

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

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

Petitioners-Objectors,

v.

Case No. 24 SOEB GP 517

Donald J. Trump,

Respondent-Candidate.

**OBJECTORS' MOTION TO GRANT OBJECTORS' PETITION, OR IN THE
ALTERNATIVE FOR SUMMARY JUDGMENT**

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Petitioners-Objectors Steven Daniel Anderson, Charles J. Holley, Jack L. Hickman, and Ralph E. Cintron (the “Objectors”), by and through their undersigned attorneys, hereby move to grant their Objector’s Petition. In the alternative, Objectors move for summary judgment in their favor. In support, Objectors state as follows:

INTRODUCTION

The undisputed facts show, in summary, that during the 2020 presidential election, the then-incumbent president, Donald J. Trump (“Trump” or “Candidate Trump”), devised and implemented a plot to prevent the peaceful transfer of power to the duly elected winner of that election, Joseph R. Biden, Jr., by falsely and fraudulently claiming that Trump and not Biden had, in fact, won and that the election had been “stolen.” After exhausting various other lawful and unlawful means to overturn the 2020 election, and in concert with his illegal plan to submit fraudulent electoral vote certificates from states where Trump had lost the vote, Trump engaged in a last-ditch effort to prevent the electoral college vote from being certified by the United States Congress at a joint session presided over by his own Vice President, Mike Pence. Trump gathered an angry and armed mob—including known violent extremists—in Washington, D.C. on January 6, 2021, incited them, and sent them to the Capitol. They stormed the Capitol, threatened to kill Vice President Pence and Members of Congress, prevented the certification of the election results, and—for the first time in our nation’s history—disrupted the peaceful transfer of power. In so doing, he “engaged in insurrection or rebellion against [the United States Constitution] [and gave] aid or comfort to [its] enemies” and thus is constitutionally disqualified from again holding public office, including the office of the presidency.

In Trump’s own words:

“Big protest in D.C. on January 6th. Be there, will be wild!”
Tweeted by Donald Trump, Dec. 19, 2020

“Our Country has had enough, they won’t take it anymore! We hear you (and love you) from the Oval Office. MAKE AMERICA GREAT AGAIN!”

Tweeted by Donald Trump, January 5, 2021 in response to Stop the Steal rallies promising violence at the Capitol on January 6, 2021

“I don’t fucking care that they have weapons. They’re not here to hurt me . . . Let my people in. They can march to the Capitol from here, let the people in and take the [metal detectors] away.”

Statement by Donald Trump, January 6, 2021 about his supporters at the Ellipse

“When you catch someone in a fraud, you’re allowed to go by very different rules. . . We fight like hell. And if you don’t fight like hell, you’re not going to have a country anymore.”

Donald Trump in his speech at the Ellipse, January 6, 2021

“Mike Pence didn’t have the courage to do what should have been done to protect our Country and Our Constitution.”

Tweeted by Donald Trump, January 6, 2021 at 2:24 p.m. as insurrectionists in the Capitol hunted Vice President Pence chanting “hang Mike Pence.”

The events of January 6, 2021 rocked the nation. Not since the War of 1812 had the seat of government of our republic been invaded and violently prevented from functioning. After months of attempting unlawful schemes to overturn the 2020 election that voted him out of office, Trump summoned his supporters to Washington D.C. When they gathered, he directed them to “fight” to reclaim the presidency, and after inciting their anger, sent them, along with their weapons, to invade the United States Capitol and disrupt the peaceful transfer of power. Trump’s supporters overwhelmed civilian law enforcement, forced the Vice President, Senators, Representatives, and staffers to flee into hiding, prevented Congress from certifying the 2020 presidential election, and captured the Capitol, a feat not even achieved by the Confederacy during the Civil War. As these events unfolded, Trump continued to goad his supporters and refused to call in law enforcement to aid those trapped and injured at the Capitol, or call off the attack. Five people died, and over 250 police officers suffered serious injuries, including broken bones, lacerations, and chemical burns. In the time since January 6, Trump has acknowledged he was in command of the Capitol attackers, praised their efforts, stated the prison sentences for those

convicted of crimes are a “shame,” referring to them as “hostages” and vowing to pardon them upon reelection.

These extraordinary and shocking facts form the backdrop of the Objectors’ Petition. But the Objection itself is simple. It asks the State Officers Electoral Board to perform a straightforward, mandatory duty: hear and decide the Objection that Candidate Donald Trump submitted invalid nomination papers, in violation of 10 ILCS 5/7-10, because he falsely swore in his Statement of Candidacy that he is “qualified” for the office of presidency. Objectors submit that Candidate Trump cannot meet one of the several qualifications for office set out in the United States Constitution—Section 3 of the Fourteenth Amendment, which mandates that no person shall hold office under the United States if they previously have taken an oath, as an officer of the United States, to support the Constitution of the United States and engaged in insurrection or rebellion against same, or given aid or comfort to the enemies thereof.

The import of the Objection does not enhance its scope or take it outside the Electoral Board’s authority. The Board has a limited, non-discretionary task that it has performed many times before. The Illinois Election Code and Illinois Supreme Court precedent clearly require the Board to evaluate candidate objections based on constitutional criteria. Fortunately, the Board can do so here using a focused set of facts, almost all of which are already in the public record, and all of which are widely known and accepted, and indisputable. Moreover, those facts have been confirmed by detailed witness testimony provided during a five-day trial in which Candidate Trump participated. Based on this evidence, including the witness testimony which Objectors also present with this motion through affidavits, the presiding Colorado district court judge concluded, by clear and convincing evidence, that Trump engaged in insurrection, a conclusion affirmed by

the Colorado Supreme Court, which, accordingly, ruled that Trump is disqualified from the presidency under Section 3 and ineligible to appear on the presidential ballot.

Following extensive public investigation into the events surrounding January 6, 2021, and similar ballot challenges in other states, the key issues in this Objection have been illuminated, narrowed, and decided. The Electoral Board's narrow task is to apply clear and well-defined legal standards to clearly established facts to determine constitutional electoral qualifications, as it has done in every presidential election cycle.

The material facts asserted in Petitioners' Objection are supported by competent evidence, cannot be genuinely disputed, and compel the conclusion that Trump engaged in insurrection under Section 3 and is therefore ineligible for the office of the President. The evidence in the Objection includes Trump's own public statements on Twitter and in news videos, the authenticity of which cannot be disputed, and the facts recounted in public governmental reports, such as the Final Report of the House of Representatives Select Committee to Investigate the January 6th Attack ("House Select Committee") on the United States Capitol (the "January 6th Report"), which are admissible as public records or reports. Yet to the extent any further evidence is required, Petitioners append additional evidence here, including affidavits that incorporate and establish the admissibility of Colorado trial testimony from two law enforcement officers who were present at the Capitol on January 6, 2021, a Congressman who was in the Capitol that day, the chief investigative counsel for the House Select Committee, an expert on national security law, and an expert on political extremism, and more, in the alternative, for summary judgment. In either case, the material undisputed facts show that Trump cannot meet the qualifications for president set out in Section 3 of the Fourteenth Amendment of the U.S. Constitution, as a result he has presented

invalid nomination papers to the Illinois Board of Elections, and thus cannot appear on the presidential primary or general election ballot in the State of Illinois.

STATEMENT OF FACTS

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

On January 20, 2017, Donald Trump was sworn in as the forty-fifth president of the United States. The oath he swore was the one required by Article II, section 1, of the Constitution, stating: “I, Donald John Trump, do solemnly swear that I will faithfully execute the office of President of the United States, and will to the best of my Ability preserve, protect, and defend the Constitution of the United States.”¹

II. TRUMP’S SCHEME TO OVERTURN THE GOVERNMENT AND PREVENT THE PEACEFUL TRANSFER OF POWER.

On June 18, 2019, at a rally in Florida, Trump officially launched his campaign for election to a second term as President.² During his campaign, Trump laid the foundation for the insurrection by repeatedly insisting that fraudulent voting activity would be the only possible reason for electoral defeat (rather than not receiving enough votes).³ Trump did not hide his intentions: when asked during a September 23, 2020 press conference if he would commit to a peaceful transfer of

¹ Trump White House Archived, *The Inauguration of the 45th President of the United States*, YOUTUBE (Jan. 20, 2017), <https://www.youtube.com/watch?v=4GNWldTc8VU>, at 26:30; see also U.S. Const. art. II, § 1, cl. 8.

