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

APPELLEES' OBJECTION AND RESPONSE TO RESPONDENT-APPELLANT'S MOTION TO VACATE

Respondent-Appellant Donald Trump has filed a motion to vacate the decision of the circuit court in light of the United States Supreme Court's opinion in *Trump v. Anderson*, 601 U.S. ____ (2024). Trump characterizes his request as a "dispositive motion" under Illinois Supreme Court Rule 361(h), but the motion does not ask this Court to dispose of the appeal; rather, it asks the court to grant the full relief Trump seeks on appeal: vacatur of the decision below. Though Appellees agree that the circuit court must reconsider its decision in light of the United States Supreme Court's opinion and that the cause should be remanded to allow the circuit court to do so, Appellees oppose Trump's request to summarily vacate that decision, which addresses issues not encompassed by the U.S. Supreme Court's decision in *Anderson*.

When the circuit court issued the order reversing the decision of the State Officers Electoral Board and finding that Trump was ineligible to be listed on the ballot for March 19, 2024 primary because he engaged in insurrection under Section Three of the Fourteenth Amendment, it did so without the benefit of the United States Supreme Court's opinion in *Trump v. Anderson*. Indeed, the circuit court anticipated that a ruling in that case may affect its own order and therefore ruled that its order should be stayed in the event the Supreme Court issued an opinion inconsistent with the order. Circuit Court Decision at 38. Now that that opinion has been issued, the prudent course is not to summarily vacate the circuit court's order but to remand for reconsideration consistent with *Trump v. Anderson*.

That is especially true because the circuit court's order directly addressed and corrected matters not addressed by the Supreme Court's decision in *Trump v Anderson*: the Electoral Board's errors of Illinois law that formed a significant portion of Petitioners' appeal. *See, e.g.* Obj'rs Mot. to Grant Petition for Judicial Review at 17-21; Circuit Court Decision at 33 n.32 ("As this Court previously referenced, the Electoral Board's General Counsel's recommendation raising a scienter requirement under Section5/7/-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 . . . ."). At least that portion of the order must stand, as the Electoral Board's misinterpretation of the Illinois Election Code cannot and should not stand.

Trump's arguments for summarily vacating the circuit court's order are unconvincing. The claim, for example, that the order must be vacated because the circuit court (and this Court) somehow lack "subject-matter jurisdiction" over this case following *Trump v. Anderson* is simply wrong. The Supreme Court never said that state courts lack *jurisdiction* to hear ballot challenges based on Section Three of the Fourteenth Amendment; it never mentioned the word "jurisdiction"

at all. It determined that the relief requested by Petitioners, removing Trump from the ballot, could not be granted, but not that the Illinois courts were divested of jurisdiction to hear the dispute. Nor could it make such a jurisdictional revision, as the subject-matter jurisdiction of an Illinois circuit court does not depend on federal law but "is conferred entirely by our state constitution." *Belleville Toyota, Inc. v. Toyota Motor Sales, U.S.A., Inc.*, 199 Ill. 2d 325, 334 (2002) (emphasis added). "'[S]ubject-matter jurisdiction' refers to the power of a court to hear and determine cases of the *general class* to which the proceeding in question belongs." *Id.* (emphasis added). And there is no question that circuit courts have jurisdiction to hear petitions for judicial review from electoral board rulings on political candidates' qualifications. Illinois' constitution grants circuit courts the power "to review administrative actions as provided by law," Ill. Const. art. VI, § 9, which includes the ability to review the decisions of electoral boards under the Election Code, 10 ILCS 5/10-10.1. The circuit court's decision, which includes a critical clarification regarding the Illinois reviewing standard for candidate qualifications under the Illinois Election Code should not be wholesale erased based on the mistaken notion that the court somehow lacked jurisdiction from the outset.

Nor can the circuit court's ruling on an important issue of *state election law* be cast aside based on Trump's claim that circuit court opinions "have no precedential value." Mot. at 7. It is true, of course, that circuit court opinions are not "binding on other circuit judges in other cases" and do not act as precedent that can "trump decisions of the appellate court." *Delgado v. Bd. of Election Comm'rs of City of Chicago*, 224 Ill. 2d 481, 488 (2007). But in the context of administrative review, the circuit court plays the role of a court of review, and administrative bodies—including electoral boards—look to circuit court rulings as providing legal precedent. The ruling will be particularly persuasive to the State Board of Elections because it is a party to the decision in its capacity as the State Officers Electoral Board, and the Electoral Board

acknowledged during the hearing on the objection that electoral boards around the state look to the State Officers Electoral Board for guidance. In this regard, it is important to note that Illinois courts regularly evaluate election issues and issue decisions on them, even after elections conclude and the relief sought regarding the elections' outcome can no longer be granted. These are *not* "advisory opinions" as Trump claims (Mot. at 7), but decisions in line with Illinois' long-established exception to the mootness doctrine for issues of public interest, an exception frequently applied to issues that arise in election cases. *See Jackson v. Bd. of Election Comm'rs of City of Chicago*, 2012 IL111928, ¶¶ 43-44 (holding questions of election law are inherently matters of public concern requiring the exception to be applied to "aid election officials. . . in promptly deciding such disputes in the future, thereby avoiding the uncertainty in the electoral process which inevitably results when threshold eligibility issues cannot be fully resolved before voters begin casting their ballots"); *Goodman v. Ward,* 241 Ill. 2d 398, 404 (2007) (same). As Appellees argued below, the electoral board's erroneous adoption of a rule that would keep unqualified candidates on the ballot unless objectors could prove a candidate's subjective dishonest intent "would wreak havoc on the ability of electoral boards in Illinois to protect the integrity of the state's ballots and safeguard voter choices for elected officials." Obj'rs Mot. to Grant Petition for Judicial Review at 2. The circuit court's rejection of this standard was critically important; at least that portion of its order must be preserved, not summarily vacated.

WHEREFORE, for the reasons discussed above, Appellees object to Appellant-Respondent's motion to vacate, and ask the Court to remand this cause to the circuit court to reconsider its order in light of the Supreme Court's opinion in *Trump v. Anderson*, 601 U. S. ____ (2024).

DATED: March 14, 2024

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DONALD J. TRUMP,	)	
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other Respondents below.	)	

AFFIDAVIT

Under penalties as 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 represent Petitioners-Appellees in the above-captioned matter. I offer this affidavit in support of Appellees' Objection and Response to Respondent-Appellant's Motion to Vacate.

2. The Rule 328 Supporting Record submitted by Respondent did not include all of the briefing before the circuit court. In their response, Petitioners-Appellees rely on their Motion

to Grant Petition for Judicial Review, and thus, a true and correct copy of that Motion is attached hereto as Exhibit 1.

FURTHER AFFIANT SAYETH NOT.

/s/ Caryn C. Lederer
Caryn C. Lederer

EXHIBIT 1

FILED
2/5/2024 10:39 PM
Iris Y. Martinez
CIRCUIT CLERK
COOK COUNTY, IL
2024COEL000013

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

STEVEN DANIEL ANDERSON, CHARLES J. HOLLEY, JACK L. HICKMAN, RALPH E. CINTRON, and DARRYL P. BAKER,	)	
Petitioners-Objectors,	)	
v.	)	**Case No. 2024COEL000013**
DONALD J. TRUMP, the ILLINOIS STATE BOARD OF ELECTIONS, and its Members CASSANDRA B. WATSON, LAURA K. DONAHUE, JENNIFER M. BALLARD CROFT, CRISTINA D. CRAY, TONYA L. GENOVESE CATHERINE S. MCCRORY, RICK S. TERVIN, SR., and JACK VRETT,	)	**Hon. Tracie R. Porter** **Calendar 9**
Respondents.	)	

OBJECTORS' MOTION TO GRANT PETITION FOR JUDICIAL REVIEW

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This case involves the constitutional disqualification of Donald J. Trump as a candidate ("Trump" or "Candidate") for the Republican presidential primary for having committed among the worst presidential misconduct in United States history: the incitement of and engagement in the invasion and seizure of the Capitol on January 6, 2021. The Candidate's disqualification is mandated by the Illinois Election Code ("Code"), 10 ILCS 5/10-10, and Section 3 of the 14th Amendment to the United States Constitution ("Section 3")

Petitioners-Objectors Steven Daniel Anderson, Charles J. Holley, Jack L. Hickman, Ralph E. Cintron, and Darryl P. Baker ("Objectors") hereby file this Motion to Grant Petition for Judicial Review on the grounds that the Illinois State Officers Electoral Board ("Electoral Board" or "Board") erred in ruling : (1) that under the Code Objectors were required to show that Candidate Trump acted *knowingly* when he falsely swore that he is qualified for the office of the Presidency; (2) in the alternative, that the Electoral Board lacks jurisdiction to determine whether Trump is disqualified for engaging in insurrection under Section 3; and (3) that they would not adopt the Hearing Officer's finding that Candidate Trump engaged in insurrection and, as a result was disqualified from the presidency under Section 3 of the Fourteenth Amendment and barred from appearing on the Illinois ballot. These determinations by the Electoral Board were a transparent effort to avoid ruling on a controversial case, and are contrary to both the Election Code and binding Illinois Supreme Court precedent.

For the reasons set forth below, Objectors request that the Court grant their motion, overrule the Decision of the Electoral Board, and order that the name of Candidate shall not be printed on the official ballot as a candidate for the Republican Nomination for the Office of the President of the United States for the March 19, 2024 General Primary Election or the November 5, 2024 General Election.

INTRODUCTION

Just before voting on this Objection to remove Donald Trump from the Illinois primary ballot, an Electoral Board member invoked the adage that "hard cases make bad law." R-204 (Transcript of SOEB Meeting at 66:18-22). The Electoral Board's decision, however, was not an example of a "hard case" making bad law, but rather, a controversial case being avoided by the Board through a legally unsustainable decision. This case does *not* present hard questions—it relies on overwhelming evidence, most of which is not legitimately in dispute, that Trump must be disqualified from the presidency because he engaged in insurrection under clear governing legal standards. The Electoral Board opted to avoid its duty and duck a controversial case they knew ultimately would be resolved on appeal. Indeed, instead of performing its mandatory duty to assess the qualifications of candidates, the Board created a brand new objection-review standard, never before applied and in clear violation of the Code. That standard, if adopted, would wreak havoc on the ability of electoral boards in Illinois to protect the integrity of the state's ballots and safeguard voter choices for elected officials.

Judge Clark Erickson (Ret.), the hearing officer who painstakingly evaluated the several-thousand-page record in this case and the parties' legal arguments, assessed the evidence and found it "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." C-6673 V12 (Hearing Officer Report and Recommended Decision at 17). However, Judge Erickson, who performed his duty as a hearing officer for the Board as a one-off specifically for this case, was troubled by resolving a big case through expedited election proceedings. He ultimately recommended that the Electoral Board find that it did not have statutory authority to "address[] issues involving constitutional analysis." C-

6670 V12 (Hearing Officer Report and Recommended Decision at 14). The Electoral Board accepted this incorrect construction of its authority, and then went a step further, and crafted a brand new—and completely invalid—standard requiring a candidate to "knowingly lie" about their qualifications to be disqualified, even if they failed to meet the qualifications for office.

