https://www.nbcnews.com/tech/internet/extremists-made-little-secret-ambitions-occupy-capitalweeks-attack-n1253499.

[101] Criminal Complaint, Statement of Facts at 10-11, *United States v. Hazard*, No. 1:21-mj-00686, ECF No. 1-1 (D.D.C. Dec. 7, 2021).

[102] *See* Trump Tweet Compilation, *supra* note 5, at 7 (Group Ex. E) (Jan. 1, 2021 at 3:34 PM ET), https://twitter.com/realDonaldTrump/status/1345106078141394944.

[103] *Id.*

a. Kylie and Amy Kremer, a mother-daughter pair involved with Women for America First, planned a demonstration on the Ellipse ("Ellipse Demonstration"), a park south of the White House fence and north of Constitution Avenue and the National Mall in Washington, D.C.[104]

b. Ali Alexander, an extremist associated with the Stop the Steal, planned an assemblage immediately outside the Capitol, on the court side and the steps of the building.[105]

132. On December 29, 2020, Alexander tweeted, "Coalition of us working on 25 new charter buses to bring people FOR FREE to #JAN6 #STOPTHESTEAL for President Trump. If you have money for more buses or have a company, let me know. We will list our buses sometime in the next 72 hours. STAND BACK & STAND BY!"[106]

133. Meanwhile, by late December, Trump, his White House staff, and his campaign became directly involved in planning the Ellipse Demonstration. Trump personally helped select the speaker lineup, and his campaign and joint fundraising committees made direct payments of $3.5 million to rally organizers.[107]

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[104] Women For America First Ellipse Public Gathering Permit, NAT'L PARK SERV. (Jan. 5, 2021), https://www.nps.gov/aboutus/foia/upload/21-0278-Women-for-America-First-Ellispse-permit_REDACTED.pdf.

[105] *President Trump Wants You in DC January 6*, WILDPROTEST.COM (2020), https://web.archive.org/web/20201223062953/http://wildprotest.com/ (archived).

[106] *See* January 6th Report, *supra* note 8, at 532 (Ex. H).

[107] *See* January 6th Report, *supra* note 8, at 533-36 (Ex. H); Massoglia, *supra* note 9.

134. By December 29, 2020, Trump had formed and conveyed to allies a plan to order his supporters to march to the Capitol at the end of his speech.[108] His goal was to force Congress to stop the certification of electoral votes.[109]

135. Between January 2 and 4, 2021, Kremer and other organizers of the Ellipse Demonstration became aware that Trump intended to "order [the crowd] to the [C]apitol at the end of his speech." These organizers messaged each other that "POTUS is going to have us march there [the Supreme Court]/the Capitol," and that the President was going to "call on everyone to march to the [C]apitol."[110]

136. These organizers received this information from White House Chief of Staff Mark Meadows.[111]

137. In early January 2021, Trump and extremists began publicly referring to January 6 using increasingly apocalyptic terminology. Some referred to a "1776" plan or option for January 6, suggesting by analogy to the American Revolution that their plans for the January 6 congressional certification of electoral votes included violent rebellion.[112]

138. On January 4, 2021, at a rally in Dalton, Georgia, Trump stated: "If you don't fight to save your country with everything you have, you're not going to have a country left."[113]

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[108] *See* January 6th Report, *supra* note 8, at 533 (Ex. H).

[109] *Id.*

[110] *Id.*

[111] *Id.*

[112] *See, e.g.*, Day 2 Transcript, *supra* note 8, at 29:2-9, 54:13-55:12 (Ex. J) (Simi Testimony).

[113] Bloomberg Quicktake, *LIVE: Trump Stumps for Georgia Republicans David Perdue, Kelly Loeffler Ahead of Senate Runoff*, YOUTUBE (Jan. 4, 2021), https://www.youtube.com/watch?v=9HisWmJJ3oE.

139. During the rally, Trump asserted that the transfer of power set for January 6, 2021 would not take place and insinuated that powerful events would later occur.[114] For example, he stated:

a. "If the liberal Democrats take the Senate and White House. . . . And they're not taking this White House. We're going to fight like hell, I'll tell you right now."

b. "We're going to take it back."

c. "There's no way we lost Georgia. There's no way. That was a rigged election, but we're still fighting it and you'll see what's going to happen."

d. "We can't let that happen. The damage they do will be permanent and will be irreversible. Can't let it happen."

e. "We will never give in. We will never give up. We will never back down. We will never, ever surrender."

f. "We have to go all the way and that's what's happening. You watch what happens over the next couple of weeks. You watch what's going to come out. Watch what's going to be revealed. You watch."

140. At the rally, the crowd chanted "Fight for Trump! Fight for Trump!" several times.[115]

141. By early January 2021, Trump anticipated that the crowd that was preparing to amass on January 6 at his behest would be large and violent.[116]

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[114] *Id.*

[115] *Id.*

[116] Letter from Donald J. Trump to The Select Committee to Investigate the January 6th Attack on the U.S. Capitol, at 2-3 (Oct. 13, 2022), https://s3.documentcloud.org/documents/23132276/830-am-final-january-6th-committee-letter14446.pdf.

142. On January 5, 2021, several events were held across D.C. on behalf of Stop the Steal, an entity formed in early November 2020 to mobilize around Trump's claim that the election had been rigged.[117] Speakers during these events made remarks about the event to be held at the Capitol the next day. For example:

a. Ali Alexander from Stop the Steal said: "We must rebel . . . . We might make this 'Fort Trump' . . . . We're going to keep fighting for you, Mr. President." He stated further, "1776 is always an option. . . . These degenerates in the deep state are going to give us what we want, or we are going to shut this country down."[118]

b. Roger Stone stated: "This is a fight for the future of Western Civilization as we know it. . . we dare not fail."[119]

c. Several members of the Phoenix Project, a Three-Percenter-linked group, told the January 5 crowd, "We are at war," promising to "fight" and "bleed," and that they will "not return to our peaceful way of life until this election is made right."[120]

143. On January 5, in response to these extremist demonstrations, Trump tweeted: "Our Country has had enough, they won't take it anymore! We hear you (and love you) from the Oval Office. MAKE AMERICA GREAT AGAIN!"[121]

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[117] On information and belief, this "Stop the Steal" entity is distinct from an identically named organization founded in 2016 by Roger Stone.

[118] *See* January 6th Report, *supra* note 8, at 537-38 (Ex. H).

[119] *Id.*

[120] *Id.*

[121] *See* Trump Tweet Compilation, *supra* note 5, at 8 (Group Ex. E) (Jan. 5, 2021 at 5:05 PM ET), http://www.twitter.com/realDonaldTrump/status/1346578706437963777.

144. That same evening, President Trump told White House staff that his supporters would be "fired up" and "angry" the next day.[122]

145. Also on January 5, 2021, Trump met alone with Pence and again asked him to obstruct the certification.[123]

146. Pence again informed Trump that he did not have the authority to unilaterally reject electoral votes and consequently would not do so.[124]

147. Trump informed Pence that if he did not reject the votes, then Trump would publicly criticize Pence for it.[125]

148. Later that night, Trump authorized his campaign to issue a false public statement that: "The Vice President and I are in total agreement that the Vice President has the power to act."[126]

E. Trump and his Administration Knew of Supporters' Plans to Use Violence and/or to Forcefully Prevent Congress from Certifying the Election Results.

149. Trump, his closest aides, the Secret Service, and the Federal Bureau of Investigations were all aware that Trump supporters—whom Trump had aroused with false claims of election fraud and veiled calls for violence—intended to commit violence at the Capitol on January 6 if the vote was certified.

[122] *See* January 6th Report, *supra* note 8, at 539 (Ex. H).

[123] August 1, 2023 Indictment, *supra* note 49, at 36.

[124] Jim Acosta & Kaitlan Collins, *Pence informed Trump that he can't block Biden's win*, CNN (Jan. 5, 2021), https://cnn.it/3FH4gx9.

[125] August 1, 2023 Indictment, *supra* note 49, at 36.

[126] *Id.*

150. On December 24, 2020, the Secret Service received from a private intelligence group a list of responses to Trump's December 19 "will be wild" tweet.[127] Those responses included:

a. "I read [the President's tweet] as armed."[128]

b. "[T]here is not enough cops in DC to stop what is coming."

c. "[M]ake sure they know who to fear," and "[W]aiting for Trump to say the word."

151. On December 26, 2020, the Secret Service received a tip that the Proud Boys had plans to enter Washington, D.C. armed. The Secret Service forwarded this tip to the Capitol Police.[129]

152. On December 29, 2020, the Secret Service again forwarded warnings that pro-Trump demonstrators were being urged to occupy the federal building.[130]

153. On December 30, 2020, the Secret Service held a briefing that highlighted how the President's December 19 "will be wild!" tweet was found alongside hashtags such as #OccupyCapitols and #WeAreTheStorm.[131]

154. Also on December 30, 2020, Jason Miller—a senior advisor to Trump—texted White House Chief of Staff Mark Meadows a link to thedonald.win website and stated, "I got the

[127] *See* January 6th Report, *supra* note 8, at 61, 695 (Ex. H).

[128] *Id.*

[129] *Id.* at 61-62.

[130] *Id.*

[131] *Id.*

base FIRED UP." The link was to a page with comments like "Gallows don't require electricity" and "if the filthy commie maggots try to push their fraud through, there will be hell to pay."[132]

155. Federal Bureau of Investigation received many tips regarding the potential for violence on January 6. One tip said:

> They think they will have a large enough group to march into D.C. armed and will outnumber the police so they can't be stopped. . . . They believe that since the election was stolen, that it's their constitutional right to overtake the government, and during this coup, no U.S. laws apply. Their plan is to literally kill. Please, please take this tip seriously and investigate further.[133]

156. On January 5, 2021, an FBI office in Norfolk, Virginia issued an alert to law enforcement agencies titled, "Potential for Violence in Washington, D.C., Area in Connection with Planned 'StopTheSteal' Protest on 6 January 2021."[134]

157. Trump was personally informed of at least some of these plans for violent action.

158. Trump proceeded with his plans for January 6, 2021.

III. THE JANUARY 6, 2021 INSURRECTION.

A. The Two Demonstrations.

159. On the morning of January 6, 2021, before the joint session of Congress began to count the votes and certify the results, thousands of people began gathering around Washington, D.C. Many of these people headed to the Ellipse, near the White House, where then-President Trump and others were scheduled to speak. Others headed directly to the Capitol building.

160. By 11:00 AM (Eastern Time), the United States Capitol Police ("USCP") reported "'large crowd[s]' around the Capitol building," including approximately 200 members of the

[132] *Id.* at 63.

[133] *See* Day 5 Transcript, *supra* note 8, at 218:7-16 (Ex M) (Heaphy Testimony).

[134] *See* January 6th Report, *supra* note 8, at 62 (Ex. H).

Proud Boys.[135] Some of the people gathering in Washington were "equip[ped] . . . with communication devices and donning reinforced vests, helmets, and goggles."[136]

B. <u>Trump's Preparations as the Demonstrations Began.</u>

161. On January 6, at 1:00 AM, Trump tweeted: "If Vice President @Mike_Pence comes through for us, we will win the Presidency. . . . Mike can send it back!"[137]

162. On the morning of January 6, at approximately 10:00 AM, White House Deputy Chief of Staff Tony Ornato briefed Chief of Staff Mark Meadows over concerns that members of the crowd were armed with weapons, such as knives and guns. Ornato confirmed with Meadows that he had spoken with Trump about this.[138]

163. At approximately 10:30 AM, Trump edited a draft of his speech for that afternoon's Ellipse Demonstration (also known as the Save America Rally).

164. Trump personally added the text, "[W]e will see whether Mike Pence enters history as a truly great and courageous leader. All he has to do is refer the illegally-submitted electoral votes back to the states that were given false and fraudulent information where they want to recertify."[139]

165. Before Trump edited the draft, it did not contain any mention of Pence.

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[135] U.S. Senate Comm. On Homeland Security & Gov't Affairs, *Examining The U.S. Capitol Attack: A Review of the Security, Planning, and Response Failures on January 6 (Staff Report)*, at 22 (June 8, 2021), https://www.hsgac.senate.gov/wp-content/uploads/imo/media/doc/HSGAC&RulesFullReport_ExaminingU.S.CapitolAttack.pdf (alteration in original).

[136] *United States v. Caldwell*, 581 F. Supp. 3d 1, 8 (D.D.C. 2021).

[137] *See* Trump Tweet Compilation, *supra* note 5, at 8 (Group Ex. E) (Jan. 6, 2021 at 1:00 AM ET), https://twitter.com/realDonaldTrump/status/1346698217304584192.

[138] Hearing Before the Select Comm. to Investigate the January 6th Attack on the United States Capitol, 117th Cong., 2d sess., at 8-9 (June 28, 2022), https://www.govinfo.gov/content/pkg/CHRG-117hhrg49354/pdf/CHRG-117hhrg49354.pdf [hereinafter Sixth Jan. 6 Hearing Transcript].

[139] January 6th Report *supra* note 8, at 581-82.

166. Eric Herschmann, a lawyer in the White House Counsel's office and senior advisor to Trump, had tried to remove the lines and advised against advancing Eastman's legal theory that Pence should reject electoral votes because, he stated, he "didn't concur with the legal analysis."[140]

C. The Increasingly Apocalyptic Demonstration at the Ellipse.

167. At the Ellipse Demonstration, speakers preceding Trump exhorted the crowd to take forceful action to ensure that Congress and/or Pence rejected electoral votes for Biden. For example:

a. Representative Mo Brooks of Alabama urged the crowd to "start taking down names and kicking ass" and be prepared to sacrifice their "blood" and "lives" and "do what it takes to fight for America" by "carry[ing] the message to Capitol Hill," since "the fight begins today."[141]

b. Trump's lawyer Rudy Giuliani called for "trial by combat."[142]

c. Trump's lawyer John Eastman perpetuated claims of voter fraud and said: "all that we are demanding of Pence is this afternoon at 1 o'clock he let the legislators of the states look into this so we get to the bottom of it."[143]

168. Trump and Meadows were aware of the line-up of speakers at the Ellipse Demonstration.[144]

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[140] *Id.*

[141] The Hill, *supra* note 12.

[142] Wash. Post, *supra* note 11.