² USA TODAY, *President Donald Trump kicks off 2020 re-election campaign in Florida*, YOUTUBE (June 18, 2019), <https://www.youtube.com/watch?v=XLwgdI25mzo>.

³ E.g., *President Trump Remarks in Oshkosh, Wisconsin*, C-SPAN (Aug. 17, 2020), <https://www.c-span.org/video/?474841-1/president-trump-remarks-oshkosh-wisconsin>, at 57:30 (On August 17, 2020, (“The only way we’re going to lose this election is if the election is rigged.”); *Watch Donald Trump’s full speech on day one of the 2020 Republican convention*, WASH. POST (Aug. 2, 2020), https://www.washingtonpost.com/video/politics/watch-donald-trumps-full-speech-on-day-one-of-the-2020-republican-convention/2020/08/24/6f789cdc-3572-46a5-9571-5d09061bad99_video.html, at 22:15 (“The only way they can take this election away from us is if this is a rigged election.”); *President Trump Departs White House*, C-SPAN (Sept. 24, 2020), <https://www.c-span.org/video/?476212-1/president-trump-departs-white-house#>, at 2:17 (“We want to make sure the election is honest, and I’m not sure that it can be. I don’t know that it can be with this whole situation [of] unsolicited ballots.”).

power following the election, Trump refused to do so.⁴

At the same time, Trump aligned himself with extremist and white supremacist organizations and signaled they should be prepared to act on his behalf. For example, on September 29, 2020, Trump was asked if he would disavow the Proud Boys, a right-wing extremist group that embraces political violence.⁵ But instead of disavowing them, he stated: “Proud Boys, stand back and *stand by*,” then adding “somebody’s got to do something about Antifa and the left.”⁶ As their social media posts clearly demonstrated, and as political extremism expert Peter Simi testifies, the Proud Boys acted on this as a call to “stand by” to be ready for future action.⁷

On November 3, 2020, the United States held its fifty-ninth presidential election. Fifty-eight of those elections were followed by peaceful processes implementing the results of the elections, even when those elections were sometimes bitterly and hotly contested. The fifty-ninth was different. That evening, while media outlets projected that Biden was in the lead,⁸ Trump alleged on Twitter that widespread voter fraud had compromised the validity of such results.⁹ Four

⁴ *President Declines to Commit to Peaceful Transfer of Power If He Loses Election*, C-SPAN (Sept. 23, 2020), <https://www.c-span.org/video/?c4909270/president-declines-commit-peaceful-transfer-power-loses-election>.

⁵ See Ex. 1, Simi Affidavit at Ex. A, 39:13-40:12. The Proud Boys bear responsibility for violence in conjunction with multiple political demonstrations. Several of the organizations’ leaders and members have been convicted of federal offenses for crimes committed in conjunction of the events of January 6, 2021. See, e.g., Dep’t of Justice, Jury Convicts Four Leaders of the Proud Boys of Seditious Conspiracy Related to U.S. Capitol Breach (May 4, 2023), <https://www.justice.gov/opa/pr/jury-convicts-four-leaders-proud-boys-seditious-conspiracy-related-us-capitol-breach>.

⁶ Associated Press, *Trump tells Proud Boys: ‘Stand back and stand by’*, YOUTUBE (Sept. 29, 2020), https://www.youtube.com/watch?v=qIHhB1ZMV_o.

⁷ Ex. 8, H.R. REP. NO. 117-663, at 507-08 (2022) [hereinafter January 6th Report]; Simi Aff., *supra* note 5, at Ex. A, 78:18-23.

⁸ E.g., Meg Wagner et al., *Election 2020 presidential results*, CNN (Nov. 5, 2020), <https://www.cnn.com/politics/live-news/election-results-and-news-11-04-20/index.html>.

⁹ See Donald J. Trump (@realDonaldTrump), TWITTER (Nov. 4, 2020 at 12:49 AM ET), <https://twitter.com/realDonaldTrump/status/1323864823680126977>, attached hereto as part of a Group Exhibit 7, which is also referred to hereinafter as “Trump Tweet Compilation.” (“We are up BIG, but they are trying to STEAL the Election. We will never let them do it. Votes cannot be cast after the Polls are

days after the election, on November 7, 2020, news organizations all across the country declared that Joseph Biden won the 2020 presidential election.¹⁰ That same day, Trump falsely tweeted: “I WON THIS ELECTION, BY A LOT!”¹¹

A. Trump Attempted to Enlist Government Officials and Others to Illegally Overturn the Election.

After Election Day, aides and advisors close to Trump investigated his election fraud claims and repeatedly informed Trump that such allegations were unfounded.¹² And on December 1, 2020, Trump’s appointed Attorney General, William Barr, publicly declared that the U.S. Justice Department found no evidence of voter fraud that would warrant a change of the election result.¹³

Despite knowing the lack of evidence of voter fraud, Trump continued to refuse to accept his electoral loss. Some of Trump’s actions—e.g., lawsuits contesting election results—were meritless but not illegal to pursue; these are not at issue here. But as it became clear that Trump’s lawful, nonviolent attempts to remain in power would fail, he turned to unlawful means to illegally

closed!”); *id.* at 2 (Nov. 5, 2020 at 9:12 AM ET), <https://twitter.com/realDonaldTrump/status/1324353932022480896> (“STOP THE FRAUD!”); *id.* at 1 (Nov. 5th, 2020 at 12:21 PM ET), <https://twitter.com/realDonaldTrump/status/1324401527663058944?lang=en> (“STOP THE COUNT!”).

¹⁰ See, e.g., Bo Erickson, *Joe Biden projected to win presidency in deeply divided nation*, CBS NEWS (Nov. 7, 2020), <https://www.cbsnews.com/news/joe-biden-wins-2020-election-46th-president-united-states/>; Scott Detrow & Asma Khalid, *Biden Wins Presidency, According to AP, Edging Trump in Turbulent Race*, NPR (Nov. 7, 2020), <https://www.npr.org/2020/11/07/928803493/biden-wins-presidency-according-to-ap-edging-trump-in-turbulent-race>.

¹¹ See Trump Tweet Compilation, *supra* note 9, at 2 (Group Ex. 7) (Nov. 7, 2020 at 10:36 AM ET), <https://twitter.com/realDonaldTrump/status/1325099845045071873>.

¹² January 6th Report, *supra* note 7, at 205-06 (Ex. 8) (reporting that lead data expert Matt Oczkowski informed Trump he did not have enough votes to win); *id.* at 374-76 (reporting that Attorney General William Barr informed Trump is fraud claims lacked merit); *id.* at 204 (reporting campaign lawyer Alex Cannon told Trump Chief of Staff he had not found evidence of voter fraud sufficient to change results in key states).