Controlling Illinois law completely contradicts both bases relied on by the Board to avoid reaching the merits in this case. Binding Illinois Supreme Court precedent makes it abundantly clear that electoral boards not only may, but *must* apply constitutional standards, and *nothing in the Illinois Election Code allows the Electoral Board to create out of whole cloth a standard that false statements of qualifications by a candidate are legally compliant unless the candidate "knowingly lies."* This Court should overrule the Board on both points to prevent precedent that will all but destroy the requirement that candidates certify their qualifications for office and adopt Judge Erickson's findings and the legal conclusion based thereupon—that Donald Trump is disqualified as a candidate on the ballot.

But now that this appeal is pending, the Board, Judge Erickson, and Objectors do agree on one critical principle: the issue of whether Candidate Trump should be barred from the Illinois ballot because he engaged in insurrection under Section 3 of the Fourteenth Amendment must be decided by the courts—specifically this Court.

The factual record in this case is extensive, but it has already been carefully evaluated three times. First, in Judge Erickson's well-reasoned assessment of the evidence. Second, because the parties relied on the testimony and exhibits from the nearly identical Colorado ballot challenge, in the decision of the Colorado Supreme Court, which includes evaluation of the trial court's factual findings on the same evidence before this Court. And third, in the factual findings of the Report of the Select Committee of the United States House of Representatives to Investigate the January 6th

Attack on the United States Capitol ("January 6th Report"), which Judge Erickson expressly adopted in his Recommendation.

The evidence shows that Candidate Trump, while President, laid the groundwork for the January 6, 2021 attack, propagated the lie that the 2020 election was somehow "stolen" from him, incited his armed supporters to storm the Capitol, and encouraged and supported their efforts to disrupt and endanger Congress while the violent attack was underway, until well after they succeeded in overtaking it and disrupting certification of the 2020 presidential election. Trump only ended the insurrection after it became clear that the certification, while disrupted and delayed, would nonetheless take place. He continues to support the violent attack on the Congress to this very day, calling those convicted of criminal misconduct for their participation "hostages."

Faced with evidence of those facts, both Judge Erickson and the Colorado Supreme Court flatly rejected Trump's completely dishonest characterization of the events of January 6th as mainly limited to walking, talking, and listening to the song "YMCA," R-48 (Transcript before Hearing Officer at 47:18-23), and the offensive untenable effort to attempt to sanitize Trump's conduct as merely "(1) contest[ing] an election outcome, (2) g[iving] a speech to protestors asking them to act 'peacefully,' and then (3) monitor[ing] the situation at the Capitol before repeatedly calling for peace and asking protesters to 'go home.'" C-3595 V8 (Mot. to Dismiss at 2). This account is an intentional falsehood—or in plain English, a lie—that is wholly unsupported by the record. Judge Erickson and the Colorado Supreme Court similarly saw through the baseless legal arguments attempting to cast aside the significant legal authority and historical evidence that clearly requires the application of Section 3 to Trump's run for the presidency.

Petitioners-Objectors now ask this Court to do the same and: (1) overrule the Electoral Board's decisions; and (2) under its own authority set out in the Illinois Constitution and case law,

determine that Trump engaged in insurrection as provided in Section 3 of the Fourteenth Amendment, and as a result, is disqualified from the presidency; and (3) order that his name 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.

PROCEDURAL HISTORY

On January 4, 2024, Objectors timely filed their objection challenging Trump's nomination papers as a candidate for the Republican Nomination for the Office of President. They asserted that 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. C-278 V2 (Objectors' Petition at 2). He is disqualified, because having sworn an oath to support the U.S. Constitution as President of the United States, he engaged in the January 6th insurrection. C-279 V2 (Objectors' Petition at 3). The Objection was assigned to hearing officer Ret. Judge Clark Erickson on January 17, 2024; he was tasked with making a recommendation to the Electoral Board based on his resolution of the legal and factual issues. On January 19, 2024, the parties simultaneously filed dispositive motions: Objectors filed a Motion to Grant Objectors' Petition or, in the Alternative, for Summary Judgment, and the Candidate filed a Motion to Dismiss Objectors' Petition.

Before Objectors filed their Petition, Trump, through counsel also appearing in this matter, had participated in a five-day trial in Colorado state court from October 30, 2023, to November 3, 2023, in a case captioned *Anderson v. Griswold*, District Court, City and County of Denver, No. 23 CV 32577—a ballot challenge similar to this one, also contending that Trump is disqualified from the Presidency under Section 3 due to his role in the January 6th attack on the Capitol.

Numerous witnesses testified in open court, and numerous exhibits were introduced and admitted in these Colorado proceedings; Trump cross-examined witnesses testifying against him. Here, the parties filed, and Judge Erickson entered on January 24, 2024, a Stipulated Order, providing (i) that any transcripts containing witness testimony from these Colorado proceedings fall within the "former testimony" exception to the hearsay rule set forth in Illinois Rule of Evidence 804(b)(1), and (ii) to the authenticity of all the trial exhibits admitted in those proceedings, with the exception of only five such exhibits.[1] C-6537-38 V12 (Stipulated Order).

At the hearing before Judge Erickson on January 26, 2024, the parties relied on the Colorado transcripts and exhibits, affidavits appended to their motions, and other documentary evidence "in the interests of justice and efficiency to minimize unnecessary or duplicative testimony." C-6537 V12 (*Id.* at 1). Significantly, Trump opted not to testify, either in person or even by affidavit. Following the hearing and review of the parties' briefing on the legal issues and the robust record, Judge Erickson issued his ruling. He found that the evidence presented "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." However, Judge Erickson recommended that the Board dismiss the Objection—not on the merits—but on the grounds that the Board lacks authority to decide it. He concluded that "Illinois law, including the Supreme Court decisions of *Goodman* and *Delgado* prohibit the Election Board from addressing issues involving constitutional analysis." C-6670, C-6673 V12 (Hearing Officer Report and Recommended Decision at 14, 17).

[1] These five exhibits were labeled as P21, P92, P94, P109, and P166 in the Colorado proceedings. They are irrelevant here, as Objectors do not rely on them in establishing that Trump is disqualified from the Presidency.

On January 29, 2024, the afternoon before the Board hearing, the General Counsel to the Electoral Board issued her own recommendation, on a new basis not raised by either party in their extensive briefing before the Board. She recommended that the Board "find, regardless of whether Candidate is disqualified from holding office under Section 3 as a matter of law, that his sworn statement on his Statement of Candidacy that he is 'legally qualified' for office is not *knowingly* false, and therefore . . . cannot invalidate his nomination papers." C-6686 V12 (Summary Sheet at 9) (emphasis added) ("General Counsel Recommendation"). She observed that though "Objectors sincerely believe Candidate engaged in insurrection and is not legally qualified to hold office, Candidate believes the opposite." C-6686 V12 (*Id.*). For this reason, she concluded that Objectors had not proved by a preponderance of the evidence that Trump "knowingly lied when he swore he was 'legally qualified' for office," and thus his Statement of Candidacy was valid and the Objection should be overruled. C-6686 V12 (*Id.*). The parties filed written exceptions to the Hearing Officer's Recommendation and the General Counsel Recommendation. C-6705 V12 (Objectors' Written Exception); C-6688 V12 (Candidate's Written Exception).

The Electoral Board held a hearing on January 30, 2024, and following brief oral argument, unanimously voted in favor of a motion to adopt the General Counsel Recommendation. Before voting in favor of the motion, one member of the Board, Republican Board Member Catherine S. McCrory, addressed the merits, stating for inclusion in the record: "There is no doubt in my mind that [Trump] manipulated, instigated, aided, and abetted an insurrection on January 6th. However, having said that, it is not my place to rule on that today." R-208-09 (Transcript of SOEB Meeting at 70:21-71:4). The Board then issued its Decision adopting the General Counsel Recommendation, and, in the alternative, ruling that the Code does not provide the Board with jurisdiction to perform the "constitutional analysis" necessary to determine whether Section 3 bars

Trump from the ballot. C-6717-18 V12 (Decision at 2-3). The Board also failed to adopt Judge Erickson's recommended findings, and thus did not reach the question of whether Trump engaged in insurrection under Section 3. C-6718 V12 (*Id.* at 3). Objectors filed their Petition for Judicial Review and served the petition the same day the Board issued its decision, January 30, 2024.

STATEMENT OF FACTS

The factual record below is voluminous. For example, the January 6th Report, which Petitioners submitted into evidence below for its factual findings, spans over 800 pages alone. Here, Petitioners present in number form only those facts that underpin the Hearing Officer's finding below that Candidate engaged in insurrection against the U.S. Constitution under Section 3 of the Fourteenth Amendment and is therefore disqualified from the presidency. The vast majority of those facts are not genuinely disputed and are supported by the Candidate's own statements—whether on Twitter or in public speeches—and factual findings made pursuant to legally authorized congressional investigations. Although this case involves misconduct personally engaged in by the Candidate, he has presented no personal rebuttal of any of it, by affidavit or otherwise. He cannot credibly do so, and thus has opted to remain silent – a most unusual choice for this Candidate.

1. Donald Trump swore the oath required by Article II, section 1 of the Constitution when he became president on January 20, 2017. This fact is undisputed.

2. It is further undisputed that Trump sought election to a second term.

3. Both after *and even before* the election, Trump publicly advanced the narrative that if he were to lose the election, it could only be as a result of fraud. *See* C-3715 V8 n.3 (Mot. for Summary Judgement at 5 n.3) (refusing to commit to peaceful transfer of power if he were to lose and stating that the only way he could lose is if the election were rigged); C-4989 V10 (Trump

Tweet Compilation at 2) (tweeting "I WON THIS ELECTION, BY A LOT!" following news projections that Joe Biden was the election winner); C-4988-89 V10 (*Id.* at 1-2) (tweeting "STOP THE FRAUD!" and "STOP THE COUNT!" on election night). This, too, is undisputed.

4. It is undisputed that aides and both legal and political advisors close to Trump investigated his election fraud claims and repeatedly informed Trump that such allegations were unfounded. C-5235-36 V10 (January 6th Report at 205-06).

5. Despite knowing there was no evidence of voter fraud, Trump continued to refuse to accept his electoral loss. It is undisputed that he tried, unsuccessfully, to overturn the election in the courts. C-5240 V10 (January 6th Report at 210), to direct the Department of Justice to seize voting machines, and to pressure state and local officials, like Georgia Secretary of State Brad Raffensperger, to "find" the votes he needed to win. C-5293 V10 (January 6th Report at 263).

6. When his other plots to retain power failed, it is undisputed that Trump directed a "fake elector" scheme, under which seven of the states Trump had lost would submit an "alternate" slate of electors as a pretext for Vice President Pence to decline to certify the actual electoral vote in Congress on January 6th. C-5372-73 V11 (January 6th Report at 341-42).