[143] *Rally on Electoral College Vote Certification, supra* note 13, at 2:27:00.

[144] Select Comm. to Investigate the Jan. 6th Attack on the U.S. Capitol, Deposition of Max Miller, at 81-83, 129-30 (Jan. 20, 2022), https://www.govinfo.gov/content/pkg/GPO-J6-TRANSCRIPT-CTRL0000038857/pdf/GPO-J6-TRANSCRIPT-CTRL0000038857.pdf; *see also* Select Comm. to Investigate the Jan. 6th Attack on the U.S. Capitol, Transcribed Interview of Katrina Pierson (Mar. 25, 2022), https://www.govinfo.gov/content/pkg/GPO-J6-TRANSCRIPT-CTRL0000060756/pdf/GPO-J6-TRANSCRIPT-CTRL0000060756.pdf.

169. Trump and Meadows were warned by aides against including known incendiary speakers, like Giuliani and Eastman, who would emphasize false claims of election fraud.

170. Trump and Meadows refused to remove Giuliani and Eastman.

171. Meadows himself explicitly directed that Giuliani and Eastman speak at the Demonstration before Trump.

172. Around 10:57 AM, the organizers of the demonstration played a two-minute pro-Trump video.[145] The video reflected flashing images of Joseph Biden and Nancy Pelosi while Trump voiced over, "For too long, a small group in our nation's capital has reaped the rewards of government, while the people have borne the cost." The video emphasized that the government had been compromised by sinister powers.

173. Around 11:39 AM, Trump left the White House by motorcade and drove to the Ellipse.[146]

174. At the Ellipse, an estimated 25,000 people refused to walk through the magnetometers at the entrance.[147]

175. White House Deputy Chief of Staff Tony Ornato informed Trump that these people were unwilling to pass through the monitors because they had weapons that they did not want confiscated by the Secret Service.[148]

176. Trump became upset that his people were not being allowed to carry their weapons through the entrance.

177. Trump ordered his team to remove the magnetometers.

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[145] Ryan Goodman, Trump Film Ellipse Jan. 6, 2021, VIMEO (Feb. 3, 2021), https://vimeo.com/508134765.

[146] Alemany, *supra* note 15.

[147] *See* January 6th Report, *supra* note 8, at 585 (Ex. H).

[148] *Id.*

178. He shouted at his advance team words to the effect of, "I don't [fucking] care that they have weapons. They're not here to hurt *me*. Take the [fucking] mags away. Let my people in. They can march to the Capitol from here. Take the [fucking] mags away."[149]

179. Around 11:57 AM, Trump took the stage at the Ellipse to give his speech.

D. Insurrectionists Prepared for Battle at the Capitol.

180. Even before Trump gave his speech at the Ellipse Demonstration, crowds had already begun swarming near the Capitol.

181. Around 11:30 AM, a large group of Proud Boys arrived at the Capitol, moving in loosely organized columns of five across. The crowd made way for them.[150]

182. At the same time, Washington, D.C. police had to leave Capitol grounds to respond to reports of violence throughout the city, including a man with a rifle, and a vehicle loaded with weaponry.[151] For example:

a. Around 12:33 PM, police detained another individual with a rifle near the World War II Memorial, which was close to where Trump was speaking.

b. Around 12:45 PM, various security agencies such as the Capitol Police and FBI responded to reports of a pipe bomb outside the Republican National Committee headquarters and suspicious packages found in or around other buildings near the Capitol, such as the Supreme Court and the Democratic National Committee headquarters.

183. On information and belief, Trump was personally informed about the escalating security situation at the Capitol before he began his speech.

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[149] *Id.*

[150] Alemany, *supra* note 15.

[151] *Id.*

E. Trump Directed Supporters to March on the Capitol and Intimidate Pence and Congress.

184. Around 11:57 AM, Trump began his speech at the Ellipse.[152]

185. For the first 15 minutes of his speech, he falsely repeated that he had been defrauded of the presidency, which he had won "by a landslide," and that "we will never give up, we will never concede. It doesn't happen. You don't concede when there's theft involved."[153]

186. Throughout his speech, Trump repeatedly called out Vice President Pence by name, urging Pence to reject electoral votes from states Trump had lost.

187. As his speech continued, the mob became audibly and increasingly angry at Pence and Congress. During Trump's speech, demonstrators shouted "Storm the Capitol!", "Invade the Capitol Building!", "Fight like Hell!", "Fight for Trump!" and "Take the Capital Right Now!".[154]

188. Around 12:16 PM, Trump made his first call on demonstrators to head towards the Capitol: "After this, we're going to walk down and I'll be there with you. We're going to walk down. We're going to walk down any one you want, but I think right here. We're going to walk down to the Capitol, and we're going to cheer on our brave senators, and congressmen and women. We're probably not going to be cheering so much for some of them because you'll never take back our country with weakness. You have to show strength, and you have to be strong."

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[152] *Id.*

[153] *See Rally on Electoral College Vote Certification*, *supra* note 13; *Donald Trump Speech*, *supra* note 13; Naylor, *supra* note 13.

[154] Dylan Stableford, *New video shows Trump rally crowd cheering call to 'storm the Capitol'*, YAHOO NEWS (Jan. 25, 2021), https://news.yahoo.com/trump-jan-6-rally-crowd-storm-the-capitol-video-184828622.html?fr=sycsrp_catchall; *Thompson v. Trump*, 590 F. Supp. 3d 46, 100 (D.D.C. 2022).

189. Immediately after this remark, approximately 10,000-15,000 demonstrators began the roughly 30-minute march to the Capitol just as Trump had directed, where they joined a crowd of 300 members of the violent extremist group, the Proud Boys.[155]

190. Nearly halfway through the speech, Trump again called on Pence to reject the certification, stating: "I hope you're [Mike Pence] going to stand up for the good of our Constitution and for the good of our country. And if you're not, I'm going to be very disappointed in you. I will tell you right now. I'm not hearing good stories."

191. For the remainder of his speech, Trump asserted that Biden's victory was illegitimate and that the process of transferring power to Biden could not take place. For example:

a. "And then we're stuck with a president who lost the election by a lot, and we have to live with that for four more years. We're just not going to let that happen."

b. "We want to go back and we want to get this right because we're going to have somebody in there that should not be in there and our country will be destroyed and we're not going to stand for that."

c. "And we're going to have to fight much harder."

d. "And you know what? If they do the wrong thing, we should never, ever forget that they did. Never forget. We should never ever forget."

e. "You will have an illegitimate president. That's what you'll have. And we can't let that happen."

f. "And we fight. We fight like hell. And if you don't fight like hell, you're not going to have a country anymore."

[155] Mendoza & Linderman, *supra* note 17.

g. "When you catch somebody in a fraud, you're allowed to go by very different rules."

192. Around 1:00 PM, towards the end of his speech, Trump again directed the crowd to the Capitol: "After this, we're going to walk down, and I'll be there with you," and "I know that everyone here will soon be marching over to the Capitol building to peacefully and patriotically make your voices heard."

193. Knowing that many in the crowd were armed, Trump gave a final plea and urged that the crowd assemble near the Capitol:

a. "So we're going to, we're going to walk down Pennsylvania Avenue. . . And we're going to the Capitol, and we're going to try and give."

b. "But we're going to try and give our Republicans, the weak ones because the strong ones don't need any of our help. 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."

194. At approximately 1:10 PM, Trump ended his remarks.

F. <u>Trump Intended to March on the Capitol and Capitalize on the Unfolding Chaos.</u>

195. On January 6, at approximately 1:17 PM, Trump was seated within his motorcade and asked to be transported to the Capitol.[156]

196. When it was clear that Trump could not be taken to the Capitol for security reasons, Trump became irate with those who prevented him from going to the Capitol.[157]

[156] *See* January 6th Report, *supra* note 8, at 587 (Ex. H); NBC News, *supra* note 72 (Trump stating, "I wanted to go down peacefully and patriotically to the Capitol.").

[157] *See* January 6th Report, *supra* note 8, at 587-91 (Ex. H).

197. On the drive to the White House, Trump attempted to seize control of the steering wheel of the presidential limousine in hopes of driving to the Capitol.[158]

198. Around approximately 1:19 PM, Trump arrived at the White House and sat in the private dining room to watch the news coverage unfold.[159]

199. At around 1:25 PM, the Secret Service communicated internally that "[THE PRESIDENT] IS PLANNING ON HOLDING AT THE WHITE HOUSE FOR THE NEXT APPROXIMATE [sic] TWO HOURS, THEN MOVING TO THE CAPITOL."[160]

200. Around 1:55 PM, the motorcade finally disbanded on orders from the Secret Service that Trump's plan to go to the Capitol had been nixed.[161]

G. Pro-Trump Insurrectionists Violently Attacked the Capitol.

201. Before Trump ended his speech at the Ellipse, attackers had already begun swarming the Capitol building.[162]

202. The attackers, following directions from Trump and his allies, shared the common purpose of preventing Congress from certifying the electoral vote.[163] Many of them also expressed a desire to assassinate Vice President Pence, the Speaker of the House, and other Members of Congress.

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[158] Sixth Jan. 6 Hearing Transcript, *supra* note 138, at 16.

[159] Alemany, *supra* note 15.

[160] *See* January 6th Report, *supra* note 8, at 592 (Ex. H).

[161] *Id.*

[162] *See* Day 1 Transcript, *supra* note 15, at 142:9-143:2, 144:11-23, 146:16-147:24 (Ex. I) (Swalwell Testimony); *see also* Day 1 Transcript, *supra* note 15, at 197:8-13; 199:8-200:8 (Ex. I) (Pingeon Testimony); Day 4 Transcript, *supra* note 15, at 192:10-195:24 (Ex. L) (Buck Testimony).

[163] *See Rally on Electoral College Vote Certification*, *supra* note 13; *Donald Trump Speech, supra* note 13; Naylor, *supra* note 13.

203. By 12:53 PM, attackers had breached the outer security perimeter that the Capitol Police (USCP) had established around the Capitol. Many were armed with weapons, pepper spray, and tasers. Some wore full body armor; others carried homemade shields. Many used flagpoles, signposts, or other weapons to attack police officers defending the Capitol.[164] Some moved through the crowd and entered the Capitol in a "stacked" formation, a single file configuration often used by special forces or infantry units during urban combat or close-quarters operations.

204. Following the initial breach, the crowd flooded into the Capitol West Front grounds. Attackers began climbing and scaling the Capitol building.

205. Around 12:55 PM, Capitol Police called on all available units to the Capitol to assist with the breach. Attackers clashed violently with police officers on the scene.[165]

206. Around 1:03 PM, Capitol Police found an unoccupied vehicle containing weapons, ammunition, and components to make Molotov cocktails.[166]

207. Inside the Capitol, Congress was in session to certify electoral votes in accordance with the Electoral Count Act and the Twelfth Amendment to the U.S. Constitution. At about 1:15 PM, the House and the Senate separated to debate objections to the certification of Arizona's Electoral College votes.

208. Around 1:30 PM, law enforcement retreated as attackers scaled the walls of the Capitol.

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[164] Alemany, *supra* note 15; *see also* Day 1 Transcript, *supra* note 15, at 74:4–10; 75:15–76:4, 105:25–106:24 (Ex. I) (Hodges Test); *id.* at 201:22–202:5, 220:23–221:2, 224:25–225:2 (Ex. I) (Pingeon Test).

[165] Alemany, *supra* note 15.

[166] *Id.*

209. Around 1:50 PM, the on-site D.C. Metropolitan Police Department incident commander officially declared a riot at the Capitol.[167]

210. At that point, law enforcement still held the building, and Congress was still able to function. But that soon changed.

211. By 2:06 PM, attackers reached the Rotunda steps.

212. By 2:08 PM, attackers reached the House Plaza.

213. By 2:10 PM, the West Front and northwest side of the Capitol had been breached through the barricades. Attackers smashed the first floor windows, which were big enough to climb through. Two individuals kicked open a nearby door to let others into the Capitol.

214. Many attackers demanded the arrest or murder of various other elected officials who refused to participate in their attempted coup.[168]

a. Some chanted "hang Mike Pence" and threatened to kill Speaker Pelosi.[169]

b. Some taunted a Black police officer with racial slurs for pointing out that overturning the election would deprive him of his vote.[170]

c. Confederate flags and symbols of white supremacist movements were widespread.[171]

215. Throughout the roughly 187 minutes of the attack, police defending the Capitol were viciously attacked. For example:

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[167] *Id.*

[168] *Id.*

[169] H.R. REP. NO. 117-2, *supra* note 15, at 20-21.

[170] Alemany, *supra* note 15.

[171] *Id.*; *See* Rules & Admin. Review, *supra* note 15, at 28 (Ex. F).

a. One police officer was crushed against a door, screaming in agony as the crowd chanted "Heave, ho!"[172]

b. An attacker ripped off the officer's gas mask, beat his head against the door, took his baton, and hit his head with it.[173]

c. Another officer was pulled into a crowd, beaten and repeatedly tased by attackers.[174]

216. While not all who stormed the Capitol personally used violence against law enforcement, the combined mass overwhelmed the police and prevented the execution of lawful authority.

H. The Fall of the United States Capitol.

217. Around 2:13 PM, Vice President Pence was removed from the Capitol by Secret Service, along with his family, for their physical safety.

218. Because of this, the Senate was forced to go into recess.

219. Senate staffers took the electoral college certificates with them when they were evacuated, ensuring they did not fall into the hands of the attackers.[175]

220. Around 2:25 PM, attackers who had breached the east side of the Capitol entered the Rotunda.

221. At 2:29 PM, the House was forced to go into recess.

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[172] Smith & Caldwell, *supra* note 15.

[173] Hymes & McDonald, *supra* note 15.

[174] Michael Kaplan & Cassidy McDonald, *At least 17 police officers remain out of work with injuries from the Capitol attack*, CBS NEWS (June 4, 2021), https://cbsn.ws/3eyXZr8.

[175] Lisa Mascaro, et al., *Pro-Trump mob storms US Capitol in bid to overturn election*, ASSOCIATED PRESS (Jan. 5, 2021), https://apnews.com/article/congress-confirm-joe-biden-78104aea082995bbd7412a6e6cd13818.