¹³ *Id.* at 377; Michael Balsamo, *Disputing Trump, Barr says no widespread election fraud*, ASSOCIATED PRESS (June 28, 2022), <https://apnews.com/article/barr-no-widespread-election-fraud-b1f1488796c9a98c4b1a9061a6c7f49d>.

prolong his stay in office. During the weeks leading up to January 6, 2021, Trump oversaw, directed, and encouraged the commission of election fraud by means of a “fake elector” scheme under which seven states that Trump lost would submit an “alternate” slate of electors as a pretext for Vice President Pence to decline to certify the actual electoral vote on January 6.¹⁴ In early December, Trump called the Chairwoman of the Republican National Committee, Ronna Romney McDaniel, to enlist the RNC’s support in gathering a slate of electors for Trump in states where President-elect Biden had won the election but legal challenges to the election results were underway.¹⁵ On December 14, 2020, at Trump’s direction, fraudulent electors convened sham proceedings in seven targeted states where President-elect Biden had won a majority of the votes (Arizona, Georgia, Michigan, Nevada, New Mexico, Pennsylvania, and Wisconsin) and cast fraudulent electoral ballots in favor of Trump.¹⁶

That same day, the *actual* presidential electors convened in all 50 states and in D.C. to cast their official electoral votes. They voted 306-232 for President Biden and against Trump.¹⁷ Also on that day, Attorney General Barr, who continued to refuse to support Trump’s ongoing election fraud, resigned as head of the Department of Justice (“DOJ”), and Trump appointed Jeffrey Rosen as acting attorney general and Richard Donoghue as acting deputy attorney general.¹⁸

Between December 23, 2020, and early January 2021, Trump repeatedly attempted to speak with Rosen in an effort to enlist his support for the purported election fraud.¹⁹ On December

¹⁴ January 6th Report, *supra* note 7, at 341-42 (Ex. 8).

¹⁵ *Id.* at 346.

¹⁶ *Id.* at 341.

¹⁷ National Archives, *2020 Electoral College Results*, <https://www.archives.gov/electoral-college/2020>.

¹⁸ January 6th Report, *supra* note 7, at 380-81 (Ex. 8).

¹⁹ *Id.* at 383.

27, 2020, when Rosen told Trump that “DOJ can’t and won’t snap its fingers and change the outcome of the election,” Trump responded: “Just say the election was corrupt and leave the rest to me and the Republican Congressmen.”²⁰ On December 31, 2020, Trump asked Rosen and Donoghue to direct the Department of Justice to seize voting machines.²¹ Rosen and Donoghue rejected Trump’s request, citing the Department of Justice’s lack of any legal authority to seize state voting machines.²²

On January 2, 2021, Jeffrey Clark, the acting head of the Civil Division and head of the Environmental and Natural Resources Division at the DOJ, who had met with Trump without prior authorization from the DOJ, told Rosen and Donoghue that Trump was prepared to fire them and to appoint Clark as the acting attorney general.²³ Clark asked Rosen and Donoghue to sign a draft letter to state officials recommending that the officials send an alternate slate of electors to Congress, and told them that if they did so, then Clark would turn down Trump’s offer and Rosen would remain in his position.²⁴ Rosen and Donoghue again refused.²⁵

Trump’s efforts to coerce public officials to assist in his fraudulent scheme to unlawfully overturn the election were not limited to federal officials. Following his election loss, Trump publicly and privately pressured state officials in various states around the country to overturn the election results. For example, on January 2, 2021, in a recorded telephone conversation, Trump pressured Georgia Secretary of State Brad Raffensperger to “find 11,780 votes” for him, and

²⁰ *Id.* at 386.

²¹ *Id.* at 396.

²² *Id.* at 396-97.

²³ *Id.* at 397.

²⁴ *Id.* at 389-90, 397.

²⁵ *Id.* at 397.

thereby fraudulently and unlawfully turn his electoral loss in Georgia to an electoral victory.²⁶ Trump's relentless false claims about election fraud and his public pressure and condemnation of election officials resulted in threats of violence against election officials around the country.²⁷ When Georgia election official Gabriel Sterling publicly warned Trump during a press conference to "stop inspiring people to commit potential acts of violence" or "[s]omeone's going to get killed,"²⁸ Trump did the opposite, retweeting a video of the press conference and repeating the same rhetoric regarding the purportedly "[r]igged election."²⁹

On January 4, 2021, Trump and his then-attorney John Eastman met with then-Vice President Mike Pence and his attorney Greg Jacob to discuss Eastman's baseless legal theory that Pence might either reject votes on January 6 during the certification process, or suspend the proceedings so that states could reexamine the results.³⁰ As Trump later admitted, the decision to continue seeking to overturn the election after the failure of legal challenges was his alone.³¹

On January 5, 2021, Eastman met privately with Jacob and requested that Pence reject the certification of election results. During the meeting, Eastman acknowledged that there was no support for his legal theory that Pence could reject the certification and acknowledged that his

²⁶ *Id.* at 263.

²⁷ *Id.* at 303-05 (providing non-exhaustive list of threats to officials in battleground states).

²⁸ Gabriel Sterling Press Conference (P-126), attached hereto as part of Group Exhibit 4, which consists of trial exhibits from *Anderson v. Griswold*. P-126 is the exhibit number in the Colorado proceedings.

²⁹ See Trump Tweet Compilation, *supra* note 9, at 3 (Group Ex. 7) (Dec 1, 2020 at 10:27 PM ET), <https://twitter.com/realDonaldTrump/status/1333975991518187521>.

³⁰ January 6th Report, *supra* note 7, at 428 (Ex. 8).

³¹ NBC News, *Meet the Press full broadcast – Sept. 17*, YOUTUBE (Sept. 17, 2023), https://www.youtube.com/watch?v=Kcsn_6Wln60, at 9:50 (Q: "Were you calling the shots, though, Mr. President, ultimately?" Trump: "As to whether or not I believed it was rigged? Oh, sure. It was my decision").

theory would lose 9-0 before the Supreme Court.³²

All the while, Trump continued to publicly lie, maintaining that the 2020 presidential election results were illegitimate due to fraud, and to set the false expectation that Pence had the authority to overturn the election. On December 4, 2020, Trump tweeted: “RIGGED ELECTION!”³³ On December 10, 2020, he tweeted: “How can you give an election to someone who lost the election by hundreds of thousands of legal votes in each of the swing states. How can a country be run by an illegitimate president?”³⁴ On December 15, 2020, Trump tweeted: “Tremendous evidence pouring in on voter fraud. There has never been anything like this in our Country!”³⁵ On January 5, 2021, he tweeted: “The Vice President has the power to reject fraudulently chosen electors.”³⁶

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

On December 11, 2020, the Supreme Court rejected a lawsuit brought by the State of Texas alleging that election procedures in four states had resulted in illegitimate votes.³⁷ The next morning, on December 12, 2020, Trump publicly attacked the Supreme Court order, tweeting that it was “a great and disgraceful miscarriage of justice,” and “WE HAVE JUST BEGUN TO

³² January 6th Report, *supra* note 7, at 449-50 (Ex. 8).

³³ See Trump Tweet Compilation, *supra* note 9, at 4 (Group Ex. 7) (Dec. 4, 2020 at 8:55 AM ET), <https://twitter.com/realDonaldTrump/status/1334858852337070083>.

³⁴ *Id.* at 4, (Dec. 10, 2020 at 9:26 AM ET), <https://twitter.com/realDonaldTrump/status/1337040883988959232>.

³⁵ *Id.* at 6 (Dec. 15, 2020 at 10:41 AM ET), <https://twitter.com/realDonaldTrump/status/1338871862315667456>.

³⁶ *Id.* at 12 (Jan. 5, 2021 at 11:06 AM ET), <https://twitter.com/realDonaldTrump/status/1346488314157797389?s=20>.

³⁷ *Texas v. Pennsylvania, et al.*, No. 22-155, Order (U.S. Sup. Ct., Dec. 11, 2020).

FIGHT!!!”³⁸

That same day, Ali Alexander of Stop the Steal, and Alex Jones and Owen Shroyer of Infowars led a march on the Supreme Court.³⁹ The crowd at the march chanted slogans such as “Stop the Steal!” “1776!” “Our revolution!” and Trump’s earlier tweet, “The fight has just begun!”⁴⁰ Trump responded to the march by tweeting, “Wow! Thousands of people forming in Washington (D.C.) for Stop the Steal. Didn’t know about this, but I’ll be seeing them! #MAGA.”⁴¹

Trump continued to issue tweets encouraging his supporters to “fight” to prevent the certification of the election results.⁴² On December 18, 2020, Trump tweeted: “.@senatemajldr and Republican Senators have to get tougher, or you won’t have a Republican Party anymore. We won the Presidential Election, by a lot. FIGHT FOR IT. Don’t let them take it away!”⁴³

Then, on December 19, 2020, Trump tweeted “Big protest in D.C. on January 6th. Be there, will be wild!”⁴⁴

C. In Response to Trump’s Call for a “Wild” Protest, Trump’s Supporters Planned Violence.

In response to Trump’s tweet calling for a “wild” protest, Twitter’s Trust and Safety Policy

³⁸ See Trump Tweet Compilation, *supra* note 9, at 5, (Group Ex. 7) (Dec 12, 2020 at 7:58 AM ET), <https://twitter.com/realDonaldTrump/status/1337743516294934529>; *id.* (Dec 12, 2020 at 8:47 AM ET), <https://twitter.com/realDonaldTrump/status/1337755964339081216>.