7. The record unequivocally shows—and Trump does not dispute—that Trump knew there was no legal basis for Pence to decline to certify the actual electoral vote and knew that Pence had also concluded he had no authority to do so. *See* C-5459 V11 (January 6th Report at 428) (Pence told Trump he did not believe he had authority to prevent certification of vote); C-5481 V11 (*id.* at 450) (Trump's own attorney conceded to Pence's attorney that legal theory had no support and would lose 9-0 at the Supreme Court).

8. Though Trump knew there was no fraud and no basis to reject the certification of the actual electoral vote, the record shows—as Judge Erickson found—that Trump "understood

and exploited [the divided political climate in the United States] 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." C-6672 V12 (Hearing Officer Report and Recommended Decision at 16); *see also* C-4991 V10 (Trump Tweet Compilation at 4) (tweeting that the election was "RIGGED"); C-4991 V10 (*id.*) (tweeting that Joe Biden would be an "illegitimate president"); C-4993 V10 (*id.* at 6) (tweeting that there was "tremendous evidence" of "voter fraud"); C-4999 V10 (*id.* at 12) (tweeting on January 5, 2021 that Vice President Pence had ("the power to reject fraudulently chosen electors").

9. To achieve his purpose of stopping the electoral vote certification, Trump urged his supporters via Twitter, on no fewer than twelve occasions, to assemble in Washington, D.C. on January 6, 2021—the date Congress would meet to certify the vote. C-4993-5001 V10 (Trump Tweet Compilation at 6-14). This, too, is undisputed.

10. On December 19, 2020, Trump mobilized political extremist groups—including Oath Keepers, Proud Boys, and the Three Percenter militias—throughout the country by tweeting: "Big protest in D.C. on January 6th. Be there, will be wild!" C-4994 V10 (Trump Tweet Compilation at 7); *see* C-5530 V11 (January 6th Report at 499) (reporting Twitter's Trust and Safety Policy team recorded "a 'fire hose' of calls to overthrow the U.S. government" following Trump's "wild tweet"); C-5725 V11 (*id.* at 694) (noting violent uptick in online rhetoric and coordination of right-wing groups following tweet). Trump does not dispute the content of his tweet or the mobilizing effect it had.

11. It is undisputed that Trump and his campaign staff became directly involved in the planning of a demonstration on January 6th at 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. C-5563-67 V11, C-5819 V12 (January 6th Report at 532-36, 786) (reporting that Trump personally helped select the speaker lineup); C-5563-67 V11, C-5819 V12 (*id.*) (Trump campaign and joint fundraising committee made direct payments to rally organizers). The plan for the demonstration included an order from Trump to march to the Capitol at the end of his speech. C-5564 V11 (*Id.* at 533).

12. The undisputed record shows—and Judge Erickson found—that Trump had received reports that violence was a likely possibility on January 6th. C-6672 V12 (Hearing Officer Report and Recommended Decision at 16), C-5092-93 V10 (January 6th Report at 62-63). But despite the expectation of violence, Trump did not alter his plans. C-5093, 5096-97 V10, C-5570-71 V11 (January 6th Report 63, 66-67, 539-40).

13. It is undisputed that at the Ellipse Demonstration, the Trump-approved speakers who preceded him urged the crowd to take action to ensure that Congress and/or Pence rejected electoral votes for Biden. 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." C-3729 V8 n.81 (Mot. for Summary Judgment at 19 n.81). Trump's lawyer Rudy Giuliani called for "trial by combat." C-3729 V8 n.82 (*Id*. at 19 n.82).

14. The record shows that numerous members of the crowd at the Ellipse were armed, and Trump knew it. C-5616 V11 (January 6th Report at 585) (reporting that an estimated 25,000 people refused to walk through the magnetometers at the Ellipse entrance). When Trump was informed that people were not being allowed through the metal detectors because they were carrying weapons, he responded, "I don't fucking care that they have weapons. They're not here to hurt *me*. Take the fucking [metal detectors] away. Let my people in. They can march to the

Capitol from here. Take the fucking mags away." C-5616 V11 (*Id.*).

15. During his speech at the Ellipse, Trump (1) repeatedly called out Vice President Pence by name, urging him to reject electoral votes from states Trump had lost; (2) told the armed and angry crowd they were going to have to "fight much harder" than Republicans had previously fought and that they needed to "fight like hell" because "if you don't fight like hell, you're not going to have a country anymore"; and (3) directed them to march to the Capitol where the certification of the electoral vote would be taking place. C-3730-31 V8 n.88-93, 95 (Mot. for Summary Judgment at 20-21 n.88-93, 95). This fact, as well, is undisputed.

16. It is an undisputed fact that following the speech at the Capitol, crowds engaged in a violent attack on and invasion of the Capitol that eventually overwhelmed law enforcement. *See* C-4037-39 V9 (Hodges Testimony at 74:2-8, 75:15-76:1), C-5671-73 V11 (January 6th Report at 640-42) (attackers were armed weapons including knives, tasers, pepper spray, and firearms; C-4038-39 V9 (Hodges Testimony at 75:15-76:1), C-6127 V12 (Pingeon Testimony at 200:9-17) (attackers wore full body armor and other tactical gear); C-5880 V12 (Rules & Admin. Review at 23), C-6144-45 V12 (Pingeon Testimony at 217:15-218:5) (attackers violently clashed with law enforcement); C-5881-82 V12 (Rules and Admin. Review at 24-25) (attackers smashed windows and kicked open doors to enter the Capitol).

17. By 2:13 PM, Vice President Pence and congressional leaders were evacuated to secure locations for their physical safety, eventually forcing the House and Senate into recess, halting the constitutionally mandated process for counting and certifying the electoral votes. C-5882 V12 (Rules & Admin. Review at 25), C-6283 V12 (Swalwell Testimony at 141:3-20). Attackers eventually breached the chambers of both houses of Congress. Senators, Representatives, and staffers were forced to flee and seclude themselves as attackers rampaged through the building. C-

6283-89 V12 (Swalwell Testimony at 141:3-147:14). By approximately 2:30 PM, the attack had succeeded in stopping the legal process for counting and certifying electoral votes. C-6283 V12 (Swalwell Testimony at 141:3-20). This tragic fact is also undisputed.

18. It is undisputed that soon after 1:21 PM, Trump began watching the Capitol attack unfold live on television. C-5624 V11 (January 6th Report at 593).

19. It is undisputed that at 2:24 PM, at the height of violence, Trump made his first public statement during the attack, further encouraging and provoking the crowd 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!" C-5003 V10 (Trump Tweet Compilation at 16). As Judge Erickson noted, Trump made this tweet while knowing that an attack was occurring on the Capitol "because the attackers believed the election was stolen." C-6672-73 V12 (Hearing Officer Report and Recommended Decision at 16-17). The only possible purpose of that tweet, Judge Erickson found, was "to fan the flames" of the attack. C-6673 V12 (*Id.* at 17); *see also* C-5116 V10 (January 6th Report at 86) (Trump's tweet "immediately precipitated further violence at the Capitol").

20. It is further undisputed that Trump did not issue any public statement telling the attackers to cease their attack or to disperse until 4:17 PM—more than three hours after the attack began—at which point he tweeted a video stating: "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." C-5610-11 V11 (January 6th Report at 579-80). Immediately after Trump uploaded the video to Twitter—something he could have done hours earlier—the attackers began to disperse from the Capitol and cease the attack. C-5637

V11 (January 6th Report at 606).

21. At 6:01 PM, Trump issued his final tweet of the day in which he stated: "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!" C-5638 V11 (January 6th Report at 607). This fact is also undisputed.

22. It is undisputed that Vice President Pence was not able to reconvene Congress until 8:06 PM, nearly six hours after the process had been obstructed. C-5498 V11 (January 6th Report at 467). Biden's election victory was finally certified at 3:32 AM, January 7, 2021. C-5700 V11 (January 6th Report at 669), C-6311 V12 (Swalwell Testimony 169:11-20).

23. In total, more than 250 law enforcement officers were injured as a result of the January 6th attacks, and five police officers died in the days following the riot. C-5742 V11 (January 6th Report at 711).

24. 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. Instead, Trump has continued to defend and praise the attackers. Just recently, 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." C-3740 V8 n.155 (Mot. for Summary Judgment at 30 n.155).

STANDARD OF REVIEW

The Court must engage in *de novo* review because the issues the Board decided—whether (i) Objectors were required under 10 ILCS 5/7-10 to prove that Candidate acted knowingly in falsely attesting to his qualifications, and (ii) the Board had jurisdiction to determine whether the

Candidate met the constitutional qualifications for the Presidency—are pure questions of law. *See Goodman v. Ward*, 241 Ill. 2d 398, 406 (2011) ("where . . . there is a dispute as to whether the governing legal provisions were interpreted correctly by the administrative body, the case presents a purely legal question for which our review is *de novo*"); *see also Zurek v. Cook County Officers Electoral Bd.*, 2014 IL App (1st) 140446, ¶ 11 ("[w]hen the dispute concerns whether a candidate's nominating papers complied substantially with the Election Code, then the question is purely one of law and our standard of review is *de novo*").

If this Court determines that the Electoral Board lacked jurisdiction to evaluate whether the Candidate satisfied the constitutional qualifications for office, it would still be duty bound to make that factual and legal determination itself, in the first instance. *See Phelan v. Cnty. Officers Electoral Bd.*, 240 Ill. App. 3d 368, 373 (1st Dist. 1992), *rev'd on other grounds sub nom. Bonaguro v. Cnty. Officers Electoral Bd*., 158 Ill. 2d. 391 (1994) ("[W]here the administrative agency's decision gives rise to pleaded issues which could not have been considered by the agency, but the record presented to the circuit court permits a fair determination of such issues, then *the scope of review by a court of original jurisdiction extends to all questions of law and fact presented under the pleadings by that record*.") (emphasis added); *Troutman v. Keys*, 156 Ill. App. 3d 247, 253 (1st Dist. 1987) (same); *see also* Ill. Const. art. VI, § 9 ("Circuit Courts shall have original jurisdiction of all justiciable matters . . . [and] shall have such power to review administrative action as provided by law.").

In circumstances, like here, where a hearing officer has issued thorough findings about a voluminous factual record, while the Court is not bound to defer to those findings, it may find the analysis persuasive. The same is true for the findings and analysis of the Colorado trial court and Colorado Supreme Court, both of which evaluated a factual record nearly identical to the one

before the Board. *See Cont'l Cas. Co. v. Howard Hoffman & Assocs.*, 2011 IL App (1st) 100957, ¶ 36; *Robertsson v. Misetic*, 2018 IL App (1st) 171674, ¶ 16.