222. Thus, by approximately 2:29 PM, the attack stopped the legal process for counting and certifying electoral votes.[176]

223. Around 2:43 PM, attackers broke the glass of a door to the Speaker's lobby, which would give them direct access to the House chamber. There, officers barricaded themselves with furniture and weapons to prevent the attackers' entry.

224. Around ten minutes later, attackers successfully breached the Senate chamber.

225. By this point, both the House Chamber and Senate Chamber were under the control of the attackers.

226. Due to the ongoing assault, Congress was unable to function or exercise its constitutional obligations. The attack successfully obstructed Congress from certifying the votes, temporarily blocking the peaceful transition of power from one presidential administration to the next.

227. Throughout the attack, Senators, Representatives, and staffers were forced to flee the House chamber and seclude themselves as attackers rampaged through the building.

228. This was the first time in the nation's history that forces opposed to the continued functioning of the United States government were able to seize any government structures or institutions in the nation's Capitol and stop the functioning of the government. Even at the height of the Civil War, the Confederate Army never succeeded in taking control of the U.S. Capitol or any other portion of Washington, D.C., nor in preventing Congress from meeting to exercise its constitutional obligations.

[176] Alemany, *supra* note 15; *see also* Day 1 Transcript, *supra* note 15, at 141:3-143:2 (Ex. I) (Swalwell Testimony).

I. Trump Reveled in, and Deliberately Refused to Stop, the Insurrection.

229. Early during the attack, by approximately 1:21 PM, Trump was informed by staffers in the White House that television broadcasts of his speech had been cut to instead show the violence at the Capitol.[177]

230. After this, Trump immediately began watching the Capitol attack unfold on live news in the private dining room of the White House.[178]

231. Shortly after, White House Acting Director of Communications Ben Williamson sent a text to Chief of Staff Mark Meadows recommending that Trump tweet about respecting Capitol Police.[179]

232. At 2:24 PM, at the height of violence, Trump made his first public statement during the attack. Against the advisors' recommendation above, rather than make any effort to quell the riotous mob, he fanned the flames by tweeting: "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 corrected set of facts, not the fraudulent or inaccurate ones which they were asked to previously certify. USA demands the truth!"[180]

233. Trump knew, consciously disregarded the risk, or specifically intended that this tweet would exacerbate the violence at the Capitol.

[177] *See* January 6th Report, *supra* note 8, at 592 (Ex. H).

[178] *Id.* at 593.

[179] *Id.* at 595.

[180] *2:24 PM-2:24 PM, supra* note 19; *see also* Trump Tweet Compilation, *supra* note 5, at 9 (Group Ex. E) (Jan. 6, 2021 at 2:24 PM ET); January 6th Report, *supra* note 8, at 429 (Ex. H).

234. Trump's 2:24 PM tweet "immediately precipitated further violence at the Capitol." Immediately after it, "the crowds both inside and outside of the Capitol building violently surged forward."[181]

235. Thirty seconds after the tweet, attackers who were already inside the Capitol opened the East Rotunda door. And thirty seconds after that, attackers breached the crypt one floor below Vice President Pence.[182]

236. At 2:25 PM, the Secret Service determined it needed to evacuate the Vice President to a more secure location. At one point during this process, attackers were within forty feet of him.[183]

237. Shortly after Trump's tweet, Cassidy Hutchinson (assistant to White House Chief of Staff Mark Meadows) and Pat Cipollone (White House Counsel) expressed to Meadows their concern that the attack was getting out of hand and that Trump must act to stop it.

238. Meadows responded, "You heard him, Pat . . . . He thinks Mike deserves it. He doesn't think they're doing anything wrong."[184]

239. Around 2:26 PM, Trump made a call to Republican leaders trapped within the Capitol. He did not ask about their safety or the escalating situation but instead asked whether any objections had been cast against the electoral count.[185]

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[181] *See* January 6th Report, *supra* note 8, at 86 (Ex. H); Day 1 Transcript, *supra* note 15, at 103:14-104:18 (Ex. I) (Hodges Testimony).

[182] *See* January 6th Report, *supra* note 8, at 465 (Ex. H).

[183] *Id.* at 466.

[184] *Id.* at 596.

[185] *Id.* at 597-98.

240. Around the same time, Trump called House Leader Kevin McCarthy regarding any such objections. McCarthy urged Trump on the phone to make a statement and to instruct the attackers to cease and withdraw.

241. Trump declined to make a statement directing the attackers to withdraw.

242. Instead, Trump responded with words to the effect of, "Well, Kevin, I guess they're just more upset about the election theft than you are."[186]

243. Within ten minutes after Trump's tweet, thousands of attackers "overran the line on the west side of the Capitol that was being held by the Metropolitan Police Force's Civil Disturbance Unit, the first time in history of the DC Metro Police that such a security line had ever been broken."[187]

244. Throughout the time Trump sat watching the attack unfold, multiple relatives, staffers, and officials tried to convince Trump to make a direct statement that the attackers must leave the Capitol. For example:

a. House Minority Leader Kevin McCarthy on the phone told Trump he must make a public statement to end the attack.

b. Ivanka Trump and Eric Herschmann entered the room where Trump sat watching the attack on television. They suggested he make a public statement about being peaceful.

245. At 2:38 PM, Trump tweeted: "Please support our Capitol Police and Law Enforcement. They are truly on the side of our Country. Stay peaceful!"[188]

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[186] *Id.* at 598.

[187] *Id.* at 86.

[188] *See* Trump Tweet Compilation, *supra* note 5, at 9 (Group Ex. E) (Jan 6, 2021 at 2:38 PM ET), https://twitter.com/realDonaldTrump/status/1346904110969315332?lang=en.

246. Many attackers saw this tweet but understood it *not* to be an instruction to withdraw from the Capitol.[189]

247. The attack raged on.

248. Around 3:05 PM, Trump was informed that a Capitol Police officer fatally shot one Ashli Babbitt. Babbitt had been attempting to forcibly enter the Speaker's Lobby adjacent to the House chamber.[190]

249. Around this time, Pence, Speaker Pelosi, and Senate leaders directly contacted senior law enforcement leaders and arranged for reinforcements.

250. Although the force and ferocity of the assault overwhelmed the U.S. Capitol Police, Trump did not himself order any additional federal military or law enforcement personnel to help retake the Capitol.[191]

251. After 3:00 PM, the Department of Homeland Security, the Bureau of Alcohol, Tobacco, Firearms, and Explosives and FBI agents, and police from Virginia and Maryland, joined Capitol Police to help regain control of the Capitol.[192]

252. Shortly after 4:00 PM, President-elect Biden addressed the nation and said, "I call on President Trump to go on national television now, to fulfill his oath and defend the Constitution and demand an end to this siege. . . . It's not protest—it's insurrection."[193]

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[189] *See, e.g.,* Day 2 Transcript, *supra* note 8, at 102:7-21 (Ex. J) (Simi Testimony).

[190] *See* January 6th Report, *supra* note 8, at 91 (Ex. H); Alemany, *supra* note 15.

[191] *See* January 6th Report, *supra* note 8, at 6-7, 595 (Ex. H); *see* Trump Daily Diary, *supra* note 20 (Ex. G); *READ: Transcript of CNN's town hall with former President Donald Trump*, *supra* note 20.

[192] Alemany, *supra* note 15.

[193] *Biden condemns chaos at the Capitol: 'It's not protest, it's insurrection'*, NBC NEWS (Jan. 6, 2021), https://www.nbcnews.com/video/biden-condemns-chaos-at-the-capitol-as-insurrection-98957381507.

253. Throughout this period, Trump knew that if he issued a public statement directing the attackers to disperse, most or all would have heeded his instruction.

254. In fact, when he finally *did* issue such a statement, it had precisely that effect.

255. At 4:17 PM, nearly 187 minutes after attackers first broke into the Capitol, Trump released a video on Twitter directed to those currently at the Capitol. In this video, he stated: "I know your pain. I know your hurt. . . . We love you. You're very special, you've seen what happens. You've seen the way others are treated. . . . I know how you feel, but go home, and go home in peace."

256. Erich Herschmann offered a correction to the video and suggested that Trump make a more direct statement that attackers leave the Capitol.[194]

257. Trump refused.[195]

258. Immediately after Trump uploaded the video to Twitter, the attackers began to disperse from the Capitol and cease the attack.[196]

259. Attackers were streaming the video. One attacker, Jacob Chansley, announced into a bullhorn, "I'm here delivering the president's message: Donald Trump has asked everybody to

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[194] Select Committee to Investigate the January 6th Attack on the United States Capitol, Deposition of Nicholas Luna, at 181-82 (Mar. 21, 2022), https://www.govinfo.gov/content/pkg/GPO-J6-TRANSCRIPT-CTRL0000060749/pdf/GPO-J6-TRANSCRIPT-CTRL0000060749.pdf [hereinafter Luna Dep. Transcript]*; see also* Day 2 Transcript, *supra* note 8, at 121:19-24, 122:9-23, 220:21-221:4 (Ex. J) (Simi Testimony).

[195] Anumita Kaur, *Trump didn't stick to script asking supporters to leave Capitol, Jan. 6 panel says*, L.A. TIMES (July 21, 2022), https://www.latimes.com/politics/story/2022-07-21/jan-6-hearing-trump-rose-garden-video; Luna Dep. Transcript, *supra* note 194, at 181-82.

[196] January 6th Comm., *07/21/22 Select Committee Hearing*, at 1:58:30, YOUTUBE (July 21, 2022), https://www.youtube.com/watch?v=pbRVqWbHGuo. (testimony of Stephen Ayres) ("[A]s soon as that come [*sic*] out, everybody started talking about it and that's—it seemed like it started to disperse.").

go home." Other attackers acknowledged, "That's our order" or "He says go home. He says go home."[197]

260. Group leaders from the Proud Boys and members of the Oath Keepers texted about the message. An Oath Keeper texted other members of the group saying, "Gentleman [sic], Our Commander-in-Chief has just ordered us to go home."[198]

261. Around 5:20 PM, the D.C. National Guard began arriving.[199]

262. This was not because Trump ordered the National Guard to the scene; he never did. Rather, Vice President Pence—who was not actually in the chain of command—ordered the National Guard to assist the beleaguered police and rescue those trapped at the Capitol.[200]

263. By 6:00 PM, the attackers had been removed from the Capitol, though some committed sporadic acts of violence through the night.[201]

264. At 6:01 PM, Trump issued the final tweet of the day in which he stated that: "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!"

265. Vice President Pence was not able to reconvene Congress until 8:06 PM, nearly six hours after the process had been obstructed.[202]

266. Around 9:00 PM, Trump's counsel John Eastman again argued to Pence's counsel

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[197] *Id.* at 1:58:42.

[198] *See* January 6th Report, *supra* note 8, at 579 (Ex. H).

[199] *See* Rules & Admin. Review, *supra* note 15, at 26 (Ex. F).

[200] *See* January 6th Report, *supra* note 8, at 578, 724 (Ex. H).

[201] Alemany, *supra* note 15.

[202] *Id.*

via email that Pence should refuse to certify Biden's victory by not counting certain states.[203]

267. Pence's counsel ignored it.[204]

268. Congress was required under the Electoral Count Act to debate the objections filed by Senators and Members of Congress to electoral results from Arizona and Pennsylvania. Despite six Senators and 121 Representatives voting to reject Arizona's electoral results,[205] and seven Senators and 138 Representatives voting to reject Pennsylvania's results,[206] Biden's victory was ultimately certified at 3:24 AM, January 7, 2021.[207]

269. In total, five people died,[208] and over 150 police officers suffered injuries, including broken bones, lacerations, and chemical burns.[209] Four Capitol Police officers on-duty during January 6 have since died by suicide.[210]

IV. MULTIPLE JUDGES AND GOVERNMENT OFFICIALS HAVE DETERMINED THAT JANUARY 6 WAS AN INSURRECTION AND THAT TRUMP WAS RESPONSIBLE.

270. Since the mob overtook the Capitol on January 6, 2021, government officials, judges, and other authorities have repeatedly and consistently characterized the event as an

[203] *Id.*

[204] *Id.*

[205] 167 Cong. Rec. H77 (daily ed. Jan. 6, 2021), http://bit.ly/Jan6CongRec.

[206] *Id.* at H98.

[207] Alemany, *supra* note 15; 167 Cong. Rec. H114–15.

[208] Jack Healy, *These Are the 5 People Who Died in the Capitol Riot*, N.Y. TIMES (Jan. 11, 2021), https://nyti.ms/3pTyN5q.

[209] Kaplan & McDonald, *supra* note 174; Michael S. Schmidt & Luke Broadwater, *Officers' Injuries, Including Concussions, Show Scope of Violence at Capitol Riot*, N.Y. TIMES (Feb. 11, 2021), https://nyti.ms/3eN31k2.

[210] Luke Broadwater & Shaila Dewan, *Congress Honors Officers Who Responded to Jan. 6 Riot*, N.Y. TIMES (Aug. 3, 2021), https://nyti.ms/3EURwlp.

insurrection, including in evaluations of electoral challenges pursuant to Section 3 of the Fourteenth Amendment such as this one.

271. On December 19, 2023, the Colorado Supreme Court concluded that Donald Trump is disqualified from holding office under Section 3 of the Fourteenth Amendment. As part of its analysis, the court held that the January 6 attack constituted an "insurrection" under section 3 of the Fourteenth Amendment.[211]

272. Prior to that decision, scores of others also recognized the events of January 6, 2021 constituted an insurrection. For example, just days after the attack, the U.S. Department of Justice characterized the events of January 6 as "a violent insurrection that attempted to overthrow the United States Government" in *United States v. Chansley*.[212]

273. A federal magistrate judge in Phoenix, Arizona agreed and ordered Chansley (also known as "QAnon Shaman") to be detained pending trial for being "an active participant in a violent insurrection that attempted to overthrow the United States government," and who thus posed a danger to the community and flight risk.[213]

274. On January 13, 2021, bipartisan majorities of the House and Senate voted for articles of impeachment against Trump describing the attack as an "insurrection."[214]

275. On February 13, 2021, during Trump's impeachment trial, Senate Majority Leader Mitch McConnell stated on the floor of the Senate that the people who entered the Capitol on

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[211] *Griswold*, 2023 WL 8770111, at *37-39 (Ex. A).

[212] Government's Br. in Supp. of Detention, *supra* note 3.