³⁹ See January 6th Report, *supra* note 7, at 505 (Ex. 8).

⁴⁰ *Id.*

⁴¹ See Trump Tweet Compilation, *supra* note 9, at 6 (Group Ex. 7) (Dec. 12, 2020 at 9:59 AM ET), <https://twitter.com/realDonaldTrump/status/1337774011376340992>.

⁴² “Far-right extremists view the word ‘fight’ in political terms. And ‘fight’ implies the need to commit violence to fend off threats.” *Simi Aff.*, *supra* note 5, at Ex. A, 83:20-22 (Ex. 1).

⁴³ See Trump Tweet Compilation, *supra* note 9, at 7 (Group Ex. 7) (Dec 18, 2020 at 9:14 AM ET), <https://twitter.com/realDonaldTrump/status/1339937091707351046>.

⁴⁴ *Id.* (Dec. 19, 2020 at 1:42 AM ET), <https://twitter.com/realDonaldTrump/status/1340185773220515840>.

team recorded “a ‘fire hose’ of calls to overthrow the U.S. government.”⁴⁵ Other militarized extremist groups began organizing for January 6th after Trump’s “will be wild” tweet. These include the Oath Keepers, the Proud Boys, the Three Percenter militias, and others.⁴⁶ An analyst at the National Capital Region Threat Intelligence Consortium observed that Trump’s tweet led to “a tenfold uptick in violent online rhetoric targeting Congress and law enforcement” and noticed “violent right-wing groups that had not previously been aligned had begun coordinating their efforts.”⁴⁷

Members of extremist groups logically and predictably understood Trump’s “will be wild” tweet as a call for violence in Washington, D.C. on January 6th.⁴⁸ On January 1, 2021, for example, a supporter tweeted to Trump that “The calvary [sic] is coming, Mr. President!”⁴⁹ Trump quoted that tweet and wrote back, “A great honor!”⁵⁰ Following Trump’s tweet, organizers planned two separate demonstrations for January 6, 2021. Kylie and Amy Kremer, a mother-daughter pair involved with Women for America First, planned a demonstration on the Ellipse (“Ellipse Demonstration”), a park south of the White House fence and north of Constitution Avenue and the National Mall in Washington, D.C.⁵¹ Ali Alexander, an extremist associated with the Stop the Steal group, planned an assemblage immediately outside the Capitol, on the court side and the steps of

⁴⁵ See January 6th Report, *supra* note 7, at 499 (Ex. 8).

⁴⁶ See *id.* at 499-501; Simi Aff., *supra* note 5, at Ex. A, 17:14-15 (Ex. 1).

⁴⁷ See January 6th Report, *supra* note 7, at 694 (Ex. 8).

⁴⁸ Simi Aff., *supra* note 5, at Ex. A, 80:13-81:1 (Ex. 1).

⁴⁹ See Trump Tweet Compilation, *supra* note 9, at 10 (Group Ex. 7) (Jan. 1, 2021 at 3:34 PM ET), <https://twitter.com/realDonaldTrump/status/1345106078141394944>.

⁵⁰ *Id.*

⁵¹ Ex. 11, Women For America First Ellipse Public Gathering Permit, NAT’L PARK SERV. (Jan. 5, 2021), https://www.nps.gov/aboutus/foia/upload/21-0278-Women-for-America-First-Ellipse-permit_REDAC_TED.pdf.

the building.⁵²

On December 29, 2020, Alexander tweeted, “Coalition of us working on 25 new charter buses to bring people FOR FREE to #JAN6 #STOPTHESTEAL for President Trump. If you have money for more buses or have a company, let me know. We will list our buses sometime in the next 72 hours. STAND BACK & STAND BY!”⁵³

Meanwhile, by late December, Trump, his White House staff, and his campaign became directly involved in planning the Ellipse Demonstration. Trump personally helped select the speaker lineup, and his campaign and joint fundraising committee made direct payments to rally organizers.⁵⁴

By December 29, 2020, Trump had formed and conveyed to allies a plan to order his supporters to march to the Capitol at the end of his speech in order to stop the certification of electoral votes.⁵⁵ Between January 2 and 4, 2021, Kremer and other organizers of the Ellipse Demonstration became aware from Mark Meadows that Trump intended to “order [the crowd] to the [C]apitol at the end of his speech.”⁵⁶ These organizers messaged each other that “POTUS is going to have us march there [the Supreme Court]/the Capitol,” and that the President was going to “call on everyone to march to the [C]apitol.”⁵⁷

In early January 2021, extremists began publicly referring to January 6 using increasingly threatening terminology. Some referred to a “1776” plan or option for January 6, suggesting by

⁵² January 6th Report, *supra* note 7, at 530 (Ex. 8); *President Trump Wants You in DC January 6*, WILDPROTEST.COM (2020), <https://web.archive.org/web/20201223062953/http://wildprotest.com/> (archived).

⁵³ *See* January 6th Report, *supra* note 7, at 532 (Ex. 8).

⁵⁴ *See id.* at 532-36, 786.

⁵⁵ *Id.* at 533.

⁵⁶ *Id.*

⁵⁷ *Id.*

analogy to the American Revolution that their plans for the January 6 congressional certification of electoral votes included violent rebellion.⁵⁸

On January 4, 2021, at a rally in Dalton, Georgia, Trump stated: “If you don’t fight to save your country with everything you have, you’re not going to have a country left.”⁵⁹ During the rally, Trump made clear his intentions that the transfer of power set for January 6, 2021 would not take place because “We’re going to fight like hell” and “take [the White House] back.”⁶⁰ He continued to urge the crowd to “never back down” and “never, ever surrender.” Several times during the rally, the crowd chanted “Fight for Trump! Fight for Trump!”⁶¹

By early January 2021, Trump anticipated that the crowd that was preparing to amass on January 6 at his behest would be large and ready to follow his command.⁶² In total, Trump had repeated his call for supporters to come to Washington, D.C. on January 6 at least twelve times.⁶³ On January 5, 2021, several events were held across D.C. on behalf of Stop the Steal, an entity formed in early November 2020 to mobilize around Trump’s claim that the election had been rigged. Speakers during these events made remarks indicating that the event to be held at the Capitol the next day would be violent.⁶⁴ On January 5, in response to these extremist

⁵⁸ Simi Aff. at Ex. A, 29:2-9 (Ex. 1) (“[W]ithin far-right extremist culture, [1776] has a very specific connotation and relationship to violence, and it really is a direct call to violence.”).

⁵⁹ Bloomberg Quicktake, *LIVE: Trump Stumps for Georgia Republicans David Perdue, Kelly Loeffler Ahead of Senate Runoff*, YOUTUBE (Jan. 4, 2021), <https://www.youtube.com/watch?v=9HisWmJJ3oE>.

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² Ex. 12, Letter from Donald J. Trump to The Select Committee to Investigate the January 6th Attack on the U.S. Capitol, at 2-3 (Oct. 13, 2022).