ARGUMENT

I. THE ELECTORAL BOARD SHOULD HAVE REACHED THE MERITS OF TRUMP'S DISQUALIFICATION UNDER SECTION 3.

Illinois electoral boards' authority and mandatory statutory duty indisputably includes determinations of whether candidates meet the eligibility requirements for their office. The Illinois Election Code dictates: "[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).

Presidential primary candidates, like candidates for other offices, *must include* with their nomination papers a Statement of Candidacy that attests the candidate "is qualified for the office specified." 10 ILCS 5/7-10. The Election Code specifies candidate qualifications, as do both the Illinois and United States Constitutions.[2] The Illinois Supreme Court in *Goodman v. Ward* directed that objections based on constitutionally-specified qualifications *must be evaluated*, including objections that a candidate has improperly sworn that they meet qualifications for the office for which they seek candidacy. 241 Ill. 2d at 407 (striking candidate's name from ballot and holding electoral board erred in denying objection where candidate falsely stated he was "qualified" for

[2] *See, e.g.* 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).

office despite not meeting eligibility requirements set forth in Election Code and Illinois Constitution).

Despite the clear mandate set out in the Election Code and confirmed by *Goodman*, the Electoral Board read two clearly erroneous conclusions into the decision. First, the Board ruled—for the first time ever—that a Statement of Candidacy for an unqualified candidate is valid unless the candidate knowingly lied in attesting to his qualifications for office. C-6718 V12 (Board Decision at 3). The Board voted, in the alternative, that under the Illinois Supreme Court's decisions in *Goodman* and *Delgado v. Board of Election Commissioners,* 224 Ill. 2d 481 (2007), electoral boards lack authority to engage in "constitutional analysis," as would be required to resolve an Objection under Section 3. C-6718 V12 (Board Decision at 3).

In doing so, the Board rewrote the Election Code and misapplied binding precedent. Both conclusions clearly contravene controlling Illinois law and must be overruled.

A. The Electoral Board Was Wrong in Ruling that the Election Code Requires Proof that an Unqualified Candidate Knowingly Lied About Qualification for Office.

In a shocking and highly questionable last-minute recommendation, the General Counsel proposed, and the Board adopted, a restriction on the Board's review of candidates' statements of candidacy that has absolutely no legal basis and which, if adopted, would all but destroy Illinois electoral boards' ability to keep unqualified candidates off the ballot.

The adopted General Counsel Recommendation limited the Board's review of Statements of Candidacy to whether the candidate "*knowingly lied*" when swearing they were qualified rather than determining whether the candidate is *actually qualified* for the office sought. C-6686 V12 (General Counsel Recommendation at 9). Neither the Election Code nor caselaw provides any basis for this newly created, absurd and unworkable supposed standard.

Section 7-10 mandates that candidates include sworn statements that they are "qualified for the office specified"; it does *not* contain a caveat for candidates who genuinely but incorrectly believe they are qualified for the office. 10 ILCS 5/7-10. And as the Illinois Appellate Court explained in *Muldrow v. Mun. Officers Electoral Bd. for City of Markham*, "[i]f a candidate's statement that he or she is qualified for the office sought is *inaccurate*, the statement fails to satisfy statutory requirements and constitutes a valid basis upon which an electoral board may sustain an objector's petition seeking to remove a candidate's name from the ballot." 2019 IL App (1st) 190345, ¶ 20. Similarly, the Illinois Supreme Court in *Goodman*, recognized that Section 7-10's requirement that a candidate provide "a sworn statement of candidacy attesting that he or she is 'qualified for the office specified' . . . evinces an intention [by the legislature] to require candidates to meet the qualifications for the office they seek . . . ." 241 Ill. 2d at 408. Neither decision, nor the language of the Code, even vaguely suggests that a Candidate's subjective belief has any relevancy to the mandatory determination.

Electoral boards must ensure that candidates actually are qualified for office—not that they may subjectively believe they are qualified. Any contrary reading would vitiate the purpose of the Statement of Candidate requirement—protecting the legitimacy of Illinois elections by keeping unqualified candidates off the ballot. *Geer v. Kadera*, 173 Ill. 2d 398, 406 (1996) ("The purpose of [10 ILCS 5/7-10] and similar provisions is to ensure an orderly procedure in which only the names of qualified persons are placed on the ballot."). Moreover, the Board's interpretation of the Election Code to allow unqualified candidates onto the ballot (albeit ignorant to their disqualification), runs headlong into the Illinois Constitution, which sets forth mandatory candidate qualifications that cannot be changed or ignored. *See Thies v. State Bd. of Elections*, 124 Ill. 2d 317, 325 (1988) ("the legislature is without authority to change . . . the qualifications [for

office prescribed in the Constitution] unless the Constitution gives it the power"). The Board's read of Section 7-10 as permitting unqualified candidates on the ballot so long as they didn't knowingly lie when attesting they were qualified must be rejected. *See Hadley v. Illinois Dep't of Corr.*, 224 Ill. 2d 365, 375–76 (2007) (no deference to agency's statutory interpretation when unreasonable and contrary to the statute).[3]

The only "authority" the General Counsel cited in support of her creative new requirement was *Welch v. Johnson*, 147 Ill. 2d 40 (1992), which is completely inapposite. In *Welch*, the Court analyzed the language of the Ethics Act, a separate law which is not part of the Election Code, and which provides that removal from the ballot is an appropriate sanction *under the Ethics Act* only for those who "willfully" file a false or incomplete *statement of economic interest*. *Id.* at 51-52. *Welch* says *absolutely nothing* about the Statement of Candidacy requirement in the Election Code.

Unsurprisingly, electoral boards frequently remove candidates from the ballot who *believe* they are qualified but turn out to be wrong, and Illinois courts approve those decisions. Indeed, *during the same hearing* as this Objection, the Board excluded a candidate from the ballot who subjectively believed he had adequately established residency, following a contentious and detailed evidentiary hearing that examined information about topics including his divorce, his children's schooling, and his various residences over several years. See R-143-62 (Transcript of SOEB Meeting at 5, discussing *Overturf v. Hopkins*, 24 SOEBGP 115); *see also, e.g.*, *Cinkus v.*

[3] The General Counsel's Recommendation, and the Board's decision adopting it, rather transparently was not an earnest interpretation of the law but what appeared to be a desire to avoid deciding a highly publicized and controversial issue. The General Counsel expressly recognized the risk that "the court [may] reject[] the recommendation that the SOEB lacks jurisdiction," and the stated aim of the Recommendation was to offer "alternative" bases for overruling the Objection in addition to the purported lack of jurisdiction. C-6684 V12 (General Counsel Recommendation at 7). The Board's fancy footwork succeeded in giving the Board cover to step aside, but affirming the Board's inventive application of Section 7-10 would be a terrible mistake.

Vill. of Stickney Mun. Officers Electoral Bd., 228 Ill. 2d 200 (2008) (affirming decision finding candidate unqualified and removing his name from ballot due to his municipal debt, despite candidate's firm belief his municipal debt did not render him unqualified); *Gercone v. Cook Cnty. Officers Electoral Bd.*, 2022 IL App (1st) 220724-U (unpublished) (affirming decision finding candidate unqualified for the office of sheriff and removing her from the ballot because she lacked the required training, despite her belief that her training was adequate). Notably, in *Cinkus*, the candidate also made one of the arguments that Trump advances here (*see infra* Part III.D.), that the disqualifying circumstance "concern[ed] only the *holding of office*, not the running for office." 228 Ill. 2d at 217. The Illinois Supreme Court did not evaluate whether the objectors had disproven the candidate's belief in his own qualification. Instead, in rejecting the candidate's incorrect argument, it simply sustained the objection, found his nominating papers invalid, and approved removal of his name from the ballot. The candidate's subjective belief was utterly irrelevant to the decision to remove him from the ballot for failing to meet the qualifications for office.

The General Counsel's Recommendation tries to create a legally unsupported distinction between "simple question[s] of fact readily known to the candidate" like "residency, citizenship, and age," and other more complicated issues, like whether Section 3 bars Trump from the ballot. C-6685 V12 (General Counsel Recommendation at 8). But this distinction is a fiction, and the line-drawing exercise it implicates is unworkable. Even "simple" challenges involving residency can often entail hearings lasting several days, at the end of which the Board decides whether to remove the candidate from the ballot based on factual findings about his residency—not on factual findings about his mental state in connection with his residency. *Goodman* illustrates why the General Counsel's newly minted distinction is an absurdity. There, the candidate believed he was qualified. Though he did not dispute that he lived outside the subcircuit, "his contention was that he was not

obligated to meet the residency requirement until the time of the election." 241 Ill. 2d at 408. The Illinois Supreme Court—without evaluating whether his Statement of Candidacy was knowingly or willfully false—rejected that argument and affirmed the decision to take him off the ballot.

If the unsupported scienter requirement the General Counsel proposed and the Board adopted were the law, the Board would see no end to candidates defending objections on the basis that objectors cannot prove that the candidates were subjectively aware of their disqualification. The General Counsel Recommendation even suggested that objectors may need to subpoena the notary public who notarized the candidate's Statement of Candidacy to ask about "any admissions Candidate may have made when he signed indicating his state of mind." C-6686 V12 (General Counsel Recommendation at 9). A candidate could run for judgeship, attest to her qualification for office, and when an objection showed that she was no longer a registered attorney, she could litigate the issues of whether she was aware of the requirement or whether she knew her registration had lapsed. *See* Ill. Const. art. VI, § 11. A candidate could attest to his qualifications to run for office, and when an objection showed that he had been dropped from the voter rolls, he could litigate the issue of whether he was aware of that criterion and whether he knew he had been dropped from the rolls. *See* 10 ILCS 5/7-10. And under the General Counsel's Recommendation, the Board would be bound to overrule any objections that did not prove by a preponderance of the evidence the perjurious intentions of such candidates.

If the Board's decision is not promptly overruled, the Board's resources will run short, and Illinois voters will be alarmingly unprotected from unqualified candidates on the ballot.

B. The Electoral Board Had Authority to Decide That Trump Was Disqualified Under Section 3.

The conclusion that electoral boards cannot engage in "constitutional analysis" also relies on a fundamental interpretive error of controlling Illinois law.

The Illinois Supreme Court recognized, in both *Delgado* and *Goodman*, the well-established and uncontroversial principle that electoral boards, like any administrative board, cannot declare a statute unconstitutional, or otherwise assess the constitutionality of statutes. Under our tripartite system of government, only courts may declare a legislative enactment to be unconstitutional. That does *not* mean, however, that the Electoral Board may not apply and analyze constitutional provisions. Indeed, they must do so. *See Zurek v. Petersen*, 2015 IL App (1st) 150456, ¶ 33-35 (unpublished) (recognizing direction in Section 10-10 of the Election Code to determine if petitions are "valid" includes authority to apply constitutional standards to objections because "to determine . . .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").

The Hearing Officer, and subsequently the Board, read *Goodman* to mean that "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," C-6664 V12 (Hearing Officer Report and Recommended Decision at 8), and reasoned the Board is prohibited from applying Section 3 of the Fourteenth Amendment. This is not what *Goodman* says or means.