[213] Brad Health et al., *Judge Calls Capitol Siege 'Violent Insurrection,' orders man who wore horns held*, REUTERS (Jan. 15, 2021), https://www.reuters.com/article/us-usa-trump-capitol-arrests/judge-calls-capitol-siege-violent-insurrection-orders-man-who-wore-horns-held-idUSKBN29K0K7.

[214] 167 Cong. Rec. H191 (daily ed. Jan. 13, 2021), https://www.congress.gov/117/crec/2021/01/13/167/8/CREC-2021-01-13-pt1-PgH165.pdf; 167 Cong. Rec. S733.

January 6 had "attacked their own government." He further stated that the attackers "used terrorism to try to stop a specific piece of domestic business they did not like. . . fellow Americans beat and bloodied our own police. They stormed the Senate floor. They tried to hunt down the Speaker of the House. They built gallows and chanted about murdering the Vice President."

276. During the trial, Trump, through his defense lawyer, stated that "the question before us is not whether there was a violent insurrection of [*sic*] the Capitol. *On that point, everyone agrees.*"[215]

277. On August 5, 2021, Congress passed Public Law 117-32, which granted four congressional gold medals to Capitol Police officers who defended the Capitol on that day. The law declared that "a mob of insurrectionists forced its way into the U.S. Capitol building and congressional office buildings and engaged in acts of vandalism, looting, and violently attacked Capitol Police officers."[216]

278. On September 6, 2022, Judge Francis J. Matthew of New Mexico's First District permanently enjoined Otero County Commissioner and "Cowboys for Trump" founder Couy Griffin from holding office under Section 3 of the Fourteenth Amendment.[217] The court held that the January 6 attack constituted an "insurrection" under section 3 of the Fourteenth Amendment.[218]

279. Since the January 6, 2021 attack on the Capitol, various judges have issued opinions describing it as an "insurrection." For example:

a. In *United States v. Little*, the judge held in a sentencing memorandum that "contrary to [defendant's] Facebook post and the statements he made to the

[215] 167 Cong. Rec. S729 (emphasis added).

[216] Act of Aug. 5, 2021, Pub. L. No. 117-32, 135 Stat 322.

[217] *State ex rel. White v. Griffin*, 2022 WL 4295619, at *25.

[218] *Id.* at *17-19.

FBI, the riot was not 'patriotic' or a legitimate 'protest,' . . . it was an insurrection aimed at halting the functioning of our government."[219]

b. In *United States v. Munchel*, the judge granted an application for access to exhibits and wrote, "defendants face criminal charges for participating in the unsuccessful insurrection at the Capitol on January 6, 2021."[220]

c. In *United States v. Bingert*, the judge denied a motion to dismiss indictment and again called it an "unsuccessful insurrection."[221]

d. In *United States v. Brockhoff*, the judge issued an order denying a motion for pretrial release, stating that "[t]his criminal case is one of several hundred arising from the insurrection at the United Sates Capitol on January 6, 2021."[222]

e. In *United States v. Grider*, the judge denied a motion to dismiss indictment, stating that "[t]his criminal case is one of several hundred arising from the insurrection at the United States Capitol on January 6, 2021."[223]

f. In *United States v. Puma*, the judge characterized the January 6, 2021 attack as an "insurrection" repeatedly in an order denying a motion to dismiss the indictment.[224]

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[219] 590 F. Supp. 3d 340, 344 (D.D.C. 2022).

[220] 567 F. Supp. 3d 9, 13 (D.D.C. 2021).

[221] 605 F. Supp. 3d 111, 115-16 (D.D.C. 2022).

[222] 590 F. Supp. 3d 295, 298-99 (D.D.C. 2022).

[223] 585 F. Supp. 3d 21, 24 (D.D.C. 2022).

[224] 596 F. Supp. 3d 90 (D.D.C 2022).

g. In *United States v. Rivera*, the judge characterized the January 6, 2021 attack as an "insurrection" repeatedly in an opinion after bench trial.[225]

h. In *United States v. DeGrave*, the judge characterized the January 6, 2021 attack as an "insurrection" repeatedly in an order on pretrial detention.[226]

i. In *United States v. Randolph*, the judge characterized the January 6, 2021 attack as an "insurrection" repeatedly in an order on pretrial detention.[227]

j. In the *Matter of Giuliani*, a state appellate court referred to "violence, insurrection and death on January 6, 2021, at the U.S. Capitol" in an order suspending Trump's lawyer from the practice of law.[228]

280. Multiple leaders and members of the extremist groups that played key roles in the insurrection have also been convicted of seditious conspiracy under 18 U.S.C. § 2384, which requires the government to prove that two or more persons "conspire to overthrow, put down, or to destroy by force the Government of the United States, or to levy war against them, or to oppose by force the authority thereof, or by force to prevent, hinder, or delay the execution of any law of the United States, or by force to seize, take, or possess any property of the United States contrary to the authority thereof."

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225 607 F. Supp. 3d 1 (D.D.C. 2022).

226 539 F. Supp. 3d 184 (D.D.C. 2021).

227 536 F. Supp. 3d 128 (E.D. Ky. 2021).

228 197 A.D.3d 1, 25 (2021); *see also O'Rourke v. Dominion Voting Sys. Inc.*, 571 F. Supp. 3d 1190, 1202 (D. Colo. 2021); *United States v. Hunt*, 573 F. Supp. 3d 779, 807 (E.D.N.Y. 2021); *Rutenburg v. Twitter, Inc.*, No. 4:21-CV-00548-YGR, 2021 WL 1338958, at *1 (N.D. Cal. Apr. 9, 2021); *O'Handley v. Padilla*, 579 F. Supp. 3d 1163, 1172, 1175-76 (N.D. Cal. 2022); *United States v. Munchel*, 991 F.3d 1273, 1275-79 (D.C. Cir. 2021).

281. The Department of Justice maintains a growing list of defendants charged in federal court in Washington, D.C. who took direction from Trump on January 6, 2021 and breached the U.S. Capitol.[229]

282. For example:

a. In April 2022, an Oath Keepers member named Brian Ulrich pleaded guilty to seditious conspiracy.[230]

b. In May of 2022, Oath Keepers member William Todd Wilson pleaded guilty to seditious conspiracy.[231]

c. In October 2022, former leader of the Proud Boys Jeremy Bertino pleaded guilty to seditious conspiracy.[232]

d. On January 23, 2023, four Oath Keepers were found guilty of seditious conspiracy.[233]

e. Around May 4, 2023, four members of the Proud Boys, including their former leader Enrique Tarrio, were convicted of seditious conspiracy.[234]

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[229] *Capitol Breach Cases*, DEP'T OF JUSTICE, https://www.justice.gov/usao-dc/capitol-breach-cases.

[230] Ryan Lucas, *A second Oath Keeper pleaded guilty to seditious conspiracy in the Jan. 6 riot*, NPR (Apr. 29, 2022), https://www.npr.org/2022/04/29/1095538077/a-second-oath-keeper-pleaded-guilty-to-seditious-conspiracy-in-the-jan-6-riot.

[231] Michael Kunzelman, *Oath Keeper from North Carolina pleads guilty to seditious conspiracy during Jan. 6 insurrection*, PBS (May 4, 2022), https://www.pbs.org/newshour/politics/oath-keeper-from-north-carolina-pleads-guilty-to-seditious-conspiracy-during-jan-6-insurrection.

[232] *Former Leader of the Proud Boys Pleads Guilty to Seditious Conspiracy for Efforts to Stop Transfer of Power Following 2020 Presidential Election*, DEP'T. OF JUSTICE (Oct. 6, 2022), https://www.justice.gov/opa/pr/former-leader-proud-boys-pleads-guilty-seditious-conspiracy-efforts-stop-transfer-power.

[233] Kyle Cheney, *4 more Oath Keepers found guilty of seditious conspiracy tied to Jan. 6 attack*, POLITICO (Jan. 23, 2023), https://www.politico.com/news/2023/01/23/oath-keepers-guilty-seditious-conspiracy-jan-6-00079083.

[234] Alan Feuer, Zach Montague, *Four Proud Boys Convicted of Sedition in Key Jan 6. Case*, N.Y. TIMES (May 4, 2023), https://www.nytimes.com/2023/05/04/us/politics/jan-6-proud-boys-sedition.html.

f. Both the Oath Keepers and the Proud Boys were instrumental in mobilizing in response to Trump's December 19 "will be wild!" tweet. Both acted as vanguards in the attack. And both withdrew after Trump belatedly ordered them to do so.

283. In a published opinion, one federal judge in the District of Columbia stated:

> For months, the President led his supporters to believe the election was stolen. When some of his supporters threatened state election officials, he refused to condemn them. Rallies in Washington, D.C., in November and December 2020 had turned violent, yet he invited his supporters to Washington, D.C., on the day of the Certification. They came by the thousands. And, following a 75-minute speech in which he blamed corrupt and weak politicians for the election loss, he called on them to march on the very place where Certification was taking place.
>
> . . . .
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> President Trump's January 6 Rally Speech was akin to telling an excited mob that corn-dealers starve the poor in front of the corn-dealer's home. He invited his supporters to Washington, D.C., after telling them for months that corrupt and spineless politicians were to blame for stealing an election *from them*; retold that narrative when thousands of them assembled on the Ellipse; and directed them to march on the Capitol building—the metaphorical corn-dealer's house—where those very politicians were at work to certify an election that he had lost. The Speech plausibly was, as [John Stuart] Mill put it, a "positive instigation of a mischievous act."[235]

284. On December 19, 2023, the Colorado Supreme Court held that Trump "engaged" in insurrection under Section 3 of the Fourteenth Amendment. *Griswold*, 2023 WL 8770111, at *37-44 (Ex. A).

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[235] *Thompson*, 590 F. Supp. 3d at 104, 118.

285. On December 28, 2023, the Maine Secretary of State, evaluating election challenges following an evidentiary hearing, determined that Trump "engaged in insurrection," under Section 3 of the Fourteenth Amendment. Maine Sec. of State Ruling, Ex. C.

286. At least eight other federal judges—in published opinions and in sentencing decisions—have explicitly assigned responsibility for the January 6 insurrection to Trump.

287. For example:

a. "Based on the evidence, the Court finds it more likely than not that President Trump corruptly attempted to obstruct the Joint Session of Congress on January 6, 2021."[236]

b. "The fact remains that [the defendant] and others were called to Washington, D.C. by an elected official; he was prompted to walk to the Capitol by an elected official. . . [the defendant was] told lies, fed falsehoods, and told that our election was stolen when it clearly was not."[237]

c. "The steady drumbeat that inspired defendant to take up arms has not faded away . . . not to mention, the near-daily fulminations of the former President."[238]

d. "Defendant's promise to take action in the future cannot be dismissed as an unlikely occurrence given that his singular source of information, . . . ('Trump's the only big shot I trust right now'), continues to propagate the lie that inspired the attack on a near daily basis."[239]

[236] *Eastman v. Thompson*, 594 F. Supp. 3d 1156, 1193 (C.D. Cal. 2022).

[237] Tr. of Sentencing at 55, *United States v. Lolos*, No. 1:21-cr-00243 (D.D.C. Nov. 19, 2021).

[238] Mem. Op. at 24, *United States v. Meredith, Jr.*, No. 1:21-cr-00159, ECF No. 41 (D.D.C. May 26, 2021).

[239] *United States v. Dresch*, No. 1:21-cr-00071, 2021 WL 2453166, *8 (D.D.C. May 27, 2021).

e. "At the end of the day the fact is that the defendant came to the Capitol because he placed his trust in someone [Donald Trump] who repaid that trust by lying to him."[240]

f. "And as for the incendiary statements at the rally detailed in the sentencing memo, which absolutely, quite clearly and deliberately, stoked the flames of fear and discontent and explicitly encouraged those at the rally to go to the Capitol and fight for one reason and one reason only, to make sure the certification did not happen, those may be a reason for what happened, they may have inspired what happened, but they are not an excuse or justification."[241]

g. "[B]ut we know, looking at it now, that they were supporting the president who would not accept that he was defeated in an election."[242]

h. "And you say that you headed to the Capitol Building not with any intent to obstruct and impede congressional proceedings; but because the then-President, Trump, told protesters at the "stop the steal" rally -- and I quote: After this, we're going to walk down; and I will be there with you. We're going to walk down. We're going to walk down. I know that everyone here will soon be marching over to the Capitol Building to peacefully and patriotically make your voices heard. And you say that you wanted to show

[240] Tr. of Plea and Sentence at 31, *United States v. Dresch*, No. 1:21-cr-00071 (D.D.C. Aug. 4, 2021).

[241] Tr. of Sentencing at 22, *United States v. Peterson*, No. 1:21-cr-00309, ECF No. 32 (D.D.C Dec. 1, 2021).

[242] *United States v. Tanios*, No. 1:21-mj-00027, ECF No. 30 at 107 (N.D.W. Va. Mar. 22, 2021).

your support for and join then-President Trump as he said he would be marching to the Capitol; but, of course, didn't."[243]

i. "[A]t the 'Stop the Steal' rally, then-President Trump eponymously exhorted his supporters to, in fact, stop the steal by marching to the Capitol. . . [h]aving followed then-President Trump's instructions, which were in line with [the defendant's] stated desires, the Court therefore finds that Defendant intended her presence to be disruptive to Congressional business."[244]

j. Moreover, four sentencing cases of January 6 defendants included statements by a judge that, "The events of January 6th involved the rather unprecedented confluence of events spurred by then President Trump. . ."[245]

V. TRUMP ACKNOWLEDGES THAT HE WAS IN COMMAND OF INSURRECTIONISTS AND CALLS THEM PATRIOTS.

288. On May 10, 2023, during a CNN town hall, Trump maintained his position that the 2020 presidential election was a "rigged election."

289. When CNN moderator Kaitlin Collins asserted that it was not a stolen election and offered Trump "a chance to acknowledge the results," Trump responded, "If you look at what happened in Pennsylvania, Philadelphia, if you look at what happened in Detroit, Michigan . . . all

[243] Tr. of Sentencing at 36, *United States v. Gruppo*, No. 1:21-cr-00391 (D.D.C. Oct. 29, 2021).

[244] Findings of Fact and Conclusions of Law at 15, *United States v. MacAndrew*, No. 1:21-cr-00730, ECF No. 59 (D.D.C. Jan. 17, 2023). https://storage.courtlistener.com/recap/gov.uscourts.dcd.238421/gov.uscourts.dcd.238421.59.0_2.pdf.