⁶³ See Trump Tweet Compilation, *supra* note 9, at 6-14 (Group Ex. 7)

⁶⁴ See January 6th Report, *supra* note 7, at 537-38 (Ex. 8) (reporting that Ali Alexander from Stop the Steal called on demonstrators to “rebel,” to “keep fighting for [Trump],” and to “shut this country down”); *id.* at 537 (reporting that Roger Stone referred to a “fight for the future of Western Civilization as we know it”); *id.* (reporting that speakers told the crowd they were at “war” and promising to “fight” and “bleed”).

demonstrations, Trump tweeted: “Our Country has had enough, they won’t take it anymore! We hear you (and love you) from the Oval Office. MAKE AMERICA GREAT AGAIN!”⁶⁵ That same evening, President Trump told White House staff that his supporters would be “fired up” and “angry” the next day.⁶⁶

Also on January 5, 2021, Trump authorized his campaign to issue the following false public statement: The Vice President and I are “in total agreement that the Vice President has the power to act.”⁶⁷

D. Trump and his Administration Knew of Supporters’ Plans to Use Violence to Forcefully Prevent Congress from Certifying the Election Results.

Trump, his closest aides, the Secret Service, and the Federal Bureau of Investigations were all aware that Trump supporters—whom Trump had incited with false claims of election fraud and veiled calls for violence—intended to commit violence at the Capitol on January 6 in an effort to stop the vote from being certified. On December 24, 2020, the Secret Service received from a private intelligence group a list of social media responses to Trump’s December 19 “will be wild” tweet, which indicated that supporters were planning for violence.⁶⁸ On December 26, 2020, the Secret Service received a tip that the Proud Boys had plans to enter Washington, D.C. armed. The Secret Service forwarded this tip to the Capitol Police.⁶⁹ On December 29, 2020, the Secret Service again forwarded warnings that pro-Trump demonstrators were being urged to occupy federal

⁶⁵ See Trump Tweet Compilation, *supra* note 9, at 13 (Group Ex. 7) (Jan. 5, 2021 at 5:05 PM ET), <http://www.twitter.com/realDonaldTrump/status/1346578706437963777>.

⁶⁶ See January 6th Report, *supra* note 7, at 539 (Ex. 8).

⁶⁷ *Id.* at 454.

⁶⁸ *Id.* at 61, 695.

⁶⁹ *Id.* at 61-62.

buildings.⁷⁰ On December 30, 2020, the Secret Service held a briefing that highlighted how the President’s December 19 “will be wild!” tweet was found alongside hashtags such as #OccupyCapitols and #WeAreTheStorm.⁷¹ Also on December 30, 2020, Jason Miller—a senior advisor to Trump—texted White House Chief of Staff Mark Meadows a link to thedonald.win website and stated, “I got the base FIRED UP.” The link was to a page with comments like “Gallows don’t require electricity” and “if the filthy commie maggots try to push their fraud through, there will be hell to pay.”⁷²

The Federal Bureau of Investigation also received many tips regarding the potential for violence on January 6.⁷³ One tip said:

They think they will have a large enough group to march into D.C. armed and will outnumber the police so they can’t be stopped. . . . They believe that since the election was stolen, that it’s their constitutional right to overtake the government, and during this coup, no U.S. laws apply. Their plan is to literally kill. Please, please take this tip seriously and investigate further.⁷⁴

On January 5, 2021, an FBI office in Norfolk, Virginia issued an alert to law enforcement agencies titled, “Potential for Violence in Washington, D.C., Area in Connection with Planned ‘StopTheSteal’ Protest on 6 January 2021.”⁷⁵

Trump was personally informed of these plans for violent action, but despite the expectation of violent action, Trump proceeded with his plans for January 6, 2021.⁷⁶

⁷⁰ *Id.*

⁷¹ *Id.* at 62.

⁷² *Id.* at 63.

⁷³ *Id.* at 695.

⁷⁴ Ex. 15, Heaphy Testimony, at 218:7-16.

⁷⁵ See January 6th Report, *supra* note 7, at 62 (Ex. 8).

⁷⁶ See *id.* at 63, 66-67, 539-40.

III. THE JANUARY 6, 2021 INSURRECTION.

A. The Two Demonstrations.

By 11:00 AM (Eastern Time) on the morning of January 6, 2021 the United States Capitol Police (“USCP”) reported “‘large crowd[s]’ around the Capitol building,” including approximately 200 members of the Proud Boys.⁷⁷ Other people headed to the Ellipse, where President Trump was scheduled to speak.

B. Trump’s Preparations as the Demonstrations Began.

On the morning of January 6, at 1:00 AM, Trump tweeted: “If Vice President @Mike_Pence comes through for us, we will win the Presidency. . . . Mike can send it back!”⁷⁸ Later that morning, Trump again tweeted that “All Mike Pence has to do is send [the votes] back to the States, AND WE WIN. Do it Mike, this is a time for extreme courage!”⁷⁹

At approximately 10:30 AM, Trump edited a draft of his speech for that afternoon’s Ellipse Demonstration (also known as the Save America Rally). Over lawyer Eric Herschmann’s objection, Trump personally added the text, “[W]e will see whether Mike Pence enters history as a truly great and courageous leader. All he has to do is refer the illegally-submitted electoral votes back to the states that were given false and fraudulent information where they want to recertify.”⁸⁰

⁷⁷ Ex. 9, U.S. Senate Comm. On Homeland Security & Gov’t Affairs, *Examining The U.S. Capitol Attack: A Review of the Security, Planning, and Response Failures on January 6 (Staff Report)*, at 22 (June 8, 2021), [hereinafter Rules & Admin. Review] https://www.hsgac.senate.gov/wp-content/uploads/imo/media/doc/HSGAC&RulesFullReport_ExaminingU.S.CapitolAttack.pdf (alteration in original).

⁷⁸ See Trump Tweet Compilation, *supra* note 9, at 15 (Group Ex. 7) (Jan. 6, 2021 at 1:00 AM ET), <https://twitter.com/realDonaldTrump/status/1346698217304584192>.

⁷⁹ *Id.* at 15 (Jan. 6, 2021 at 8:17 AM ET), <https://twitter.com/realDonaldTrump/status/1346808075626426371>.

⁸⁰ January 6th Report *supra* note 7, at 581-82 (Ex. 8).

C. The Increasingly Apocalyptic Demonstration at the Ellipse.

At the Ellipse Demonstration, speakers preceding Trump 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.”⁸¹ Trump’s lawyer Rudy Giuliani called for “trial by combat.”⁸²

Around 10:57 AM, the organizers of the demonstration played a two-minute pro-Trump video.⁸³ The video reflected flashing images of Joseph Biden and Nancy Pelosi while Trump voiced over, “For too long, a small group in our nation’s capital has reaped the rewards of government, while the people have borne the cost.”

At the Ellipse, an estimated 25,000 people refused to walk through the magnetometers at the entrance.⁸⁴ When Trump was informed that people were not being allowed through the monitors 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 [metal detectors] away.”⁸⁵

D. Trump Directed Supporters to March on the Capitol and Intimidate Pence and Congress In An Effort to Prevent Certification of the Results

⁸¹ The Hill, *Mo Brooks gives FIERY speech against anti-Trump Republicans, socialists*, YOUTUBE (Jan. 6, 2021), <https://youtu.be/ZKHwV6sdrMk>.

⁸² Wash. Post, *Trump, Republicans incite crowd before mob storms Capitol*, YOUTUBE (Jan. 6, 2021), <https://youtu.be/mh3cbd7niTQ>.

⁸³ Ryan Goodman, *Trump Film Ellipse Jan. 6, 2021*, VIMEO (Feb. 3, 2021), <https://vimeo.com/508134765>.

⁸⁴ See January 6th Report, *supra* note 7, at 585 (Ex. 8).

⁸⁵ *Id.* (alterations omitted); Heaphy Testimony, *supra* note 74, at 217:9-18 (Ex. 15).

of the Election.