In *Goodman*, the Electoral Board rejected an objection that a candidate did not meet the residency requirement mandated by the Election Code, instead disregarding the Code's requirements as unconstitutional based on its analysis of the Illinois Constitution. 241 Ill. 2d at 410-11. When the Illinois Supreme Court stated "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," *id.* at

414-15, it meant that the Board overstepped by evaluating the constitutionality of the Election Code instead of applying it.[4]

In contrast, here, Objectors did not ask the Electoral Board to declare any statute to be unconstitutional. Rather they asked the Board to comply with its statutory mandate to determine whether the Candidate is qualified to serve for office based on qualifications specified in the U.S. Constitution. Doing so requires construing and applying the Constitution—but that is a far cry from finding a statue to be unconstitutional. *Compare Delgado*, 224 Ill. 2d at 485 (board cannot "question [the] validity" of a statute). "Constitutional analysis" means something very different in the context of the Objection to Trump's candidacy. The Board's lack of authority to declare a statute unconstitutional does not and cannot mean that it can ignore constitutional requirements.

Goodman also explicitly recognized that the Board's mandate to evaluate candidate objections *extends to candidate qualifications*:

> 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. Though [the candidate] did sign the statutorily required statement of candidacy and submit it with his nomination petition in the case before us, the statement did not satisfy statutory requirements. As we have discussed, his representation that "I am legally qualified to hold the office of Circuit Court Judge, 12th District [*sic*], 4th Judicial Subcircuit" was untrue. Ward did not meet the qualifications for office.

[4] The *Goodman* decision tracked with the Illinois Supreme Court's decision in *Delgado*, which held that the Board of Elections exceeded its authority when it rejected objections to a candidate's nomination papers on the basis that the underlying statute was unconstitutional and thus unenforceable. In that case, rather than apply a statutory standard to a set of candidate facts, the electoral board decided that *in spite of* the facts applicable to the candidate, the underlying statute that precluded him from running was unconstitutional and proceeded to direct his inclusion on the ballot. 224 Ill. 2d at 486. Again, as in *Goodman*, this is an application of the well-established principle that boards and other administrative bodies have no authority to declare statues to be unconstitutional.

Goodman, 241 Ill. 2d at 409-10 (citations omitted). The Court held the objection should have been sustained because the candidate did not meet requirements in the Election Code *and the Illinois Constitution*. *Id.*

Consistent with *Goodman* and as mandated by the Election Code, electoral boards have a long history of *applying* constitutional requirements when called for. These decisions support Objectors' interpretation of the governing law, which the electoral board itself agreed with until it was faced with this politically controversial objection.

For example, the Electoral Board has previously, repeatedly, evaluated and applied presidential requirements set out in the U.S. Constitution. In at least one prior case, it even analyzed its own statutory authority to evaluate objections based on presidential candidate qualifications and explicitly determined it was empowered to rule on the objection's constitutional merits. In that case, presidential Candidate Marco Rubio challenged the Board's statutory authority to hear an objection that he did not meet the natural born citizen requirement set out in Article II, Section 1, Clause 5 of the U.S. Constitution. The Board rejected the challenge: "the Objector alleges that the Statement of Candidacy is invalid because the Candidate is not legally qualified to hold the office of President. . . [but] the Board is acting within the scope of its authority in reviewing the adequacy of the Candidate's Statement of Candidacy." *Graham v. Rubio*, No. 16 SOEB GP 528 (Hearing Officer Findings and Recommendations, adopted by the Electoral Board); *Graham v. Rubio*, No. 16 SOEB GP 528 (Feb. 1, 2016) (adoption by SOEB).[5] *See also, e.g., Freeman v. Obama*, No. 12 SOEB 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 United States Constitution); *Jackson v. Obama*, No. 12 SOEB GP 104 (Feb. 2, 2012) (same); *Socialist Workers*

[5] These Board decisions are included in the Record at C-4975-86 V10.

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).

This is consistent with court decisions confirming that electoral boards not only can but must *apply* constitutional provisions. *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." (emphasis added)); *Zurek*, 2015 IL App (1st) 150456, ¶ 33-35 (recognizing 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 statute or the constitution").

Judge Erickson also grounded his recommendation in concern that objections that present complex factual disputes in a short time period fall beyond electoral boards' ability—and thus authority—to resolve. He credited the Candidate's argument: "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." C-6666 V12 (Hearing Officer Report and Recommended Decision at 10). But this principle is simply not true. Just as evaluation of "constitutional issue[s]" is both authorized and required, resolving highly disputed facts is part of electoral boards' bread and butter. The Election Code both mandates and equips them to do so. *See* 10 ILCS 5/10-10 (granting subpoena power for witnesses and documents

and empowering boards to, among other things, adopt rules of procedure for the introduction of evidence, presentation of arguments, and evaluation of legal briefs).[6] Any other interpretation would foreclose objections based on the nature of the fact-finding required rather than the powers granted by the Election Code. It would create a framework where electoral boards would have the authority to decide certain categories of qualifications, but if, in their estimation, the facts were too complicated, that authority would dissipate. This would make the electoral objection process chaotic, unpredictable, and unworkable, and leave many objectors without recourse for objections encompassed by the statute. It would also allow the Electoral Board a loophole (not authorized by the statute) to avoid—as here—controversial matters.

Approving the Board's "alternative" decision would mean that electoral boards would never have authority to sustain an objection to a candidate who clearly violated candidacy requirements set out in the U.S. or Illinois constitution. This would contravene the Election Code's mandate, a history of diligently evaluated objections presented in presidential elections, and the practical need to safeguard Illinois ballots in presidential and other elections.

II. TRUMP ENGAGED IN INSURRECTION IN VIOLATION OF SECTION 3.

Once the Board's legally baseless dismissal is overruled, this Court must do what the Board failed to do and address the merits of the objection to Trump's candidacy. And on the merits, there can be no reasonable doubt that Candidate Trump engaged in insurrection against the U.S.

[6] As discussed above, *supra* Part I, electoral boards frequently evaluate complex and disputed objections, and the Illinois Supreme Court has repeatedly endorsed their decisions. This includes in a contentious objection evaluating former Presidential Chief of Staff Rahm Emmanuel's residency during the time he served and lived in Washington D.C., that involved detailed information about events in Washington. *Maksym v. Bd. of Election Comm'rs of City of Chicago*, 242 Ill. 2d 303, 306 (2011) (noting the "extensive evidentiary hearing" before electoral board and crediting board's factual findings in appeal of objection on Emmanuel's qualification to appear on ballot based on disputed Chicago residency). *See also* C-6440 V12 (Objectors' Opp. to Mot. to Dismiss at 9) (collecting cases with disputed facts, complex records, and extensive evidentiary proceedings).

Constitution after swearing an oath to support it, and thus is disqualified under Section 3. That was Judge Erickson's conclusion after his review of the evidence "even when giving the Candidate the benefit of the doubt wherever possible." C-6672 V12 (Hearing Officer Report and Recommended Decision at 16). That was also the conclusion in Colorado and Maine, the only two other states that have addressed the merits of a Section 3 challenge to Trump's candidacy. *See* C-4940-73 V10 (Maine Sec'y of State Ruling in *In re: Challenges to Primary Nomination Petition of Donald J. Trump, Republican Candidate for President of the United States* (Dec. 28, 2023)); *Anderson v. Griswold*, 2023 CO 63, ¶ 221, *cert. granted sub nom. Trump v. Anderson*, No. 23-719, 2024 WL 61814 (U.S. Jan. 5, 2024) (affirming finding that Trump engaged in insurrection). No court or electoral authority anywhere in the United States that has reached the merits has ever decided otherwise.

Trump has barely even attempted to present evidence to the contrary, failing to testify or even provide an affidavit supporting his version of events. Instead, he challenges the admissibility of the January 6th Report, which includes many of the damning facts establishing that Trump engaged in insurrection. But that challenge fails because the factual findings from the January 6th Report are plainly admissible under Illinois Rule of Evidence 803(8), as Judge Erickson found.

Trump also disputes the legal standard for an "insurrection," but the definition he proposes is unsupported and conflicts with persuasive case law and historical evidence of the term's original meaning. Finally, Trump attempts to highlight his purported calls for peace on January 6th and his alleged authorization of D.C. National Guard troops days earlier to show that he did not "engage in" insurrection. But he cannot and does not dispute that he provided voluntary assistance to the insurrection by, among other things, widely disseminating the lie that the 2020 election had been "stolen" and that Vice President Pence had the authority to prevent certification of the electoral

vote; summoning supporters to Washington, D.C. for a "wild" protest for Congress's certification of the vote; exhorting the armed and angry crowd at the Ellipse rally to march to the Capitol to "fight like hell" against the constitutionally mandated certification of the electoral vote; tweeting at the height of the violence that Pence lacked the "courage" after Pence indicated he would certify the vote; and despite watching the attack unfold, refusing to tell attackers to cease and disperse or to order additional law enforcement to secure the Capitol for over three hours after the violent attack began. Nor can he dispute that when he finally called for his supporters to end their attack and leave after three bloody hours, he did so with "love." His shameful conduct violated the Constitution, and it disqualifies him from the ballot.

A. The January 6th Report is Admissible.

As found by Judge Erickson, the detailed factual findings in the January 6th Report are admissible under Illinois Rule of Evidence 803(8) (public records and reports exception to the hearsay rule). Like the analogous federal rule and the Colorado rule that the Colorado Supreme Court relied on to affirm the Report's admissibility in *Anderson*, Illinois Rule 803(8) allows the admission of "factual findings from a legally authorized investigation" as an exception to the hearsay rule, unless the opposing party can establish that the "sources of information or other circumstances indicate lack of trustworthiness." Public reports are "presumed trustworthy," and it is the opposing party's burden to establish untrustworthiness. *People ex rel. Madigan v. Kole*, 2012 IL App (2d) 110245, ¶ 56.

Trump failed to meet that burden below, never offering *any* evidence of untrustworthiness except to emphasize that members of the Select Committee had previously voted to impeach him. But while that may arguably affect the weight afforded the Report's opinions or conclusions (upon which Objectors do *not* rely), it does not call into question the well-sourced findings of historical

fact—facts about what actually happened on January 6th and the days leading up to it—resulting from the months-long investigation. Factual findings are clearly admissible under the Illinois Rules of Evidence. As Judge Erickson found, the Report was "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." C-6672 V12 (Hearing Officer Report and Recommended Decision at 16). Here, apart from his wholly conclusory screed against the Report included in a single cell of a chart attached as Exhibit A to his Summary Judgement Response, Trump offers no *evidence* to meet his burden to show lack of trustworthiness. For all of Trump's claims about the political bias of the Select Committee, he cannot dispute that the investigative staff who produced the Report's factual findings included "many Republican lawyers," and the "overwhelming majority" of witnesses whose testimony forms the basis of the factual findings were Trump administration officials and Republicans. *Anderson*, 2023 CO 63, ¶ 169; (C-768 V3).