[245] Tr. of Sentencing at 38, *United States v. Prado*, No. 1:21-cr-00403 (D.D.C. Feb. 7, 2022); Tr. of Sentencing at 28, *United States v. Barnard, et al.*, No. 1:21-cr-00235 (D.D.C. Feb 4, 2022); Tr. of Sentencing at 68, *United States v. Stepakoff*, No. 1:21-cr-00096 (D.D.C. Jan. 20, 2022); Tr. of Sentencing at 28, *United States v. Williams*, No. 1:21-cr-00388 (D.D.C. Feb. 7, 2022).

you have to do is take a look at government cameras. You will see them, people going to 28 different voting booths to vote, to put in seven ballots apiece."[246]

290. Collins asked Trump "Will you pardon the January 6th rioters who were convicted of federal offenses?" Trump responded, "I am inclined to pardon many of them. I can't say for every single one because a couple of them, probably, they got out of control."[247]

291. Collins asked Trump, "When it was clear [attackers] weren't being peaceful, why did you wait three hours to tell them to leave the Capitol? They listen to you like no one else." Trump responded, "They do. I agree with that."[248]

292. Trump then asserted he thought it was Nancy Pelosi's and the mayor's "job" to do so. He also stated that the video he posted 187 minutes after the initial break-in "was a beautiful video."[249]

293. When Collins mentioned Ashli Babbitt, who was shot by police while attempting to break into the Capitol, Trump praised her and responded, "That thug [the police officer] that killed her, there was no reason to shoot her at blank range. . . . And she was a good person. She was a patriot." [250]

294. When Collins told Trump that Mike Pence "says that you endangered his life on that day," Trump responded, "I don't think he was in any danger." [251]

[246] *READ: Transcript of CNN's town hall with former President Donald Trump*, *supra* note 20.

[247] *Id.*

[248] *Id.*

[249] *Id.*

[250] *Id.*

[251] *Id.*

295. Trump said this notwithstanding violent chants among the crowd to "Hang Mike Pence!" and active tweets by Trump during the attack that Pence lacked courage to unlawfully reject certification of the election.

296. Collins then asked Trump if he feels that he owes Pence an apology. Trump replied, "No, because he did something wrong. He should have put the votes back to the state legislatures and I think we would have had a different outcome." [252]

VI. TRUMP REMAINS UNREPENTANT AND WOULD DO IT AGAIN.

297. To this day, Trump has never expressed regret that his supporters violently attacked the U.S. Capitol, threatened to assassinate the Vice President and other key leaders, and obstructed congressional certification of the electoral votes. Nor has he condemned any of them for these actions.

298. Trump has never expressed regret for any aspect whatsoever of his own conduct in the days leading up to January 6, 2021 or on January 6 itself.

299. Trump has not offered personal condolences to any of the law enforcement personnel or their families who were injured or died as a result of the January 6 attack.

300. Trump has not apologized to anyone, either on his own behalf or on behalf of his supporters, for the January 6 attack.

301. To the contrary, Trump has continued to defend and praise the attackers.

302. Around December 20, 2022, after the bi-partisan House committee voted to recommend that the Justice Department bring criminal charges against Trump, Trump posted on

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[252] *Id.*

his website Truth Social: "these folks don't get it that when they come after me, people who love freedom rally around me."[253]

303. Trump has endorsed and appeared at multiple fundraisers for the "Patriot Freedom Project," an organization that provides support for January 6 attackers.

304. As recently as November 2023, Trump decried the prison sentences January 6 attackers received for their criminal activity, stating they were "hostages." At a 2024 presidential campaign event he stated: "I call them the J6 hostages, not prisoners. I call them the hostages, what's happened. And it's a shame."[254]

305. Trump has not petitioned Congress for amnesty under Section 3 of the Fourteenth Amendment, nor has Congress granted it.

306. In fact, Trump has demonstrated that the purpose of Section 3 of the Fourteenth Amendment—to prevent insurrectionists from holding power *because of the danger they pose to the Republic*—applies with undiminished vigor.

307. For example, on December 3, 2022, Trump called for "termination of all rules, regulations, and articles, even those found in the Constitution."[255]

308. And on September 22, 2023, Trump invoked execution as punishment and stated that General Mark Milley, Chairman of the Joint Chiefs of Staff, by making phone calls, explicitly authorized by officials in the administration, to reassure China following January 6 about a

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[253] Steve Peoples, *Republicans' usual embrace of Trump muted following criminal referral*, PBS (Dec. 20, 2022), https://www.pbs.org/newshour/politics/republicans-usual-embrace-of-trump-muted-following-criminal-referral.

[254] *Former President Trump Campaigns in Houston*, at 5:05, C-SPAN (Nov. 2, 2023), https://www.c-span.org/video/?531400-1/president-trump-campaigns-houston.

[255] Donald J. Trump (@realDonaldTrump), TRUTH SOCIAL (Dec. 3, 2022, 6:44 AM), https://truthsocial.com/@realDonaldTrump/posts/109449803240069864.

threatened attack, had committed "an act so egregious that, in times gone by, the punishment would have been DEATH!"[256]

VII. THE CONSTITUTION DISQUALIFIES INSURRECTIONISTS FROM OFFICE.

309. Section 3 of the Fourteenth Amendment to the U.S. Constitution provides: "No Person shall . . . hold any office, civil or military, under the United States . . . who, having previously taken an oath . . . as an officer of the United States . . . or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same."

310. Persons who trigger this provision are disqualified from public office, just as those who fail to meet the age or citizenship requirements of Article I, section 2 of the Constitution are disqualified from the presidency. "*The oath to support the Constitution is the test*. The idea being that one who had taken an oath to support the Constitution and violated it, ought to be excluded from taking it again, until relieved by Congress." *Worthy*, 63 N.C. at 204.

311. Under Section 3, to "engage" merely requires "a voluntary effort to assist the Insurrection . . . and to bring it to a successful [from the insurrectionists' perspective] termination"). *Powell*, 27 F. Cas. at 607; *Worthy*, 63 N.C. at 203 (in leading national precedent, defining "engage" under Section 3 to mean "[v]oluntarily aiding the rebellion, by personal service, or by contributions, other than charitable, of any thing that was useful or necessary").

312. Planning or helping plan an insurrection or rebellion satisfies the definition of "engag[ing]" under Section 3 of the Fourteenth Amendment. So does planning a demonstration or march upon a government building that the planner knows is substantially likely to (and does)

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[256] Donald J. Trump (@realDonaldTrump), TRUTH SOCIAL (Sept. 22, 2023, 6:59 PM), https://truthsocial.com/@realDonaldTrump/posts/111111513207332826.

result in insurrection or rebellion, as it constitutes taking voluntary steps to contribute, "by personal service," a "thing that was useful or necessary" to the insurrection or rebellion. And knowing that insurrection or rebellion was likely makes that aid voluntary.

VIII. TRUMP ENGAGED IN INSURRECTION OR REBELLION.

313. The allegations of all previous paragraphs are incorporated by reference.

314. On January 20, 2017, Trump took an oath to support the U.S. Constitution.

315. Trump took that oath as an "officer of the United States" within the meaning of Section 3 of the Fourteenth Amendment.

316. During his 2020 re-election campaign, and after the results made clear that he had lost the election, Trump inflamed his supporters with claims that the 2020 presidential election had been rigged.

317. Over the course of November and December 2020, and continuing into January 2021, Trump attempted a series of unlawful schemes to overturn the election. These schemes included pressuring state legislators to appoint pro-Trump electors in states he had lost; the submission of fake electoral certificates by pro-Trump electors in states he had lost; pressuring Pence to discard electoral votes from states he had lost; and seizing voting machines as a pretext for other unlawful means to retain power.

318. Trump's lawyers and aids and Vice President Pence himself had repeatedly advised Trump that Pence had no lawful authority to reject electoral votes.

319. After various other schemes to overturn the 2020 election failed, Trump summoned his supporters to Washington, D.C., on January 6, 2021, telling them that it would be "wild."

320. Trump knew that some of his supporters on January 6, 2021 were armed and had plans to commit violence on that day.

321. Still, Trump egged supporters on and insisted they must "fight" and reclaim the presidency from supposed theft.

322. After enraging his supporters further, telling them to "fight like hell" and that "you're allowed to go by very different rules," Trump sent them to the Capitol.

323. Trump's supporters defeated civilian law enforcement, captured the United States Capitol, and prevented Congress from certifying the 2020 presidential election, just as Trump had intended.

324. Although they did not succeed, many of the attackers threatened to assassinate Vice President Pence, Speaker Pelosi, and other leaders whom Trump had urged them to target.

325. During the hours-long attack, and despite pleas from family and aides, Trump did not call off the attack. Nor did he use his presidential authority to order reinforcements for the beleaguered police. Instead, he goaded the attackers on.

326. As a result, the certification of the 2020 presidential election could not take place until the next day.

327. The events of January 6, 2021, constituted an insurrection or a rebellion under Section 3: a violent, coordinated effort to storm the Capitol to obstruct and prevent the Vice President of the United States and the United States Congress from fulfilling their constitutional roles by certifying President Biden's victory, and to illegally extend then-President Trump's tenure in office.

328. The effort to overthrow the results of the 2020 election by unlawful means, from on or about November 3, 2020, through at least January 6, 2021, constituted a rebellion under Section 3: an attempt to overturn or displace lawful government authority by unlawful means.

329. Trump knew of, consciously disregarded the risk of, or specifically intended the attackers' unlawful actions described in the preceding allegations.

330. Trump knew of, consciously disregarded the risk of, or specifically intended each of the following:

a. Angry and armed supporters would amass in Washington, D.C., on January 6, 2021.

b. These supporters would, at his command, march on the U.S. Capitol.

c. These supporters would disrupt, delay, or obstruct Congress from certifying the electoral votes.

d. His 2:24 PM tweet would goad and encourage his supporters to continue their attack.

e. His refusal to issue a public statement directing the attackers to disperse would encourage the attackers to continue.

f. His refusal to order federal law enforcement to the scene would enable the attackers to continue.

331. Trump summoned the attackers to Washington, D.C. to "be wild" on January 6; ensured that his armed and angry supporters were able to bring their weapons; incited them against Vice President Pence, Congress, the certification of electoral votes, and the peaceful transfer of power; instructed them to march on the Capitol for the purpose of preventing, obstructing, disrupting, or delaying the electoral vote count and peaceful transfer of power; encouraged them during their attack; used the attack as an opportunity to further pressure and intimidate the Vice President and Members of Congress; provided material support to the insurrection by refraining

from mobilizing federal law enforcement or National Guard assistance; and otherwise fomented, facilitated, encouraged, and aided the insurrection.

332. None of this conduct was undertaken in performance of Trump's official duties, in his official capacity, or under color of his office. Under Article II of the Constitution, the Twelfth Amendment, and statutes in effect then or now, the President is not involved in counting or certifying votes. Rather, Trump engaged in insurrection solely in his personal or campaign capacity. In fact, when he did contemplate the unlawful use of executive power to further his unlawful schemes (such as seizing voting machines), government aides and lawyers advised him that it would be illegal and/or refused his orders.

333. Despite having sworn an oath to support the Constitution of the United States, Trump "engaged in insurrection or rebellion against the same, or [gave] aid or comfort to the enemies thereof" within the meaning of section 3 of the Fourteenth Amendment.

IX. TRUMP GAVE "AID OR COMFORT TO THE ENEMIES OF" THE U.S. CONSTITUTION.

334. The allegations of all previous paragraphs are incorporated by reference.

335. In addition to disqualifying persons who violate their oath by engaging in insurrection or rebellion, Section 3 disqualifies persons who do so by giving "aid or comfort to enemies of" the Constitution. As used in Section 3, "enemies" applies to domestic, as well as foreign enemies of the Constitution. The concept of a "domestic" enemy became part of American constitutional thinking no later than 1862, when Congress enacted the Ironclad Oath to "support and defend the Constitution of the United States, against all *enemies, foreign and domestic*." Act of July 2, 1862, Ch. 128, 12 Stat. 502 (emphases added).

336. Aid or comfort to enemies of the Constitution includes indirect assistance such as supporting, encouraging, counseling, or promoting the enemy, even where such conduct might fall short of "engaging" in insurrection. *See* Baude & Paulsen, *supra* ¶ 20, at 67-68.

337. By his conduct described herein, beginning before January 6, 2021, and continuing to the present time, Trump gave aid and comfort to enemies of the Constitution by, among other things: encouraging and counseling the insurrectionists; deliberately failing to exercise his authority and responsibility as President to quell the insurrection; praising the insurrectionists, including calling them "very special," "good persons," and "patriots"; and promising or suggesting that he would pardon many of the insurrectionists if reelected to the presidency.

X. TRUMP IS DISQUALIFIED FROM PUBLIC OFFICE.

338. Trump is disqualified from holding "any office, civil or military, under the United States."

339. Congress has not removed this disability from Trump.

340. The presidency of the United States is an "office . . . under the United States" within the meaning of Section 3 of the Fourteenth Amendment.

341. Consequently, Donald J. Trump is disqualified from, and ineligible to hold, the office of President of the United States. Accordingly, his nomination papers are invalid under Illinois law because when Trump swore that he is "qualified" for the presidential office, as required by 10 ILCS 5/7-10, he did so falsely.

WHEREFORE, Objectors request the following: (a) a hearing on the objection set forth herein; (b) a determination that the Nomination Papers of Candidate are legally and factually insufficient; and (c) a decision that the name of Candidate "Donald J. Trump" shall not be printed on the official ballot as a candidate for the Republican Nomination for the Office of the President

of the United States for the March 19, 2024 General Primary Election or the November 5, 2024 General Election.

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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.

Donald J. Trump,
Candidate.

No. 24 SOEB GP 517

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:

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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
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Illinois State Board of Elections

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

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

MEMORANDUM OF JUDGMENT AND ORDER

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

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

Exhibit C

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

Jurisdiction

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

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

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

Relevant Legal and Secondary Authorities

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

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

I. U.S. Constitution:

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

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

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

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

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

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

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

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

"Before he enter on the Execution of his Office, he shall take the following Oath or Affirmation:–I do solemnly swear (or affirm) that I will faithfully execute the Office of President of the United States, and will to the best of my Ability, preserve, protect and defend the Constitution of the United States."