Around 11:57 AM, Trump began his speech at the Ellipse.⁸⁶ For the first 15 minutes of his speech, he falsely repeated that he had been defrauded of the presidency, and claimed that he won “by a landslide.” He exhorted the crowd that “we will never give up, we will never concede. It doesn’t happen. You don’t concede when there’s theft involved.”⁸⁷ Throughout his speech, Trump repeatedly called out Vice President Pence by name, urging Pence to reject electoral votes from states Trump had lost.⁸⁸

Around 12:16 PM, Trump made his first call on demonstrators to head towards the Capitol: “After this, we’re going to walk down and I’ll be there with you. We’re going to walk down. We’re going to walk down any one you want, but I think right here. We’re going to walk down to the Capitol, and we’re going to cheer on our brave senators, and congressmen and women. We’re probably not going to be cheering so much for some of them because you’ll never take back our country with weakness. You have to show strength, and you have to be strong.”⁸⁹ Trump criticized Republicans for being “nice” and acting like a “boxer with his hands tied behind his back,” and told the crowd they were “going to have to fight much harder.”⁹⁰

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

⁸⁶ *Id.*

⁸⁷ *Rally on Electoral College Vote Certification*, at 3:33:49, C-SPAN (Jan. 6, 2021), <https://www.c-span.org/video/?507744-1/rally-electoral-college-vote-certification>.

⁸⁸ *E.g., id.* at 3:37:19, 3:46:29.

⁸⁹ *Id.* at 3:46:53.

⁹⁰ *Id.* at 3:46:10.

right now. I'm not hearing good stories.”⁹¹

For the remainder of his speech, Trump asserted that Biden's victory was illegitimate and that the process of transferring power to Biden could not take place, telling the crowd that Biden would be an “illegitimate president”⁹² and urging them to “fight like hell” because “if you don't fight like hell, you're not going to have a country anymore.”⁹³ Trump supporters understood the calls to “fight,” not as metaphorical but as a literal call to violence. And while in the midst of the calls to go to the Capitol to “fight” Trump also stated, “I know that everyone here will soon be marching over to the Capitol Building to peacefully and patriotically make your voices heard.” Professor Peter Simi has testified that this statement was part of a communication style aimed at preserving plausible deniability and was understood by Trump supporters to do nothing to diminish the call for fighting and violence.⁹⁴

Around 1:00 PM, towards the end of his speech, Trump again urged the crowd to march toward the Capitol: “So we're going to, we're going to walk down Pennsylvania Avenue . . . and we're going to the Capitol, and we're going to try and give . . . our Republicans, the weak ones because the strong ones don't need any of our help. We're going to try and give them the kind of pride and boldness that they need to take back our country. So let's walk down Pennsylvania Avenue.”⁹⁵ Following Trump's direction to march to the Capitol, members of the crowd shouted, “Storm the Capitol!”; “Invade the Capitol Building!”; and “Take the Capitol!”⁹⁶

⁹¹ *Id.* at 4:20:50.

⁹² *Id.* at 4:10:20.

⁹³ *Id.* at 4:41:26.

⁹⁴ Simi Aff., *supra* note 5, at Ex. A, 49:14-21, 59:7-17, 101:8-102:21 126:11-19, 221:10-21 (Ex. 1)

⁹⁵ *See Rally on Electoral College Vote Certification, supra* note 87, at 4:41:56.

⁹⁶ Ellipse Crowd Video (P-166), attached hereto as part of Group Exhibit 4, which consists of trial exhibits from *Anderson v. Griswold*. P-166 is the exhibit number in the Colorado proceedings.

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

E. Pro-Trump Insurrectionists Violently Attacked the Capitol.

By the time Trump ended his speech at the Ellipse, attackers had already begun swarming the Capitol building.⁹⁷ The attackers, following directions from Trump and his allies, shared the common purpose of preventing Congress from certifying the electoral vote.⁹⁸ Many of them also expressed a desire to assassinate Vice President Pence, the Speaker of the House, and other Members of Congress.⁹⁹

By 12:53 PM, attackers had breached the outer security perimeter that the Capitol Police (USCP) had established around the Capitol.¹⁰⁰ Many were armed with weapons including knives, tasers, pepper spray, and firearms.¹⁰¹ Some wore full body armor and other tactical gear.¹⁰² Many used flagpoles, signposts, or other weapons to attack police officers defending the Capitol.¹⁰³

Following the initial breach, the crowd flocked into the Capitol West Front grounds. Attackers began climbing and scaling the Capitol building.¹⁰⁴ Around 12:55 PM, Capitol Police called on all available units to the Capitol to assist with the breach. Attackers clashed violently with police officers on the scene.¹⁰⁵

⁹⁷ January 6th Report, *supra* note 7, at 577 (Ex. 8).

⁹⁸ *See Rally on Electoral College Vote Certification*, *supra* note 87; Ex. 2, Hodges Affidavit, at Ex. A, 71:17-21, 77:6-15; Ex. 14, Pigeon Testimony, at 200:25-201:11.

⁹⁹ January 6th Report *supra* note 7, at 642, 655 (Ex. 8).

¹⁰⁰ Rules & Admin. Review, *supra* note 77, at 23 (Ex. 9).

¹⁰¹ Hodges Aff., *supra* note 98, at Ex. A, 74:2-8, 75:15-76:1 (Ex. 2); January 6th Report, *supra* note 7, at 640-42 (Ex. 8).

¹⁰² Hodges Aff., *supra* note 98, at Ex. A, 75:15-76:1 (Ex. 2); Pigeon Testimony, *supra* note 98, at 200:9-17 (Ex. 14).

¹⁰³ Hodges Aff., *supra* note 98, at Ex. A, 74:4-10; 75:15-76:4, 105:25-106:24 (Ex. 2); Pigeon Testimony, *supra* note 98, at 201:22-202:5, 220:23-221:2, 224:25-225:2 (Ex. 14).

¹⁰⁴ Rules & Admin Review, *supra* note 77, at 24 (Ex. 9).

¹⁰⁵ *Id.* at 23; Pigeon Testimony, *supra* note 98, at 217:15-218:5 (Ex. 14).

As the invasion was mounting, inside the Capitol, Congress was in session to certify electoral votes in accordance with the Electoral Count Act and the Twelfth Amendment to the U.S. Constitution. At approximately 1:12 PM, the House and the Senate separated to debate objections to the certification of Arizona's Electoral College votes.¹⁰⁶

Rioters soon pushed through the United States Capitol Police perimeter and began scaling the walls of the Capitol. Around 1:50 PM, the on-site D.C. Metropolitan Police Department incident commander officially declared a riot at the Capitol.¹⁰⁷ At that point, law enforcement still held the building, and Congress was still able to function. But that soon changed.

By 2:06 PM, attackers reached the Rotunda steps.¹⁰⁸ By 2:08 PM, attackers reached the House Plaza.¹⁰⁹ By 2:11 PM, the West Front and northwest side of the Capitol had been breached through the barricades. Attackers smashed the first floor windows, which were big enough to climb through. Two individuals kicked open a nearby door to let others into the Capitol.¹¹⁰ Many attackers demanded the arrest or murder of various elected officials who refused to participate in their attempted coup.¹¹¹

Throughout the roughly 137 minutes of the attack, police defending the Capitol were viciously attacked.¹¹² While not all who stormed the Capitol personally used violence against law enforcement, a large number did, and the combined mass overwhelmed the police and prevented

¹⁰⁶ Rules & Admin Review, *supra* note 77, at 24 (Ex. 9).

¹⁰⁷ *Id.* at 24.

¹⁰⁸ *Id.*

¹⁰⁹ *Id.*

¹¹⁰ *Id.* at 24-25.

¹¹¹ January 6th Report *supra* note 7, at 655 (Ex. 8).

¹¹² Pigeon Testimony, *supra* note 98, at 201:22-202:5, 208:6-22, 217:15-218:5 (Ex. 14); Hodges Aff., *supra* note 98, at Ex. A, 103:22-104:5 (Ex. 2).

the execution of lawful authority.¹¹³

F. The Fall of the United States Capitol.

Around 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.¹¹⁴ By approximately 2:30 PM, the attack had succeeded in stopping the legal process for counting and certifying electoral votes.¹¹⁵

Around 2:43 PM, attackers broke the glass of a door to the Speaker's lobby, which would give them direct access to the House chamber.¹¹⁶ There, officers barricaded themselves with furniture and weapons to prevent the attackers' entry.¹¹⁷ Around ten minutes later, attackers successfully breached the Senate chamber.¹¹⁸ By this point, both the House Chamber and Senate Chamber were under the control of the attackers.