Not only are the Report's factual findings admissible under Rule 803(8), but they were also admissible, as Judge Erickson found, under the Board regulations governing admissibility of evidence, which require admission of evidence if even an "arguable interpretation of substantive law" supports admissibility. Ill. Admin. Code tit. 26, § 125.180(c).

B. January 6th Was Unquestionably an Insurrection.

Trump cannot genuinely or credibly dispute—as Judge Erickson found below (C-6672-73 V12 (Hearing Officer Report and Recommended Decision at 16-17))—that the events of January 6th constituted an insurrection. Other authorities to reach the same conclusion include the Colorado Supreme Court, *Anderson*, 2023 CO 63, ¶ 185; Maine's Secretary of State, C-4965 V10 (Maine Sec'y of State Ruling at 26); federal judges in at least fifteen decisions, C-338-40 V2 (Objectors' Petition ¶ 279 nn. 219-28); both houses of Congress, Act of Aug. 5, 2021, Pub. L. No. 117-32, 135

Stat 322 (determining that the January 6th attackers were "insurrectionists"); the Trump administration's own Department of Justice, 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); and even Trump's own defense attorney during his impeachment trial, *see* 167 Cong. Rec. S729 ("[T]he question before us is not whether there was a violent insurrection of [sic] the Capitol. *On that point, everyone agrees.*") (emphasis added).[7]

There is general unanimity on that point because the events of January 6th so clearly meet the definition of "insurrection" as that term was understood at the time the Fourteenth Amendment was enacted and ratified. The consensus now, based on that meaning, is that an "insurrection" under Section 3 is any: (1) concerted, (2) use of force or violence, (3) to resist the government's authority to execute the law in some significant respect. *See* William Baude & Michael Stokes Paulsen*, The Sweep and Force of Section Three,* 172 U. Pa. L. Rev. __, at 64 (forthcoming) (summarizing dictionary definitions, public and political usage, judicial decisions, and other sources to define "insurrection" as "concerted, forcible resistance to the authority of government to execute the laws in at least some significant respect"); *see also* C-6447-51 V12 (Objectors' Mot. For Summary Judgment at 16-20) (citing historical sources); *Anderson*, 2023 CO 63, ¶ 184 (recognizing "any definition of 'insurrection' for purposes of Section Three would encompass 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 a peaceful transfer of power in this country").

[7] Indeed, Trump appears to have abandoned the argument that January 6th was not an insurrection in his U.S. Supreme Court appeal, leaving the Colorado Supreme Court's decision on this point unchallenged. *See* Br. for Petr. Trump at 33-38, *Trump v. Anderson*, No. 23-719 (U.S.) (Jan. 18, 2024), *available at* https://www.supremecourt.gov/docket/docketfiles/html/public/23-719.html.

Based on that common understanding of the term, prior to the Civil War, violent uprisings against federal authority comparable to January 6th were regularly understood to be "insurrections." *See* Robert Coakley, *The Role of Federal Military Forces in Domestic Disorders, 1789–1878* (U.S. Army Ctr. of Mil. Hist. 1996) (recounting antebellum insurrections that involved loosely organized, lightly-armed groups and few deaths). None of these pre-1861 insurrections approached the scale of the Civil War; nor would any meet the insurrection standard Trump concocted below, that would require an attempt to actually "break away from or overthrow the government." *See* Coakley, *id.* at 35-66, 74 (describing Shays, Whiskey, and Fries insurrections).

Trump's contention below that the consensus definition of insurrection would apply to merely "any public, joint effort to obstruct federal law," is also wrong. Section 3 does not encompass garden-variety political protests or even riots; rather, it requires violence or the use of force directed "against" the Constitution of the United States. It is the unprecedented nature of January 6th in modern times—the concerted violent effort to prevent the peaceful transfer of power at the core of the U.S. Constitution—that brings that day's events within the scope of Section 3.

Under any viable definition of insurrection, the events of January 6th meet the necessary criteria. First, the attack was undeniably concerted. As Judge Erickson found, the attackers shared a common purpose in "furtherance of the President's plan to disrupt the electoral count taking place before the joint meeting of Congress." C-6672 V12 (Hearing Officer Report and Recommended Decision at 16); *see also Anderson*, 2023 CO 63, ¶¶ 184-89. That common purpose is obvious from, *inter alia*, the facts that the attackers arrived in Washington at Trump's request on the date of the electoral vote certification and attacked the Capitol while the vote certification was underway, following Trump's repeated demands that his supporters "fight" to prevent the certification of the purportedly "rigged" election. Second, there is no question that the attack

involved violence and the use of force: Trump cannot and does not dispute that attackers used force to overwhelm law enforcement protecting the Capitol or that more than 200 law enforcement personnel were injured during the attack. Finally, there can be no dispute that the attackers' purpose in disrupting the vote certification and preventing the peaceful transfer of power mandated by the Constitution is both an act of resistance against the government's authority to execute the law in some significant respect and resistance against the Constitution itself. The attack of January 6th was plainly an insurrection under Section 3.

C. Trump Engaged in the January 6th Insurrection.

The record also overwhelmingly supports Judge Erickson's finding that Trump participated in and thus "engaged in" the insurrection. C-6673 V12 (Hearing Officer Report and Recommended Decision at 17). As with the meaning of "insurrection," there is consensus on the meaning of "engaged in": it means "to provide voluntary assistance." *See United States v. Powell*, 27 F. Cas. 605, 607 (C.C.D.N.C. 1871) (defining "engage" as "a voluntary effort to assist the Insurrection . . . and to bring it to a successful [from the insurrectionists' perspective] termination"); *Worthy v. Barrett*, 63 N.C. 199, 203 (1869) (defining "engage" as "[v]oluntarily aiding the rebellion, by personal service, or by contributions, other than charitable, of any thing that was useful or necessary"); *State v. Griffin*, No. D-101-CV-2022-00473, 2022 WL 4295619, *19-20 (N.M. Dist. Sept. 6, 2022), *appeal dismissed*, No. S-1-SC-39571 (N.M. Nov. 15, 2022), *cert. filed* May 18, 2023 (applying definition of "engage" from *Powell* and *Worthy*); *Rowan v. Greene*, No. 2222582-OSAH-SECSTATE-CE-57-Beaudrot (Ga. Ofc. of State Admin. Hrgs. May 6, 2022), slip op. at 13-14 (same); *see also Anderson*, 2023 CO 63, ¶ 194 ("engaged in" element requires "an overt and voluntary act, done with the intent of aiding or furthering the common unlawful purpose").

Before the Board, Trump never even tried to address the established case law concerning the meaning of "engaged in," but instead argued for a new standard that would insulate incitement or speech in support of an insurrection from the definition of "engagement." C-3612 V8 (Mot. to Dismiss at 19). The argument lacks any legal basis.

Contrary to Trump's claims, the historical record unquestionably indicates that engagement includes incitement: "Disloyal sentiments, opinions, or sympathies would not disqualify; but when a person has, by speech or by writing, incited others to engage in rebellion, [h]e must come under the disqualification." *The Reconstruction Acts*, 12 U.S. Op. Att'y Gen. 182, 205 (1867) (opinion of Attorney General Stanbery regarding a similarly-worded statute); *see also In re Charge to Grand Jury*, 62 F. 828, 830 (N.D. Ill. 1894) ("[E]very person who knowingly incites, aids, or abets [an insurgent], no matter what his motives may be, is likewise an insurgent.").

Applying the consensus standard, the record establishes that Trump "engaged in insurrection" through both acts of speech that incited and maintained the insurrection and other conduct. To the extent speech that provides assistance to an insurrection must meet the standard for incitement, Trump's summoning of supporters to Washington, D.C. to "be wild" and ordering them to march to the Capitol to "fight" certainly does:

> Having considered the President's January 6 Rally Speech in its entirety and in context, the court concludes that the President's statements that, "[W]e fight. We fight like hell and if you don't fight like hell, you're not going to have a country anymore," and "[W]e're going to try to and give [weak Republicans] the kind of pride and boldness that they need to take back our country," immediately before exhorting rally-goers to "walk down Pennsylvania Avenue," are plausibly words of incitement not protected by the First Amendment. It is plausible that those words were implicitly "directed to inciting or producing imminent lawless action and [were] likely to produce such action."

Thompson v. Trump, 590 F. Supp. 3d 46, 115 (D.D.C. 2022), *appeal pending*, No. 22-7031 (D.C. Cir. 2023). Though Trump emphasizes that he called for a "peaceful and patriotic" march to the

Capitol, every tribunal to address the issue has found that stray references to "peacefulness" do not negate Trump's urging a crowd of armed and angry supporters to "fight." *See* C-6672 V12 (Hearing Officer Report and Recommended Decision at 16) (finding Trump "understood the context of the events of January 6, 2021 because he created the climate" and concluding that calls for "peace" merely provided "plausible deniability"); *Anderson*, 2023 CO 63 ¶ 244 ("isolated reference" to peace does not inoculate Trump against conclusion that he incited lawless action); C-4971 V10 (Maine Sec'y of State Ruling at 32) (Trump intended to incite lawless action).

Trump's engagement in the insurrection was not limited to his pre-attack speech. At the height of the violence, knowing that attackers were invading the Capitol where they hoped Vice President Pence would block the certification of the electoral vote, rather than call for National Guard or other federal law enforcement assistance, and rather than call for his supporters to cease the attack, Trump lashed out at Pence on Twitter, deriding his lack of "courage." As Judge Erickson concluded, that tweet "could not possibly have had any other intended purpose besides to fan the flames" of the attack. C-6673 V12 (Hearing Officer Report and Recommended Decision at 17). Trump also cannot dispute that he was aware of the violence as it was unfolding but still failed to call for additional federal law enforcement to assist in securing the Capitol and failed—for over three hours—to direct the attackers to cease the attack and disperse.

And though, as noted, speech inciting insurrection constitutes "engagement," Trump's voluntary assistance to the insurrection was not at all limited to speech. The unrebutted record establishes that Trump, among other things, directed the scheme to prevent certification of the votes, helped to plan the demonstration where supporters gathered before attacking the Capitol, planned the March on the Capitol, ordered officials to remove magnetometers preventing armed people from joining the assembly, allowing them to bring weapons to the Capitol, failed to perform

his duty to support and defend the constitutional peaceful transfer of power by, *inter alia*, failing to call for reinforcements for the Capitol police as he watched them attempt to fend off the brutal attack and not least of all, failed—for over three hours—to call for his supporters to end the attack.

Thus, under the established legal standards, the record amply and unquestionably supports Judge Erickson's conclusion that Trump engaged in insurrection under Section 3. This Court should therefore order the Board to adopt that finding or, in the alternative, make that finding itself.

III. SECTION 3 BARS FORMER PRESIDENTS FROM THE PRESIDENCY.

To avoid the consequences of his conduct, Trump has repeatedly advanced a number of absurd interpretations of Section 3, deviating from the plain meaning of commonly understood terms, their widely accepted historical context, and the legal analysis of courts interpreting them.