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

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

II. U.S. Supreme Court Precedent:

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

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

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

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

III. Illinois Constitution:

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

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

IV. Illinois Election Code:

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

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

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

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

. . .

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

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

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

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

. . .

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

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

Signed.................

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

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

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

"The electoral board shall take up the question as to whether or not the certificate of nomination or nomination papers or petitions are in proper form, and whether or not they were filed within the time and under the conditions required by law, and whether or not they are the genuine certificate of nomination or nomination papers or petitions which they purport to be, and whether or not in the case of the certificate of nomination in question it represents accurately the decision of the caucus or convention issuing it, and in general shall decide whether or not the certificate of nomination or nominating papers or petitions on file are valid or whether the objections thereto should be sustained and the decision of a majority of the electoral board shall be final subject to judicial review as provided in Section 10-10.1. The electoral board must state its findings in writing and must state in writing which objections, if any, it has sustained. A copy of the decision shall be served upon the parties to the proceedings in open proceedings before the electoral board. If a party does not appear for receipt of the decision, the decision shall be deemed to have been served on the absent party on the date when a copy of the decision is personally delivered or on the date when a copy of the decision is deposited in the United States mail, in a sealed envelope or package, with postage prepaid, addressed to each party affected by the decision or to such party's attorney of record, if any, at the address on record for such person in the files of the electoral board."

...

The electoral board on the first day of its meeting shall adopt rules of procedure for the introduction of evidence and the presentation of arguments and may, in its discretion, provide for the filing of briefs by the parties to the objection or by other interested persons."

V. Illinois Code of Civil Procedure:

735 ILCS 5/8-1003:

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

VI. Illinois Precedent:

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

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

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

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

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

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

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

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

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

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

VII. Illinois State Board of Elections Decisions:

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

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

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

VIII. U.S. Congressional Authority:

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

IX. Other Jurisdictional Authority:

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

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

X. Secondary Authority:

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

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

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

Procedural History of the Case

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

PREAMBLE

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

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

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

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

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

QUESTIONS PRESENTED

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

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

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

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

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

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

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

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

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

STANDARD OF REVIEW

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ANALYSIS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

JUDICIAL NOTICE

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

LEGAL INTERPRETATION

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

[19] 735 ILCS 5/8-1003, reads as follows: "Common law and statutes. Every court of this state shall take ***judicial notice of the common law and statutes of every state***, territory, and other jurisdictions of the United States." (Emphasis added).
[20] United States Constitution, Article IV, Section 1, reads as follows:
"Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof." Constitution Annotated, FN 5 ("The Clause also requires states to give Full Faith and Credit to the Records[ ] and judicial Proceedings of every other State.") https://constitution.congress.gov/browse/essay/artIV-S1-1/ALDE_00013015/ (accessed Feb. 25, 2024).

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

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

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

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

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

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

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

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

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

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[22] This Court takes as judicial notice the Background facts related to the candidate, January 6, 2021 and other related facts relied upon by the Court in its determination, as set forth in the decision. *Anderson v. Griswold*, 2023 CO 63, at 9.

This Court does not need to restate the mountainous facts from the Colorado Supreme Court decision, the Colorado District Court Decision, the 6,000 plus pages of written evidentiary exhibits in the Electoral Board Record filed in 12 Volumes in this case, of which all factual findings are almost, if not completely, identical from this Court's assessment.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

CONCLUSION

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

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

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

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

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

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

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

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

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

2313

The Honorable Tracie R. Porter
Circuit Court Judge

ENTERED
Judge Tracie R. Porter-2313
FEB 28 2024
IRIS Y. MARTINEZ
CLERK OF THE CIRCUIT COURT
OF COOK COUNTY, IL

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

APPENDIX A

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

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

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

STIPULATED ORDER REGARDING TRIAL TRANSCRIPTS AND EXHIBITS FROM THE COLORADO ACTION

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

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

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

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

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

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

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

Dated: January 24, 2024

SO STIPULATED:

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

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

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

DONALD J. TRUMP

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

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

ENTERED:

____
Hearing Officer Clark Erickson

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

Judge Erickson,

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

Adam P. Merrill
Watershed Law LLC
312.368.5932

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

Dear Counsel,

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

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

Please let us know if you have any questions.

Thank you,
Caryn

Exhibit B

HSPRD

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

APPENDIX B

Hearing Officer Report and Recommended Decision January 27, 2024

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

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

HEARING OFFICER REPORT AND RECOMMENDED DECISION

Background of the Case

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

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

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

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

Procedural History

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

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

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

Candidate's Motion to Dismiss

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

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

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

Candidate's First Ground

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

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

> "The electoral board shall take up the question as to whether or not the certificate of nomination or nomination papers or petitions are in proper form, and whether or not they were filed within the time and under the conditions required by law, and whether or not they are the genuine certificate of nomination or nomination papers or petitions which they purport to be, and whether or not in the case of the certificate of nomination in question it represents accurately the decision of the caucus or convention issuing it, and in general shall decide whether or not the certificate of nomination or nominating papers or petitions on file are valid or whether the objections thereto should be sustained and the decision of a majority of the electoral board shall be final subject to judicial review as provided in Section 10-10.1. The electoral board must state its findings in writing and must state in writing which objections, if any, it has sustained."

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

Objectors, in response to this contention, argue that "There is no authority for the unworkable proposition that the Electoral Board's authority to hear objections depends on a subjective consideration of where the facts fall on a continuum from simple to complex." [See Objector's Response, Page 5]. Objectors also rely on Section 10-10 citing specifically to the language from the statute that the SOEB "shall decide whether or not the certificate of

nomination or nominating papers or petitions on file are valid or whether the objections thereto should be sustained." Objector further cites to *Goodman v. Ward*, 241 Ill. 2d 398 (2011) claiming that "the Illinois Supreme Court has clearly directed that determinations of the validity of a candidate's nominating papers include whether the candidate has falsely sworn that they are qualified for the office specified, and candidate qualifications include constitutional qualifications."

Candidate's Second Ground

Candidate next argues that this matter is a political question, for which the Courts must decide. The Candidate contends that "the vast weight of authority has held that the Constitution commits to Congress and the electors the responsibility of determining matters of presidential candidates' qualifications."

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

> "[1] a textually demonstrable constitutional commitment of the issue to a coordinate political department; or [2] a lack of judicially discoverable and manageable standards for resolving it; or [3] the impossibility of deciding without an initial policy determination of a kind clearly for nonjudicial discretion; or [4] the impossibility of a court's undertaking independent resolution without expressing lack of the respect due coordinate branches of government; or [5] an unusual need for unquestioning adherence to a political decision already made; or [6] the potentiality of embarrassment from multifarious pronouncements by various departments on one question." *Id.*

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

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

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

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

1. Section 3, unlike other Constitutional provisions to which the doctrine applies, is not reserved for Congressional action in its text.
2. Section 3 involves judicially manageable standards, as illustrated by courts that have repeatedly applied and interpreted it.
3. Federal circuit court precedent that the Motion fails to cite demonstrates the inapplicability of the doctrine, as does the Colorado Supreme Court decision giving it close analysis.
4. A host of the cases cited in the Motion do not stand for the propositions relied on and do not hold up against the on-point precedent.

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

Candidate's Third Ground

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

Candidate's Fourth Ground

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

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

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

Candidate's Fifth Ground

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

Candidate's Sixth Ground

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

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

Objectors' Motion for Summary Judgment

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

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

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

Recommendations on Dispositive Motions

A. Objectors' Motion for Summary Judgment.

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

B. Candidate's Motion to Dismiss.

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

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

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

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

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

The clear answer is that it cannot.

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

Section 3 of the Fourteenth Amendment reads as follows:

> Section 3. No person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1. **EXPEDITED PROCEEDINGS**

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

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

Rule 8 provides a procedure for subpoenas:

a. Procedure and deadlines for general subpoenas.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

On the issue of whether Section 3 of the Fourteenth Amendment is self-executing, the Court found that it was: "In summary, based on Section Three's plain language; Supreme Court decisions declaring its neighboring, parallel Reconstruction Amendments self-executing; and the absurd results that would flow from Intervenors' reading, we conclude that Section Three is self-executing in the sense that its disqualification provision attaches without congressional action." Id, at 106.

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

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

For example, the Court, found that "the record amply established that the events of January 6 constituted a concerted and public use of force or threat of force by a group of people to hinder or prevent the U.S. government from taking the actions necessary to accomplish the peaceful transfer of power in this country. Under any viable definition, this constituted an insurrection." *Anderson*, at 189.

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

Three justices wrote dissenting opinions.

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

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

<u>Hearing Officer's Findings and Recommendation re Candidate's Motion to Dismiss</u>

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

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

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

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

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

Recommendation on Candidate's Motion to Dismiss

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

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

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

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

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

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

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

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

6. The evidence shows that President Trump understood the divided political climate in the United States. He understood and exploited that climate for his own political gain by falsely and publicly claiming the election was stolen from him, even though every single piece of evidence demonstrated that his claim was demonstrably false. He used these false claims to garner further political support for his own benefit by inflaming the emotions of his supporters to convince them that the election was stolen from him and that American democracy was being undermined. He understood the context of the events of January 6, 2021 because he created the climate. At the same time he engaged in an elaborate plan to provide lists of fraudulent electors to Vice President Pence for the express purpose of disrupting the peaceful transfer of power following an election.

7. Even though the Candidate may not have intended for violence to break out on January 6, 2021, he does not dispute that he received reports that violence was a likely possibility on January 6, 2021. Candidate does not dispute that he knew violence was occurring at the capitol.. He understood that people were there to support him. Which makes one single piece of evidence, in this context, absolutely damning to his denial of his participation: the tweet regarding Mike Pence's lack of courage while Candidate knew the attacks were going on is inexplicable. Candidate knew the attacks were

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

CONCLUSION

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

Submitted by

Clark Erickson

Hearing Officer

Date ______________

FINDINGS OF THE JANUARY 6 HOUSE SELECT COMMITTEE REPORT

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

* * *

APPENDIX C

Electoral Board Decision
January 30, 2024

STATE OF ILLINOIS)
) ss
COUNTY OF COOK)

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

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

DECISION

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

DATED: 01/30/2024

Casandra B. Watson, Chair

CERTIFICATE OF SERVICE

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

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

Caryn C. Lederer
clederer@hsplegal.com

Matthew J. Piers
mpiers@hsplegal.com

Margaret E. Truesdale
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Ben T. Clements
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ben@clementslaw.org

Anna Mattar
amira@freespeechforpeople.org

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

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

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

Adam P. Merrill
amichaellaw1@gmail.com

Scott Gessler
sgessler@gesslerblue.com

Nicholas J. Nelson
nicholas.nelson@crosscastle.com

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

Jordan Andrew
Deputy General Counsel
Illinois State Board of Elections

APPENDIX D

Statement of Candidacy, Donald J. Trump

December 13, 2023

10 ILCS 5/7-10 ATTACH TO PETITION

Suggested
Revised March 2020
SBE No. P-1

STATEMENT OF CANDIDACY

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

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

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

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

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

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

______________ (Signature of Candidate)

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

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

(SEAL)

______________ (Notary Public's Signature)

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

A23-1354

October 23, 2023

OFFICE OF APPELLATE COURTS

State of Minnesota
In Supreme Court

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

Petitioners,

v.

Steve Simon, Minnesota Secretary of State,

Respondent,

v.

Republican Party of Minnesota,

Respondent.

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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,

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

and

DONALD J. TRUMP,

Intervening Appellee.
_______________________________________/

ROBERT DAVIS,

Plaintiff-Appellant,

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

v

WAYNE COUNTY ELECTION COMMISSION,

Defendant-Appellee.
_______________________________________/

BRIEF ON APPEAL OF PLAINTIFFS-APPELLANTS LaBRANT ET AL.

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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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NOTICE: This opinion is subject to formal revision before publication in the United States Reports. Readers are requested to notify the Reporter of Decisions, Supreme Court of the United States, Washington, D. C. 20543, pio@supremecourt.gov, of any typographical or other formal errors.

SUPREME COURT OF THE UNITED STATES

No. 23–719

DONALD J. TRUMP, PETITIONER *v.* NORMA ANDERSON, ET AL.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF COLORADO

[March 4, 2024]

PER CURIAM.

A group of Colorado voters contends that Section 3 of the Fourteenth Amendment to the Constitution prohibits former President Donald J. Trump, who seeks the Presidential nomination of the Republican Party in this year's election, from becoming President again. The Colorado Supreme Court agreed with that contention. It ordered the Colorado secretary of state to exclude the former President from the Republican primary ballot in the State and to disregard any write-in votes that Colorado voters might cast for him.

Former President Trump challenges that decision on several grounds. Because the Constitution makes Congress, rather than the States, responsible for enforcing Section 3 against federal officeholders and candidates, we reverse.

I

Last September, about six months before the March 5, 2024, Colorado primary election, four Republican and two unaffiliated Colorado voters filed a petition against former President Trump and Colorado Secretary of State Jena Griswold in Colorado state court. These voters—whom we refer to as the respondents—contend that after former

Exhibit E

President Trump's defeat in the 2020 Presidential election, he disrupted the peaceful transfer of power by intentionally organizing and inciting the crowd that breached the Capitol as Congress met to certify the election results on January 6, 2021. One consequence of those actions, the respondents maintain, is that former President Trump is constitutionally ineligible to serve as President again.

Their theory turns on Section 3 of the Fourteenth Amendment. Section 3 provides:

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

According to the respondents, Section 3 applies to the former President because after taking the Presidential oath in 2017, he intentionally incited the breaching of the Capitol on January 6 in order to retain power. They claim that he is therefore not a qualified candidate, and that as a result, the Colorado secretary of state may not place him on the primary ballot. See Colo. Rev. Stat. §§1–1–113(1), 1–4–1101(1), 1–4–1201, 1–4–1203(2)(a), 1–4–1204 (2023).

After a five-day trial, the state District Court found that former President Trump had "engaged in insurrection" within the meaning of Section 3, but nonetheless denied the respondents' petition. The court held that Section 3 did not apply because the Presidency, which Section 3 does not mention by name, is not an "office . . . under the United

States" and the President is not an "officer of the United States" within the meaning of that provision. See App. to Pet. for Cert. 184a–284a.