Throughout the attack, Senators, Representatives, and staffers were forced to flee the House chamber and seclude themselves as attackers rampaged through the building.¹¹⁹ Due to the ongoing assault, Congress was unable to function or exercise its constitutional obligations. The attack successfully obstructed Congress from certifying the votes, temporarily blocking the peaceful transition of power from one presidential administration to the next. For the first time in the history of our nation, an insurrection had succeeded in seizing the seat of government and

¹¹³ Rules & Admin. Review, *supra* note 77, at 24 (Ex. 9); Pigeon Testimony, *supra* note 98, at 211:25-213:2 (Ex. 14); Hodges Aff., *supra* note 98, at Ex. A, 79:7-20 (Ex. 2).

¹¹⁴ *Id.* at 25; Ex. 16, Swalwell Testimony, at 141:3-20.

¹¹⁵ Swalwell Testimony, *supra* note 114, at 141:3-20 (Ex. 16).

¹¹⁶ Rules & Admin. Review, *supra* note 77, at 25 (Ex. 9).

¹¹⁷ *Id.* at 25-26 (Ex. 9); Swalwell Testimony, *supra* note 114, at 145:6-12 (Ex. 16).

¹¹⁸ Rules & Admin. Review, *supra* note 77, at 25-26 (Ex. 9).

¹¹⁹ Swalwell Testimony, *supra* note 114, at 141:3-147:14 (Ex. 16).

preventing its functioning.

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

Early during the attack, by approximately 1:21 PM, Trump was informed by staffers in the White House that television broadcasts of his speech had been cut to instead show the violence at the Capitol.¹²⁰

After this, Trump immediately began watching the Capitol attack unfold on live news in the private dining room of the White House.¹²¹ Shortly after, White House Acting Director of Communications Ben Williamson sent a text to Chief of Staff Mark Meadows recommending that Trump issue a tweet about respecting Capitol Police.¹²²

At 2:24 PM, at the height of violence, Trump made his first public statement during the attack. Against his advisors' recommendation above, rather than make any effort to stop the mob's attack, he encouraged and provoked the crowd further 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!"¹²³

Trump's 2:24 PM tweet "immediately precipitated further violence at the Capitol." Immediately after it, "the crowds both inside and outside of the Capitol building violently surged forward."¹²⁴

¹²⁰ See January 6th Report, *supra* note 7, at 592 (Ex. 8).

¹²¹ *Id.* at 593.

¹²² *Id.* at 595.

¹²³ Trump Tweet Compilation, *supra* note 9, at 16 (Group Ex. 7) (Jan. 6, 2021 at 2:24 PM ET), <https://twitter.com/usatgraphics/status/1347376642956603392?s=20>; <https://web.archive.org/web/20210106192450/https://twitter.com/realDonaldTrump/status/1346900434540240897>; January 6th Report, *supra* note 7, at 429 (Ex. 8).

¹²⁴ See January 6th Report, *supra* note 7, at 86 (Ex. 8).

Thirty seconds after the tweet, attackers who were already inside the Capitol opened the East Rotunda door. And thirty seconds after that, attackers breached the crypt one floor below Vice President Pence.¹²⁵ At 2:25 PM, the Secret Service determined it needed to evacuate the Vice President from his office to a more secure location. At one point during this process, attackers were within forty feet of him.¹²⁶

Shortly after Trump's tweet, Cassidy Hutchinson (assistant to White House Chief of Staff Mark Meadows) and Pat Cipollone (White House Counsel) expressed to Meadows their concern that the attack was getting out of hand and that Trump must act to stop it. Meadows responded, "You heard him, Pat He thinks Mike deserves it. He doesn't think they're doing anything wrong."¹²⁷

Around 2:26 PM, Trump made a call to Republican leaders trapped within the Capitol. He did not ask about their safety or the escalating situation but instead asked whether any objections had been cast against the electoral count.¹²⁸ Around the same time, Trump called House Leader Kevin McCarthy regarding any such objections. McCarthy urged Trump on the phone to make a statement and to instruct the attackers to cease and withdraw. Trump declined to make a statement directing the attackers to withdraw. Instead, Trump responded with words to the effect of, "Well, Kevin, I guess they're just more upset about the election theft than you are."¹²⁹

Within ten minutes after Trump's tweet about Pence's purported lack of "courage," thousands of attackers "overran the line on the west side of the Capitol that was being held by the

¹²⁵ *Id.* at 465.

¹²⁶ *Id.* at 466.

¹²⁷ *Id.* at 596.

¹²⁸ *Id.* at 597-98.

¹²⁹ *Id.* at 598.

Metropolitan Police Force’s Civil Disturbance Unit, the first time in history of the DC Metro Police that such a security line had ever been broken.”¹³⁰

Throughout the time Trump sat watching the attack unfold, multiple relatives, staffers, and officials—including McCarthy, Trump’s daughter Ivanka, and attorney Eric Herschmann—tried to convince Trump to make a direct statement telling the attackers to leave the Capitol.¹³¹ At 2:38 PM, Trump tweeted: “Please support our Capitol Police and Law Enforcement. They are truly on the side of our Country. Stay peaceful!”¹³² Many attackers saw this tweet but understood it *not* to be an instruction to withdraw from the Capitol, and the attack raged on.¹³³

Around 3:05 PM, Trump was informed that a Capitol Police officer fatally shot one Ashli Babbitt. Babbitt had been attempting to forcibly enter the Speaker’s Lobby adjacent to the House chamber.¹³⁴

Although the force and ferocity of the assault overwhelmed the U.S. Capitol Police, Trump did not himself order any additional federal military or law enforcement personnel to help retake the Capitol.¹³⁵

After 3:00 PM, the Department of Homeland Security, the Bureau of Alcohol, Tobacco, Firearms, and Explosives and FBI agents, and police from Virginia and Maryland, joined Capitol Police to help regain control of the Capitol.¹³⁶

¹³⁰ *Id.* at 86; *see also* Hodges Aff., *supra* note 98, at Ex. A, 103:12-104:5 (Ex. 2).

¹³¹ *Id.* at 599, 601-04.

¹³² *See* Trump Tweet Compilation, *supra* note 9, at 16 (Group Ex. 7) (Jan 6, 2021 at 2:38 PM ET), <https://twitter.com/realDonaldTrump/status/1346904110969315332?lang=en>.

¹³³ *See, e.g.*, Simi Aff., *supra* note 5, at Ex. A, 78:18-23 (Ex. 1).

¹³⁴ *See* January 6th Report, *supra* note 7, at 91 (Ex. 8).

¹³⁵ *See* January 6th Report, *supra* note 7, at 6-7, 595 (Ex. 8); Ex.10, The Daily Diary of President Donald J. Trump, January 6, 2021; Ex. 13, Banks Testimony, at 255:21-256:18.

¹³⁶ Rules & Admin. Review, *supra* note 77, at 26 (Ex. 9).