Section 3 prohibits a person from holding any "office, civil or military, under the United States" if that person, as "an officer of the United States," took an oath "to support the Constitution of the United States" and subsequently engaged in insurrection. U.S. Const. amend. XIV, § 3. Trump plainly engaged in an insurrection, as established above, *supra* Part II, and Section 3 clearly applies to Trump because (i) the office of the Presidency is an "office . . . under the United States"; (ii) the President is an "officer of the Unites States"; and (iii) the presidential oath constitutes an oath "to support the Constitution of the United States." Trump's strained attempts to interpret Section 3 to exclude the Presidency or the President, and to make the Presidential oath "to preserve, protect, and defend the Constitution" mean something other than "support the Constitution" fail under the weight of their own lack of support and logic. Moreover, the distinction Trump has attempted to draw between "holding office" and "running for office" does not diminish the Board's duty to remove him from the ballot under both federal and Illinois law.

A. The Presidency is an "Office . . . under the United States."

As the Colorado Supreme Court decision definitively held, "both the constitutional text and historical record" show the Presidency is an "office under the United States" within the meaning of Section 3. *Anderson,* 2023 CO 63, ¶ 129. Not only does the Constitution refer to the presidency as an "office" no less than 25 times,[8] the plain meaning of "office" includes the Presidency, and the ratifying public understood the Presidency as an "office . . . under the United States." *See* C-3763-65 V8 (Mot. for Summary Judgment at 53-55) (collecting dictionary definitions and Reconstruction Era sources); C-6462-63 V12 (Opp. to Mot. to Dismiss at 31-32) (same).

In addition, the Constitution's multiple other references to offices "under the United States" make plain that the Presidency is undeniably such an office. For example, the Impeachment Clause—a clause that undoubtedly applies to the Presidency—states that Congress can impose, as a consequence of impeachment, a "disqualification to hold and enjoy any *Office* of honor, Trust or Profit *under the United States*." *Id.* at art. I, § 3, cl. 7 (emphasis added). A reading of "office under the United States" as excluding the Presidency, would lead to the absurd outcome that presidents could not be removed from office even if impeached and convicted. In the same vein, the Incompatibility Clause states that "no Person holding any *Office under the United States*, shall be a member of either House during his Continuance in Office." *Id.* at art. I, § 6, cl. 2 (emphasis added). If "office under the United States" were read to omit the Presidency, a sitting President could simultaneously occupy a seat in Congress, which would violate the precise aim of the Incompatibility Clause: the separation of powers. *See Buckley v. Valeo*, 424 U.S. 1, 124 (1976).

[8] *See, e.g.*, U.S. Const. art. II, § 1, cl. 1 ("[The President] shall hold his *Office* during the Term of four years."), art. II, § 1, cl. 8 ("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 . . . .'") (emphasis added).

The fact that an early draft of Section 3 included the phrase "office of the President or Vice President," *Cong. Globe*, 39th Cong., 1st Sess. 919 (1866), does not, as Trump argued, suggest that the drafters intentionally *omitted* the office of the President and Vice President from Section 3. Nothing in the legislative history suggests such an absurd intent. On the contrary, the drafters chose to include a "much broader catchall"—one that still included, but was not limited to, the office of the Presidency and Vice Presidency. C-4961 V10 (Maine Sec'y of State Ruling at 22); *Anderson*, 2023 CO 63, ¶¶ 140-141. Indeed, during amendment debates in the Senate, when Senator Reverdy Johnson expressed his concern that Section 3 needed to prevent rebels from being elected President or Vice President, his colleague Senator Lot Morrill easily assuaged this concern by drawing his attention to the catchall phrase "or hold any office, civil or military, under the United States," which would unquestionably include the President and Vice President. *Cong. Globe*, 39th Cong., 1st Sess. 2899 (1866).

Nor does the fact that Section 3 lists senators, representatives, and electors, but not the Presidency, provide any evidence that the Office of the Presidency was intended to be omitted from the "offices under the United States" to which Section 3 applies. As the Colorado Supreme Court reasoned, Section 3 does not specifically mention the Presidency but lists senators, representatives, and presidential electors because the Presidency "is so evidently an 'office'" that to list it would be surplusage. *Anderson*, 2023 CO 63, ¶ 131. By contrast, senators, representatives, and presidential electors needed to be listed because none of these positions constitutes an "office." *Id.; see also* C-6463-64 V10 (Opp. to Mot. to Dismiss at 32-33).

Trump's reading of "office . . . under the United States," which would disqualify disloyal insurrectionists from every public office, from meat inspector, to Governor, to Supreme Court Justice, *except the presidency*, flies in the face both of logic and the plain meaning of Section 3

and its purpose: that "those who had been once trusted to support the power of the United States, and proved false to the trust reposed, ought not, as a class, to be entrusted with power again until congress saw fit to relieve them from disability." *Powell*, 27 F. Cas. at 607.[9]

B. The President is an "Officer of the United States."

The Colorado Supreme Court's reasoned interpretation shows that just as the Presidency is an "office," all interpretations—logical and textual—place President as an "officer of the United States" within Section 3. *See Anderson,* 2023 CO 63, ¶ 145.

The phrase "Officer of the United States" by its plain language quite clearly encompasses the President. The Constitution refers to the presidency as an "office" over 25 times, *see supra* Part III.A., and the plain meaning of "officer" is one who holds an office. *See* N. Bailey, *An Universal Etymological English Dictionary* (20th ed. 1763) ("one who is in an Office"); *see also United States v. Maurice*, 26 F. Cas. 1211, 1214 (C.C.D. Va. 1823) (Marshall, C.J., riding circuit) ("An office is defined to be a public charge or employment, and he who performs the duties of the office, is an officer. If employed on the part of the United States, he is an officer of the United States.") (quotation marks omitted). Accordingly, a reading of "officer" that excludes the President cannot be squared with the meaning of "office," which includes the President. *Motions Sys. Corp. v. Bush*, 437 F.3d 1356, 1371–72 (Fed. Cir. 2006) (*en banc*) (Gajarsa, J., concurring in part and concurring in the judgment) (citations omitted) ("An interpretation of the Constitution in which the holder of an 'office' is not an 'officer' seems, at best, strained."). In their briefing below, Objectors cited a mountain of historical and contemporary authorities reflecting this plain meaning of "officer of the United States" as including the President. *See* C-3766-68 V8 (Mot. for Summary

[9] For additional discussion of this issue, see C-3763-65 V8 (Mot. for Summary Judgment at 53-55), and C-6462-65 V12 (Opp. to Mot. to Dismiss at 31-34).

Judgment at 56-58); C-6466-69 V12 (Opp. to Mot. to Dismiss at 35-38). Quite plainly, a person who swears an oath as President cannot engage in insurrection and then subsequently be permitted to hold public office.

Trump argued below that "Officer of the United States" should be read as a term of art—not according to its plain language—and interpreted, counterintuitively, as excluding the President. C-3607 V8 (Mot. to Dismiss at 14) ("[T]he phrase has a *particular legal meaning* when it appears in the Constitution . . . and that meaning excludes the President.") (emphasis added). In so arguing, Trump attempts to overcomplicate what should be a straightforward reading of clear constitutional text. This tact runs counter to the principle that "the Constitution was written to be understood by the voters; its words and phrases were used in their normal and ordinary as distinguished from technical meaning." *Dist. of Columbia v. Heller*, 554 U.S. 570, 576-77 (2008); *see also Whitman v. Nat'l Bank of Oxford*, 176 U.S. 559, 563 (1900) (similar). As the Colorado Supreme Court explained, "If members of the Thirty-Ninth Congress and their contemporaries all used the term 'officer' according to its ordinary meaning to refer to the President, we presume this is the same meaning the drafters intended it to have in Section Three . . . . [I]n the absence of a clear intent to employ a technical definition for a common word, we will not do so." *Anderson*, 2023 CO 63, ¶ 148. Like the Colorado Supreme Court, this Court too should reject Trump's urging to adopt a "particular legal meaning" of the phrase "officer of the United States." C-3607 V8 (Mot. to Dismiss at 14).

Notably, the self-serving definition of "officer of the United States" that Trump advanced below contradicts his federal court brief filed just a few months ago in *People v. Trump*, No. 23-cv-3773 (S.D.N.Y.). There, Trump asserted that he *is* a former "officer . . . of the United States." Memo. in Opp. to Mot. to Remand, ECF No. 34, *People v. Trump*, No. 23-cv-3773 (S.D.N.Y. filed

June 15, 2023) ("Trump Opp."), at 2 (omission in original).[10] Indeed, he argued there that the reading he advanced below—that the President is not an "officer of the United States"—"has never been accepted by any court." *Id*. This Court should not be the first.

In addition to violating its plain meaning, a construction of "officer of the United States" that excluded the President would mean that one who swears an oath to protect the Constitution *in the highest office in the nation* would be unique among our nation's officers in that he would be permitted to violate that oath by engaging in insurrection and subsequently return to public office. Such a reading would not only be absurd but would, as discussed above, also undermine Section 3's purpose of preventing those who have been entrusted with power and violated that trust from being entrusted with power again. *See* discussion of *Powell*, *supra* Part III.A.[11]

C. The Presidential Oath is an Oath to Support the Constitution.

By both its text and historical context, the presidential oath to "preserve, protect and defend the Constitution," U.S. Const. art. II, § 1, cl. 8, is undoubtably an oath "to support the Constitution," *id.* at amend. XIC, § 3; s*ee Anderson,* 2023 CO 63, ¶¶ 153-58 (reaching this conclusion by looking to plain meaning and context of the oath and finding it to be the "most obvious" interpretation). It defies the plain meaning of the terms used to even attempt to argue that a duty to "preserve, protect and defend the constitution" is not included in the duty to "support the constitution." As the Colorado Supreme Court reasoned, it would be an absurd result if "Section Three disqualifies every oath-breaking insurrectionist *except the most powerful one* and that it bars oath-breakers from virtually every office, both state and federal, *except the highest one in the*

[10] *Available at* https://bit.ly/TrumpRemandOpp.