In December, the Colorado Supreme Court reversed in part and affirmed in part by a 4 to 3 vote. Reversing the District Court's operative holding, the majority concluded that for purposes of Section 3, the Presidency is an office under the United States and the President is an officer of the United States. The court otherwise affirmed, holding (1) that the Colorado Election Code permitted the respondents' challenge based on Section 3; (2) that Congress need not pass implementing legislation for disqualifications under Section 3 to attach; (3) that the political question doctrine did not preclude judicial review of former President Trump's eligibility; (4) that the District Court did not abuse its discretion in admitting into evidence portions of a congressional Report on the events of January 6; (5) that the District Court did not err in concluding that those events constituted an "insurrection" and that former President Trump "engaged in" that insurrection; and (6) that former President Trump's speech to the crowd that breached the Capitol on January 6 was not protected by the First Amendment. See *id.*, at 1a–114a.

The Colorado Supreme Court accordingly ordered Secretary Griswold not to "list President Trump's name on the 2024 presidential primary ballot" or "count any write-in votes cast for him." *Id.*, at 114a. Chief Justice Boatright and Justices Samour and Berkenkotter each filed dissenting opinions. *Id.*, at 115a–124a, 125a–161a, 162a–183a.

Under the terms of the opinion of the Colorado Supreme Court, its ruling was automatically stayed pending this Court's review. See *id.*, at 114a. We granted former President Trump's petition for certiorari, which raised a single question: "Did the Colorado Supreme Court err in ordering President Trump excluded from the 2024 presidential primary ballot?" See 601 U. S. ___ (2024). Concluding that it

did, we now reverse.

II

A

Proposed by Congress in 1866 and ratified by the States in 1868, the Fourteenth Amendment "expand[ed] federal power at the expense of state autonomy" and thus "fundamentally altered the balance of state and federal power struck by the Constitution." *Seminole Tribe of Fla.* v. *Florida*, 517 U. S. 44, 59 (1996); see also *Ex parte Virginia*, 100 U. S. 339, 345 (1880). Section 1 of the Amendment, for instance, bars the States from "depriv[ing] any person of life, liberty, or property, without due process of law" or "deny[ing] to any person . . . the equal protection of the laws." And Section 5 confers on Congress "power to enforce" those prohibitions, along with the other provisions of the Amendment, "by appropriate legislation."

Section 3 of the Amendment likewise restricts state autonomy, but through different means. It was designed to help ensure an enduring Union by preventing former Confederates from returning to power in the aftermath of the Civil War. See, *e.g.*, Cong. Globe, 39th Cong., 1st Sess., 2544 (1866) (statement of Rep. Stevens, warning that without appropriate constitutional reforms "yelling secessionists and hissing copperheads" would take seats in the House); *id.*, at 2768 (statement of Sen. Howard, lamenting prospect of a "State Legislature . . . made up entirely of disloyal elements" absent a disqualification provision). Section 3 aimed to prevent such a resurgence by barring from office "those who, having once taken an oath to support the Constitution of the United States, afterward went into rebellion against the Government of the United States." Cong. Globe, 41st Cong., 1st Sess., 626 (1869) (statement of Sen. Trumbull).

Section 3 works by imposing on certain individuals a preventive and severe penalty—disqualification from holding

a wide array of offices—rather than by granting rights to all. It is therefore necessary, as Chief Justice Chase concluded and the Colorado Supreme Court itself recognized, to "'ascertain[] what particular individuals are embraced'" by the provision. App. to Pet. for Cert. 53a (quoting *Griffin's Case*, 11 F. Cas. 7, 26 (No. 5,815) (CC Va. 1869) (Chase, Circuit Justice)). Chase went on to explain that "[t]o accomplish this ascertainment and ensure effective results, proceedings, evidence, decisions, and enforcements of decisions, more or less formal, are indispensable." *Id.*, at 26. For its part, the Colorado Supreme Court also concluded that there must be some kind of "determination" that Section 3 applies to a particular person "before the disqualification holds meaning." App. to Pet. for Cert. 53a.

The Constitution empowers Congress to prescribe how those determinations should be made. The relevant provision is Section 5, which enables Congress, subject of course to judicial review, to pass "appropriate legislation" to "enforce" the Fourteenth Amendment. See *City of Boerne* v. *Flores*, 521 U. S. 507, 536 (1997). Or as Senator Howard put it at the time the Amendment was framed, Section 5 "casts upon Congress the responsibility of seeing to it, for the future, that all the sections of the amendment are carried out in good faith." Cong. Globe, 39th Cong., 1st Sess., at 2768.

Congress's Section 5 power is critical when it comes to Section 3. Indeed, during a debate on enforcement legislation less than a year after ratification, Sen. Trumbull noted that "notwithstanding [Section 3] . . . hundreds of men [were] holding office" in violation of its terms. Cong. Globe, 41st Cong., 1st Sess., at 626. The Constitution, Trumbull noted, "provide[d] no means for enforcing" the disqualification, necessitating a "bill to give effect to the fundamental law embraced in the Constitution." *Ibid.* The enforcement mechanism Trumbull championed was later enacted as part of the Enforcement Act of 1870, "pursuant to the power

conferred by §5 of the [Fourteenth] Amendment." *General Building Contractors Assn., Inc.* v. *Pennsylvania*, 458 U. S. 375, 385 (1982); see 16 Stat. 143–144.

B

This case raises the question whether the States, in addition to Congress, may also enforce Section 3. We conclude that States may disqualify persons holding or attempting to hold *state* office. But States have no power under the Constitution to enforce Section 3 with respect to federal offices, especially the Presidency.

"In our federal system, the National Government possesses only limited powers; the States and the people retain the remainder." *Bond* v. *United States*, 572 U. S. 844, 854 (2014). Among those retained powers is the power of a State to "order the processes of its own governance." *Alden* v. *Maine*, 527 U. S. 706, 752 (1999). In particular, the States enjoy sovereign "power to prescribe the qualifications of their own officers" and "the manner of their election . . . free from external interference, except so far as plainly provided by the Constitution of the United States." *Taylor* v. *Beckham*, 178 U. S. 548, 570–571 (1900). Although the Fourteenth Amendment restricts state power, nothing in it plainly withdraws from the States this traditional authority. And after ratification of the Fourteenth Amendment, States used this authority to disqualify state officers in accordance with state statutes. See, *e.g.*, *Worthy* v. *Barrett*, 63 N. C. 199, 200, 204 (1869) (elected county sheriff); *State ex rel. Sandlin* v. *Watkins*, 21 La. Ann. 631, 631–633 (1869) (state judge).

Such power over governance, however, does not extend to *federal* officeholders and candidates. Because federal officers "'owe their existence and functions to the united voice of the whole, not of a portion, of the people,'" powers over their election and qualifications must be specifically "delegated to, rather than reserved by, the States." *U. S. Term*

Limits, Inc. v. *Thornton*, 514 U. S. 779, 803–804 (1995) (quoting 1 J. Story, Commentaries on the Constitution of the United States §627, p. 435 (3d ed. 1858)). But nothing in the Constitution delegates to the States any power to enforce Section 3 against federal officeholders and candidates.

As an initial matter, not even the respondents contend that the Constitution authorizes States to somehow remove *sitting* federal officeholders who may be violating Section 3. Such a power would flout the principle that "the Constitution guarantees 'the entire independence of the General Government from any control by the respective States.'" *Trump* v. *Vance*, 591 U. S. 786, 800 (2020) (quoting *Farmers and Mechanics Sav. Bank of Minneapolis* v. *Minnesota*, 232 U. S. 516, 521 (1914)). Indeed, consistent with that principle, States lack even the lesser powers to issue writs of mandamus against federal officials or to grant habeas corpus relief to persons in federal custody. See *McClung* v. *Silliman*, 6 Wheat. 598, 603–605 (1821); *Tarble's Case*, 13 Wall. 397, 405–410 (1872).

The respondents nonetheless maintain that States may enforce Section 3 against *candidates* for federal office. But the text of the Fourteenth Amendment, on its face, does not affirmatively delegate such a power to the States. The terms of the Amendment speak only to enforcement by Congress, which enjoys power to enforce the Amendment through legislation pursuant to Section 5.

This can hardly come as a surprise, given that the substantive provisions of the Amendment "embody significant limitations on state authority." *Fitzpatrick* v. *Bitzer*, 427 U. S. 445, 456 (1976). Under the Amendment, States cannot abridge privileges or immunities, deprive persons of life, liberty, or property without due process, deny equal protection, or deny male inhabitants the right to vote (without thereby suffering reduced representation in the House). See Amdt. 14, §§1, 2. On the other hand, the Fourteenth Amendment grants new power to Congress to enforce the

provisions of the Amendment against the States. It would be incongruous to read this particular Amendment as granting the States the power—silently no less—to disqualify a candidate for federal office.

The only other plausible constitutional sources of such a delegation are the Elections and Electors Clauses, which authorize States to conduct and regulate congressional and Presidential elections, respectively. See Art. I, §4, cl. 1; Art. II, §1, cl. 2.[1] But there is little reason to think that these Clauses implicitly authorize the States to enforce Section 3 against federal officeholders and candidates. Granting the States that authority would invert the Fourteenth Amendment's rebalancing of federal and state power.

The text of Section 3 reinforces these conclusions. Its final sentence empowers Congress to "remove" any Section 3 "disability" by a two-thirds vote of each house. The text imposes no limits on that power, and Congress may exercise it any time, as the respondents concede. See Brief for Respondents 50. In fact, historically, Congress sometimes exercised this amnesty power postelection to ensure that some of the people's chosen candidates could take office.[2] But if States were free to enforce Section 3 by barring candidates from running in the first place, Congress would be

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[1] The Elections Clause directs, in relevant part, that "[t]he Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof." Art. I, §4, cl. 1. The Electors Clause similarly provides that "[e]ach State shall appoint, in such Manner as the Legislature thereof may direct, a Number of Electors," who in turn elect the President. Art. II, §1, cl. 2.

[2] Shortly after the Fourteenth Amendment was ratified, for instance, Congress enacted a private bill to remove the Section 3 disability of Nelson Tift of Georgia, who had recently been elected to represent the State in Congress. See ch. 393, 15 Stat. 427. Tift took his seat in Congress immediately thereafter. See Cong. Globe, 40th Cong., 2d Sess., 4499–4500 (1868). Congress similarly acted postelection to remove the disabilities of persons elected to state and local offices. See Cong. Globe, 40th Cong., 3d Sess., 29–30, 120–121 (1868); ch. 5, 15 Stat. 435–436.

forced to exercise its disability removal power before voting begins if it wished for its decision to have any effect on the current election cycle. Perhaps a State may burden congressional authority in such a way when it exercises its "exclusive" sovereign power over its own state offices. *Taylor*, 178 U. S., at 571. But it is implausible to suppose that the Constitution affirmatively delegated to the States the authority to impose such a burden on congressional power with respect to candidates for federal office. Cf. *McCulloch* v. *Maryland*, 4 Wheat. 316, 436 (1819) ("States have no power . . . to retard, impede, burden, or in any manner control, the operations of the constitutional laws enacted by Congress").

Nor have the respondents identified any tradition of state enforcement of Section 3 against federal officeholders or candidates in the years following ratification of the Fourteenth Amendment.[3] Such a lack of historical precedent is generally a "'telling indication'" of a "'severe constitutional problem'" with the asserted power. *United States* v. *Texas*, 599 U. S. 670, 677 (2023) (quoting *Free Enterprise Fund* v. *Public Company Accounting Oversight Bd.*, 561 U. S. 477, 505 (2010)). And it is an especially telling sign here, because as noted, States *did* disqualify persons from holding state offices following ratification of the Fourteenth Amendment. That pattern of disqualification with respect to state, but not federal offices provides "persuasive evidence of a general understanding" that the States lacked enforcement power with respect to the latter. *U. S. Term Limits*, 514

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[3] We are aware of just one example of state enforcement against a would-be federal officer. In 1868, the Governor of Georgia refused to commission John Christy, who had won the most votes in a congressional election, because—in the Governor's view—Section 3 made Christy ineligible to serve. But the Governor's determination was not final; a committee of the House reviewed Christy's qualifications itself and recommended that he not be seated. The full House never acted on the matter, and Christy was never seated. See 1 A. Hinds, Precedents of the House of Representatives §459, pp. 470–472 (1907).

U. S., at 826.

Instead, it is Congress that has long given effect to Section 3 with respect to would-be or existing federal officeholders. Shortly after ratification of the Amendment, Congress enacted the Enforcement Act of 1870. That Act authorized federal district attorneys to bring civil actions in federal court to remove anyone holding nonlegislative office—federal or state—in violation of Section 3, and made holding or attempting to hold office in violation of Section 3 a federal crime. §§14, 15, 16 Stat. 143–144 (repealed, 35 Stat. 1153–1154, 62 Stat. 992–993). In the years following ratification, the House and Senate exercised their unique powers under Article I to adjudicate challenges contending that certain prospective or sitting Members could not take or retain their seats due to Section 3. See Art. I, §5, cls. 1, 2; 1 A. Hinds, Precedents of the House of Representatives §§459–463, pp. 470–486 (1907). And the Confiscation Act of 1862, which predated Section 3, effectively provided an additional procedure for enforcing disqualification. That law made engaging in insurrection or rebellion, among other acts, a federal crime punishable by disqualification from holding office under the United States. See §§2, 3, 12 Stat. 590. A successor to those provisions remains on the books today. See 18 U. S. C. §2383.

Moreover, permitting state enforcement of Section 3 against federal officeholders and candidates would raise serious questions about the scope of that power. Section 5 limits *congressional* legislation enforcing Section 3, because Section 5 is strictly "remedial." *City of Boerne*, 521 U. S., at 520. To comply with that limitation, Congress "must tailor its legislative scheme to remedying or preventing" the specific conduct the relevant provision prohibits. *Florida Prepaid Postsecondary Ed. Expense Bd.* v. *College Savings Bank*, 527 U. S. 627, 639 (1999). Section 3, unlike other provisions of the Fourteenth Amendment, proscribes conduct of individuals. It bars persons from holding office after

taking a qualifying oath and then engaging in insurrection or rebellion—nothing more. Any congressional legislation enforcing Section 3 must, like the Enforcement Act of 1870 and §2383, reflect "congruence and proportionality" between preventing or remedying that conduct "and the means adopted to that end." *City of Boerne*, 521 U. S., at 520. Neither we nor the respondents are aware of any other legislation by Congress to enforce Section 3. See Tr. of Oral Arg. 123.

Any state enforcement of Section 3 against federal officeholders and candidates, though, would not derive from Section 5, which confers power only on "[t]he Congress." As a result, such state enforcement might be argued to sweep more broadly than congressional enforcement could under our precedents. But the notion that the Constitution grants the States freer rein than Congress to decide how Section 3 should be enforced with respect to federal offices is simply implausible.

Finally, state enforcement of Section 3 with respect to the Presidency would raise heightened concerns. "[I]n the context of a Presidential election, state-imposed restrictions implicate a uniquely important national interest." *Anderson* v. *Celebrezze*, 460 U. S. 780, 794–795 (1983) (footnote omitted). But state-by-state resolution of the question whether Section 3 bars a particular candidate for President from serving would be quite unlikely to yield a uniform answer consistent with the basic principle that "the President . . . represent[s] *all* the voters in the Nation." *Id.*, at 795 (emphasis added).

Conflicting state outcomes concerning the same candidate could result not just from differing views of the merits, but from variations in state law governing the proceedings that are necessary to make Section 3 disqualification determinations. Some States might allow a Section 3 challenge to succeed based on a preponderance of the evidence, while

others might require a heightened showing. Certain evidence (like the congressional Report on which the lower courts relied here) might be admissible in some States but inadmissible hearsay in others. Disqualification might be possible only through criminal prosecution, as opposed to expedited civil proceedings, in particular States. Indeed, in some States—unlike Colorado (or Maine, where the secretary of state recently issued an order excluding former President Trump from the primary ballot)—procedures for excluding an ineligible candidate from the ballot may not exist at all. The result could well be that a single candidate would be declared ineligible in some States, but not others, based on the same conduct (and perhaps even the same factual record).

The "patchwork" that would likely result from state enforcement would "sever the direct link that the Framers found so critical between the National Government and the people of the United States" as a whole. *U. S. Term Limits*, 514 U. S., at 822. But in a Presidential election "the impact of the votes cast in each State is affected by the votes cast"—or, in this case, the votes not allowed to be cast—"for the various candidates in other States." *Anderson*, 460 U. S., at 795. An evolving electoral map could dramatically change the behavior of voters, parties, and States across the country, in different ways and at different times. The disruption would be all the more acute—and could nullify the votes of millions and change the election result—if Section 3 enforcement were attempted after the Nation has voted. Nothing in the Constitution requires that we endure such chaos—arriving at any time or different times, up to and perhaps beyond the Inauguration.

* * *

For the reasons given, responsibility for enforcing Section 3 against federal officeholders and candidates rests with Congress and not the States. The judgment of the Colorado

Supreme Court therefore cannot stand.

All nine Members of the Court agree with that result. Our colleagues writing separately further agree with many of the reasons this opinion provides for reaching it. See *post*, Part I (joint opinion of SOTOMAYOR, KAGAN, and JACKSON, JJ.); see also *post*, p. 1 (opinion of BARRETT, J.). So far as we can tell, they object only to our taking into account the distinctive way Section 3 works and the fact that Section 5 vests *in Congress* the power to enforce it. These are not the only reasons the States lack power to enforce this particular constitutional provision with respect to federal offices. But they are important ones, and it is the combination of all the reasons set forth in this opinion—not, as some of our colleagues would have it, just one particular rationale—that resolves this case. In our view, each of these reasons is necessary to provide a complete explanation for the judgment the Court unanimously reaches.

The judgment of the Colorado Supreme Court is reversed.

The mandate shall issue forthwith.

It is so ordered.

SUPREME COURT OF THE UNITED STATES

No. 23–719

DONALD J. TRUMP, PETITIONER *v.* NORMA ANDERSON, ET AL.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF COLORADO

[March 4, 2024]

JUSTICE BARRETT, concurring in part and concurring in the judgment.

I join Parts I and II–B of the Court's opinion. I agree that States lack the power to enforce Section 3 against Presidential candidates. That principle is sufficient to resolve this case, and I would decide no more than that. This suit was brought by Colorado voters under state law in state court. It does not require us to address the complicated question whether federal legislation is the exclusive vehicle through which Section 3 can be enforced.

The majority's choice of a different path leaves the remaining Justices with a choice of how to respond. In my judgment, this is not the time to amplify disagreement with stridency. The Court has settled a politically charged issue in the volatile season of a Presidential election. Particularly in this circumstance, writings on the Court should turn the national temperature down, not up. For present purposes, our differences are far less important than our unanimity: All nine Justices agree on the outcome of this case. That is the message Americans should take home.

SUPREME COURT OF THE UNITED STATES

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ON WRIT OF CERTIORARI TO THE SUPREME COURT OF COLORADO

[March 4, 2024]

JUSTICE SOTOMAYOR, JUSTICE KAGAN, and JUSTICE JACKSON, concurring in the judgment.

"If it is not necessary to decide more to dispose of a case, then it is necessary *not* to decide more." *Dobbs* v. *Jackson Women's Health Organization*, 597 U. S. 215, 348 (2022) (ROBERTS, C. J., concurring in judgment). That fundamental principle of judicial restraint is practically as old as our Republic. This Court is authorized "to say what the law is" only because "[t]hose who apply [a] rule to particular cases . . . must of *necessity* expound and interpret that rule." *Marbury* v. *Madison*, 1 Cranch 137, 177 (1803) (emphasis added).

Today, the Court departs from that vital principle, deciding not just this case, but challenges that might arise in the future. In this case, the Court must decide whether Colorado may keep a Presidential candidate off the ballot on the ground that he is an oathbreaking insurrectionist and thus disqualified from holding federal office under Section 3 of the Fourteenth Amendment. Allowing Colorado to do so would, we agree, create a chaotic state-by-state patchwork, at odds with our Nation's federalism principles. That is enough to resolve this case. Yet the majority goes further. Even though "[a]ll nine Members of the Court" agree that this independent and sufficient rationale resolves this case,

five Justices go on. They decide novel constitutional questions to insulate this Court and petitioner from future controversy. *Ante,* at 13. Although only an individual State's action is at issue here, the majority opines on which federal actors can enforce Section 3, and how they must do so. The majority announces that a disqualification for insurrection can occur only when Congress enacts a particular kind of legislation pursuant to Section 5 of the Fourteenth Amendment. In doing so, the majority shuts the door on other potential means of federal enforcement. We cannot join an opinion that decides momentous and difficult issues unnecessarily, and we therefore concur only in the judgment.

I

Our Constitution leaves some questions to the States while committing others to the Federal Government. Federalism principles embedded in that constitutional structure decide this case. States cannot use their control over the ballot to "undermine the National Government." *U. S. Term Limits, Inc.* v. *Thornton*, 514 U. S. 779, 810 (1995). That danger is even greater "in the context of a Presidential election." *Anderson* v. *Celebrezze*, 460 U. S. 780, 794–795 (1983). State restrictions in that context "implicate a uniquely important national interest" extending beyond a State's "own borders." *Ibid.* No doubt, States have significant "authority over presidential electors" and, in turn, Presidential elections. *Chiafalo* v. *Washington*, 591 U. S. 578, 588 (2020). That power, however, is limited by "other constitutional constraint[s]," including federalism principles. *Id.*, at 589.

The majority rests on such principles when it explains why Colorado cannot take Petitioner off the ballot. "[S]tate-by-state resolution of the question whether Section 3 bars a particular candidate for President from serving," the majority explains, "would be quite unlikely to yield a uniform answer consistent with the basic principle that 'the President

. . . represent[s] *all* the voters in the Nation.'" *Ante*, at 11 (quoting *Anderson*, 460 U. S., at 795). That is especially so, the majority adds, because different States can reach "[c]onflicting . . . outcomes concerning the same candidate . . . not just from differing views of the merits, but from variations in state law governing the proceedings" to enforce Section 3. *Ante*, at 11.

The contrary conclusion that a handful of officials in a few States could decide the Nation's next President would be especially surprising with respect to Section 3. The Reconstruction Amendments "were specifically designed as an expansion of federal power and an intrusion on state sovereignty." *City of Rome* v. *United States*, 446 U. S. 156, 179 (1980). Section 3 marked the first time the Constitution placed substantive limits on a State's authority to choose its own officials. Given that context, it would defy logic for Section 3 to give States new powers to determine who may hold the Presidency. Cf. *ante*, at 8 ("It would be incongruous to read this particular Amendment as granting the States the power—silently no less—to disqualify a candidate for federal office").

That provides a secure and sufficient basis to resolve this case. To allow Colorado to take a presidential candidate off the ballot under Section 3 would imperil the Framers' vision of "a Federal Government directly responsible to the people." *U. S. Term Limits*, 514 U. S., at 821. The Court should have started and ended its opinion with this conclusion.

II

Yet the Court continues on to resolve questions not before us. In a case involving no federal action whatsoever, the Court opines on how federal enforcement of Section 3 must proceed. Congress, the majority says, must enact legislation under Section 5 prescribing the procedures to "' "ascertain[] what particular individuals" '" should be disqualified.

Ante, at 5 (quoting *Griffin's Case*, 11 F. Cas. 7, 26 (No. 5,815) (CC Va. 1869) (Chase, Circuit Justice)). These musings are as inadequately supported as they are gratuitous.

To start, nothing in Section 3's text supports the majority's view of how federal disqualification efforts must operate. Section 3 states simply that "[n]o person shall" hold certain positions and offices if they are oathbreaking insurrectionists. Amdt. 14. Nothing in that unequivocal bar suggests that implementing legislation enacted under Section 5 is "critical" (or, for that matter, what that word means in this context). *Ante*, at 5. In fact, the text cuts the opposite way. Section 3 provides that when an oathbreaking insurrectionist is disqualified, "Congress may by a vote of two-thirds of each House, remove such disability." It is hard to understand why the Constitution would require a congressional supermajority to remove a disqualification if a simple majority could nullify Section 3's operation by repealing or declining to pass implementing legislation. Even petitioner's lawyer acknowledged the "tension" in Section 3 that the majority's view creates. See Tr. of Oral Arg. 31.

Similarly, nothing else in the rest of the Fourteenth Amendment supports the majority's view. Section 5 gives Congress the "power to enforce [the Amendment] by appropriate legislation." Remedial legislation of any kind, however, is not required. All the Reconstruction Amendments (including the due process and equal protection guarantees and prohibition of slavery) "are self-executing," meaning that they do not depend on legislation. *City of Boerne* v. *Flores*, 521 U. S. 507, 524 (1997); see *Civil Rights Cases*, 109 U. S. 3, 20 (1883). Similarly, other constitutional rules of disqualification, like the two-term limit on the Presidency, do not require implementing legislation. See, *e.g.*, Art. II, §1, cl. 5 (Presidential Qualifications); Amdt. 22 (Presidential Term Limits). Nor does the majority suggest otherwise.

It simply creates a special rule for the insurrection disability in Section 3.

The majority is left with next to no support for its requirement that a Section 3 disqualification can occur only pursuant to legislation enacted for that purpose. It cites *Griffin's Case*, but that is a nonprecedential, lower court opinion by a single Justice in his capacity as a circuit judge. See *ante*, at 5 (quoting 11 F. Cas., at 26). Once again, even petitioner's lawyer distanced himself from fully embracing this case as probative of Section 3's meaning. See Tr. of Oral Arg. 35–36. The majority also cites Senator Trumbull's statements that Section 3 "'provide[d] no means for enforcing'" itself. *Ante*, at 5 (quoting Cong. Globe, 41st Cong., 1st Sess., 626 (1869)). The majority, however, neglects to mention the Senator's view that "[i]t is the [F]ourteenth [A]mendment that prevents a person from holding office," with the proposed legislation simply "affor[ding] a more efficient and speedy remedy" for effecting the disqualification. Cong. Globe, 41st Cong., 1st Sess., at 626–627.

Ultimately, under the guise of providing a more "complete explanation for the judgment," *ante,* at 13, the majority resolves many unsettled questions about Section 3. It forecloses judicial enforcement of that provision, such as might occur when a party is prosecuted by an insurrectionist and raises a defense on that score. The majority further holds that any legislation to enforce this provision must prescribe certain procedures "'tailor[ed]'" to Section 3, *ante,* at 10, ruling out enforcement under general federal statutes requiring the government to comply with the law. By resolving these and other questions, the majority attempts to insulate all alleged insurrectionists from future challenges to their holding federal office.

* * *

"What it does today, the Court should have left undone."

Bush v. *Gore*, 531 U. S. 98, 158 (2000) (Breyer, J., dissenting). The Court today needed to resolve only a single question: whether an individual State may keep a Presidential candidate found to have engaged in insurrection off its ballot. The majority resolves much more than the case before us. Although federal enforcement of Section 3 is in no way at issue, the majority announces novel rules for how that enforcement must operate. It reaches out to decide Section 3 questions not before us, and to foreclose future efforts to disqualify a Presidential candidate under that provision. In a sensitive case crying out for judicial restraint, it abandons that course.

Section 3 serves an important, though rarely needed, role in our democracy. The American people have the power to vote for and elect candidates for national office, and that is a great and glorious thing. The men who drafted and ratified the Fourteenth Amendment, however, had witnessed an "insurrection [and] rebellion" to defend slavery. §3. They wanted to ensure that those who had participated in that insurrection, and in possible future insurrections, could not return to prominent roles. Today, the majority goes beyond the necessities of this case to limit how Section 3 can bar an oathbreaking insurrectionist from becoming President. Although we agree that Colorado cannot enforce Section 3, we protest the majority's effort to use this case to define the limits of federal enforcement of that provision. Because we would decide only the issue before us, we concur only in the judgment.

CERTIFICATE OF SERVICE

I, Adam P. Merrill, hereby certify that on March 12, 2024, I caused a true and correct copy of the foregoing RESPONDENT-APPELLANT DONALD J. TRUMP'S MOTION TO VACATE BASED ON U.S. SUPREME COURT DECISION to be served upon all parties/ counsel of record via the Court's Electronic Filing System, and upon the following via electronic mail message:

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

/s/ Adam P. Merrill
Adam P. Merrill