[11] For additional discussion of this issue, see C-3765-69 V8 (Mot. for Summary Judgment at 55-59); C-6465-69 V12 (Opp. to Mot. to Dismiss at 34-38).

land." *Anderson,* 2023 CO 63, at ¶ 159. Under Section 3, a person who swears the presidential oath and then engages in insurrection is quite plainly barred from public office.[12]

D. "Running For" and "Holding" Office is Not a Meaningful Distinction for Section 3.

Trump posits the Electoral Board must allow him to appear on the ballot because Section 3 bars insurrections from "holding office" but not from "appearing on a ballot or being elected." C-3604-05 V8 (Mot. to Dismiss at 11-12.) This is nonsense. Then-Judge, now-Justice Gorsuch rejected the same argument in *Hassan v. Colorado*, 495 Fed. Appx. 947 (10th Cir. 2012). Like Trump here, Hassan argued "even if Article II properly holds him ineligible *to assume the office* of president," it was unlawful "for the state to deny him a *place on the ballot*." *Id.* at 948 (emphasis in original). The court rejected this foolish distinction, concluding "a state's legitimate interest in protecting the integrity and practical functioning of the political process permits it to exclude from the ballot candidates who are constitutionally prohibited from assuming office." *Id.; see also* C-6459-61 V12 (Opp to Mot. to Dismiss at 28-30) (collecting cases similar to *Hassan* and distinguishing the cases cited by Trump below). While Section 3 prohibits *holding* the office, the Illinois Election Code—which the Illinois legislature has chosen to fulfill its federal constitutional obligation to "appoint, in such Manner as the Legislature thereof may direct, a Number of Electors" for president, U.S. Const. art. II, § 1, cl. 2—prohibits *running for* an office one is not qualified to hold.

Trump's contention that election officials and the courts are powerless to enforce Section 3 unless and until a disloyal insurrectionist has successfully run for an office for which he is not qualified, then belatedly and perhaps unsuccessfully asks Congress to remove the disability (C-

[12] For additional discussion of this issue, see C-3769-70 V8 (Mot. for Summary Judgment at 59-60); C-6469-70 V12 (Opp. to Mot. to Dismiss at 38-39).

3604 V8 (Mot. to Dismiss at 11)), is both completely unfounded and a recipe for chaos. As of this time (and indeed for the foreseeable future), Trump is disqualified from holding office and therefore may not appear on the ballot.

Indeed, under binding Illinois Supreme Court precedent, when a candidate submits his nomination papers to run for office, the candidate must swear that he is *currently* qualified for the office sought. *See Cinkus*, 228 Ill. 2d at 219. A candidate is "ineligible to run for office" unless the disqualifying circumstances have already been "remedied by the time the candidate files his or her nomination papers." *Id.* at 219-20. Trump's statement that he is currently qualified for the office of the Presidency is false, and accordingly, he must be excluded from the ballot.[13]

IV. THIS DISPUTE IS NOT A NON-JUSTICIABLE POLITICAL QUESTION.

Though Trump argued below that Petitioners' Section 3 challenge presents a non-justiciable political question, this case clearly does not fall within that "narrow" doctrine. *Zivotofsky ex rel. Zivotofsky v. Clinton*, 566 U.S. 189, 194-95 (2012). A question is nonjusticiable under the political-question doctrine only where the issue raised: (1) is textually committed in the constitution to another branch of government, or (2) lacks judicially discoverable and manageable standards for resolution. *See Rucho v. Common Cause*, 139 S. Ct 2484, 2494 (2019). Neither factor applies to a Section 3 challenge. *See Anderson*, 2023 CO 63, ¶¶ 110-126. On the second element, Trump never argued that Section 3's standards were not judicially discoverable or manageable, and thus any argument on that point has been waived.

On the first element, Trump does not cite any constitutional provision that textually commits the authority to assess presidential candidate qualifications to Congress. No such textual commitment exists. *Id.* at ¶ 112. Notably, Section 3 does require a "vote of two-thirds of each

[13] For additional discussion of this issue, see C-6459-62 V12 (Opp. to Mot. to Dismiss at 28-31).

House" to *remove* a candidate's disqualification but conspicuously *does not* direct either branch of Congress to make the disqualification in the first instance.

Though the Constitution does not commit the determination of presidential candidate eligibility to Congress, it *does* textually commit plenary power to the *states* to appoint presidential electors in the manner they choose. *See* U.S. Const., art. II, § 1, cl. 2 ("Each State shall appoint, in such Manner as the Legislature thereof may direct, a Number of Electors . . . ."). Thus, in determining the manner in which they choose electors, states may provide procedures for examining candidates' qualifications. *See Hassan*, 495 Fed. App'x. at 948 ("state's legitimate interest in protecting the integrity and practical functioning of the political process permits it to exclude from the ballot candidates who are constitutionally prohibited from assuming office") (Gorsuch, J.); *Lindsay v. Bowen*, 750 F.3d 1061 (9th Cir. 2014) (concluding that state authorities may exclude ineligible presidential candidates from the ballot).

None of the cases Trump cited below in support of his political-question argument are persuasive because, among other things, none identify any textually demonstrable commitment to Congress to determine presidential candidate qualifications in the first instance. *See Anderson*, 2023 CO 63, ¶ 120 (declining to follow the cases cited Trump cited before the Hearing Officer below for failure to identify any textual commitment to Congress). Indeed, no federal or state appellate court has *ever* accepted this argument—the only cases Trump could cite below were trial court decisions (often *pro se*) that were either never appealed, or were supplanted by different rationales on appeal.[14]

[14] State and federal appellate courts have consistently and expressly declined to indulge any trial court suggestion that the political question doctrine preempts state authority to adjudicate presidential candidates' qualifications. *See Castro v. Scanlan*, 86 F.4th 947, 953 (1st Cir. 2023) (declining to decide political question issue discussed below); *Grinols v. Electoral College*, 622 Fed. Appx. 624, 625 n.1 (9th Cir. 2015) (similar); *Kerchner v. Obama*, 612 F.3d 204, 209 n.3 (3d Cir. 2010) (similar); *Davis v. Wayne Cnty. Election*

Finally, the Court should reject any suggestion that this case is somehow nonjusticiable because the Senate previously acquitted Trump of Articles of Impeachment pertaining to January 6th. The Senate vote concerned matters beyond what is at issue in this Section 3 challenge, including whether it had jurisdiction over a former official. Moreover, Section 3 explicitly requires a vote of *two-thirds* of *both houses* to grant amnesty from disqualification. *See* U.S. Const. amend. XIV, § 3 ("But Congress may by a vote of two-thirds of each House, remove such disability."). Trump's argument would turn that provision upside down and effectively allow a *minority* of one house to remove the disability by voting against conviction in an impeachment proceeding. The argument is unsupported by any authority and has no basis in logic.

V. SECTION 3 DOES NOT NEED CONGRESSIONAL LEGISLATION FOR STATES TO ENFORCE IT.

Trump also argued below that Section 3 is not self-executing and can only be enforced with specific legislative action from Congress. This is not supported by the law, the plain language of Section 3, or basic principles of Constitutional interpretation.

This argument was thoroughly analyzed and rejected by the Colorado Supreme Court:

> 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.

Anderson, 2023 CO 63, ¶ 106. This Court should adopt the compelling reasoning of the Colorado Supreme Court and similarly reject Trump's "absurd" argument. *See also* C-6478-85 V12 (Opp. to Mot. to Dismiss at 47-54).

Comm'n, __ N.W.2d __, 2023 WL 8656163, at *16 n.18 (Mich. Ct. App. Dec. 14, 2023) (similar), *leave to appeal denied sub nom. LaBrant v. Sec'y of State*, No. 166470 (Mich. Dec. 27, 2023) (mem.).

First, state courts are *obligated* to apply the Constitution. *See* U.S. Const., art. VI, § 2 (the U.S. Constitution "shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby"); *Martin v. Hunter's Lessee*, 14 U.S. 304, 339-42 (1816) (state courts are competent to adjudicate questions under the U.S. Constitution); *Robb v. Connolly*, 111 U.S. 624, 637 (1884) (Harlan, J.) (emphasizing obligation to enforce U.S. Constitution lies "[u]pon the state courts, equally with the courts of the Union"). Indeed, when plaintiffs in state court civil actions raise federal constitutional claims, courts do not first demand a federal statute authorizing those claims. *See Testa v. Katt*, 330 U.S. 386, 389 (1947) (holding when federal law applies to a cause of action, state courts must apply it).

Second, by its plain language, Section 3 applies *unless* ***two-thirds*** of each Congressional chamber grants amnesty. In other words, it requires Congressional action to undo its effect, not to make it effective. In contrast, other Constitutional provisions that require effectuating federal legislation explicitly state it. For example, Article I authorizes Congress "[t]o provide for the Punishment of counterfeiting the Securities and current Coin of the United States." U.S. Const. art. I, § 8, cl. 6. This neither prohibits counterfeiting nor establishes a punishment; it authorizes Congress to "provide for" such punishment. Such authorizing language typically is stated as Congress "may" "by Law" do something, *e.g.*, *U.S.* Const. art. I, § 2, cl. 3; *id.* § 4, cl.1-2, or Congress "shall have power" to do something, *e.g.*, *id.* art. I, § 8; art. III, § 3, cl. 2; art. IV, § 3, cl. 2.

Finally, Trump relies on a non-binding 1869 case, that modern courts agree was wrongly decided, to make the disingenuous argument that requiring Congressional authorization was the "unbroken" practice from then until after January 6, 2021. Of course, Section 3 cases have reached the courts in limited circumstances: immediately following the Civil War and in connection with

January 6th. The modern courts that have evaluated Section 3 cases have agreed that Section 3 is self-executing. *See Anderson*, 2023 CO 63, ¶ 96 ("[W]e agree with the Electors that interpreting any of the Reconstruction Amendments, given their identical structure, as not self-executing would lead to absurd results."); *Rowan v. Raffensperger*, No. 2022-CV-364778 (Ga. Fulton Cty. Sup. Ct. July 25, 2022) (state court appellate review of Marjorie Taylor Greene Section 3 disqualification); *Greene v. Raffensperger*, 599 F. Supp. 3d 1283, 1319 (N.D. Ga. 2022) *remanded as moot*, 52 F.4th 907 (11th Cir. 2022) (federal court rejecting candidate motion to enjoin state proceeding: "Plaintiff has pointed to no authority holding that a state is barred from evaluating whether a candidate meets the constitutional requirements for office or enforcing such requirements"); *Griffin*, 2022 WL 4295619 (New Mexico state court applying Section 3 to remove county commissioner from office). In contrast, *In re Griffin*, 11 F. Cas. 7 (C.C.D. Va. 1869)—a case in which Chief Justice Chase, during the time he was both riding circuit and also was a presidential nominee for the then-segregationist Democratic Party, held that Section 3 required implementing legislation to avoid undermining criminal sentences imposed by disqualified ex-Confederate judges—has been comprehensively criticized as incorrectly decided both by Courts interpreting it and legal scholars. *See Anderson*, 2023 CO 63, ¶¶ 103-107 (collecting criticisms, finding the case unpersuasive and not binding, and recognizing "the fact it has not been reversed is of no particular significance"). *See also* C-6483-85 V12 (Opp. to Mot. to Dismiss at 52-54).

CONCLUSION

For these reasons, Objectors request that the Court grant their motion, overrule the Decision of the Electoral Board, and order that the name of Candidate shall not be printed on the official ballot as a candidate for the Republican Nomination for the Office of the President of the United States for the March 19, 2024 General Primary Election or the November 5, 2024 General Election.

Dated: February 5, 2024

PETITIONERS-OBJECTORS

By: _/s/ Caryn C. Lederer_____
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