Throughout this period, a public statement from Trump directing the attackers to disperse could have halted the attack. In fact, when he finally *did* issue such a statement, after multiple deaths and after the tides were starting to turn against his violent mob as more law enforcement arrived, it had precisely that effect. At 4:17 PM, nearly 187 minutes after attackers first broke into the Capitol, Trump released a video on Twitter directed to those currently at the Capitol. In this video, he stated: “I know your pain. I know your hurt. . . . We love you. You’re very special, you’ve seen what happens. You’ve seen the way others are treated. . . . I know how you feel, but go home, and go home in peace.”¹³⁷

Immediately after Trump uploaded the video to Twitter, the attackers began to disperse from the Capitol and cease the attack.¹³⁸ Attackers were streaming the video. One attacker, Jacob Chansley, announced into a bullhorn, “I’m here delivering the president’s message: Donald Trump has asked everybody to go home.” Other attackers acknowledged, “That’s our order” or “He says go home. He says go home.”¹³⁹ Group leaders from the Proud Boys and members of the Oath Keepers texted about the message. An Oath Keeper texted other members of the group saying, “Gentleman [sic], Our Commander-in-Chief has just ordered us to go home.”¹⁴⁰

Around 5:20 PM, the D.C. National Guard began arriving.¹⁴¹ This was not because Trump ordered the National Guard to the scene; he never did.¹⁴² Rather, Vice President Pence—who was not actually in the chain of command of the National Guard—ordered the National Guard to assist

¹³⁷ January 6th Report, *supra* note 7, at 579-80 (Ex. 8); *President Trump Video Statement on Capitol Protestors*, C-SPAN (Jan. 6, 2021), <https://www.c-span.org/video/?507774-1/president-trump-video-statement-capitol-protesters>.

¹³⁸ January 6th Report, *supra* note 7, at 606 (Ex. 8).

¹³⁹ *Id.*

¹⁴⁰ *Id.* at 579.

¹⁴¹ *Id.* at 747.

¹⁴² Banks Testimony, *supra* note 135, at 255:21-256:18 (Ex. 13).

the beleaguered police and rescue those trapped at the Capitol.¹⁴³

At 6:01 PM, Trump issued the final tweet of the day in which he stated that: “These are the things and events that happen when a sacred landslide election victory is so unceremoniously & viciously stripped away from great patriots who have been badly & unfairly treated for so long. Go home with love & in peace. Remember this day forever!”¹⁴⁴

Vice President Pence was not able to reconvene Congress until 8:06 PM, nearly six hours after the process had been obstructed.¹⁴⁵ Even after Congress reconvened, Trump’s attorney Eastman continued to urge Pence to delay the certification of the electoral results.¹⁴⁶ Ultimately, though six Senators and 121 Representatives voted to reject Arizona’s electoral results,¹⁴⁷ and seven Senators and 138 Representatives voted to reject Pennsylvania’s results,¹⁴⁸ Biden’s election victory was finally certified at 3:32 AM, January 7, 2021.¹⁴⁹

Professor Peter Simi, an expert in political extremism testified that the Trump supporters participating in January 6 understood that Trump’s calls to “fight” were literal calls for violence and his communications to them incited the events at the Capitol, based on the history and pattern of Trump’s communications and extremist culture.¹⁵⁰ 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

¹⁴³ January 6th Report, *supra* note 7, at 578, 724 (Ex. 8).

¹⁴⁴ *Id.* at 607.

¹⁴⁵ *Id.* at 467.

¹⁴⁶ *Id.* at 469.

¹⁴⁷ 167 Cong. Rec. H77 (daily ed. Jan. 6, 2021), <http://bit.ly/Jan6CongRec>.

¹⁴⁸ *Id.* at H98.

¹⁴⁹ January 6th Report, *supra* note 7, at 669 (Ex. 8); Swalwell Testimony, *supra* note 114, at 169:11-20 (Ex. 16).

¹⁵⁰ Simi Aff., *supra* note 5, at Ex. A, 49:14-21, 59:7-17, 101:20-102:6, 126:11-19, 221:10-21 (Ex. 1).

following the riot.¹⁵¹

IV. TRUMP REMAINS UNREPENTANT AND WOULD DO IT AGAIN.

On May 10, 2023, during a CNN town hall, Trump maintained his position that the 2020 presidential election was a “rigged election,”¹⁵² stated his inclination to pardon “many of” the January 6th rioters who have been convicted of federal offenses,¹⁵³ and acknowledged that he had control of the January 6th attackers, who “listen to [him] like no one else.”¹⁵⁴

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

Instead, Trump has continued to defend and praise the attackers. As recently as November 2023, Trump decried the prison sentences January 6 attackers received for their criminal activity, referring to them as “hostages.” At a 2024 presidential campaign event he stated: “I call them the J6 hostages, not prisoners. I call them the hostages, what’s happened. And it’s a shame.”¹⁵⁵

On December 3, 2022, in a post on social media website Truth Social, Trump called for “termination of all rules, regulations, and articles, even those found in the Constitution.”¹⁵⁶

¹⁵¹ January 6th Report, *supra* note 7, at 711 (Ex. 8).

¹⁵² *Donald Trump CNN Townhall Kaitlan Collins 10 May 2023 Ep*, at 42:13, DAILYMOTION (May 11, 2023), <https://www.dailymotion.com/video/x8kup36> [hereinafter *Trump CNN Townhall*]; *see also* CNN, *READ: Transcript of CNN’s town hall with former President Donald Trump* (May 11, 2023), <https://www.cnn.com/2023/05/11/politics/transcript-cnn-town-hall-trump/index.html>.

¹⁵³ *Trump CNN Townhall*, *supra* note 152, at 13:22.

¹⁵⁴ *Id.* at 8:24.

¹⁵⁵ *Former President Trump Campaigns in Houston*, at 5:05, C-SPAN (Nov. 2, 2023), <https://www.c-span.org/video/?531400-1/president-trump-campaigns-houston>.

¹⁵⁶ Donald J. Trump (@realDonaldTrump), TRUTH SOCIAL (Dec. 3, 2022, 6:44 AM), <https://truthsocial.com/@realDonaldTrump/posts/109449803240069864>.

OBJECTION REVIEW STANDARD

When evaluating an objection to a candidate’s nomination papers, the Board may consider documentary evidence, testimonial evidence, and evidence presented through affidavits. *See* SOEB Rules of Procedure 2024, at §10(a)(1). “Generally, the objector must bear the burden of proving by operation of law and by a preponderance of the relevant and admissible evidence” that the objection is true and the petition is invalid. *Id.* at 11(b). Here, Objectors have thoroughly supported their petition with these categories of admissible evidence; judgment can be rendered based on the objection alone. This is true, even before taking into account that the Board not “bound by the rules of evidence which prevail in the circuit courts of Illinois,” meaning that admissibility decisions can be made more flexibly based on discretion of the Board and hearing officer. *Id.* §10(a)(2). This Motion, however, supplements the original filing with additional evidence and conclusively demonstrates that application of the governing legal standards direct granting the Objection. Summary judgment is appropriate, where, as here, “the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” 735 ILCS 5/2-1005(c); *see also Seymour v. Collins*, 2015 IL 118432, ¶ 42.

ARGUMENT

Section Three of the Fourteenth Amendment 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 or rebellion against the same, or [gave] aid or comfort to the enemies thereof.” U.S. Const. amend. XIV, § 3. Undisputed facts—or facts that cannot be meaningfully disputed—show that Section 3 disqualifies Candidate Trump from the office of the presidency because: (1) while President, he “engaged in insurrection” by inciting, supporting, encouraging, and bolstering the

violent January 6, 2021 insurrection at the United States Capitol, and also gave aid to the insurrectionists engaging in the attack; (2) the presidency is an “office” under the United States; (3) as the President, Trump was an “officer of the United States;” and (4) he took the presidential oath “to support the Constitution of the United States.” Because there are no genuine issues as to any material facts, the objectors are entitled to summary judgment holding that Candidate Trump’s Nomination Papers are legally and factually insufficient, disqualifying him from inclusion on the official ballot as a candidate for the Republican Nomination for the Office of President of the United States for the March 19, 2024 General Primary Election of the November 5, 2024 General Election.

I. THE BOARD IS AUTHORIZED AND OBLIGATED TO HEAR AND RULE ON THIS OBJECTION.

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

Under the Illinois Election Code, presidential primary candidates, like candidates for other offices, *must include* with their nomination papers a statement of candidacy that, among other things, states that the candidate “is qualified for the office specified.” 10 ILCS 5/7-10. The Election Code specifies candidate qualifications, as do the constitutions of the State of Illinois and the United States. *See, e.g., Goodman v. Ward*, 241 Ill. 2d 398, 407 (2011) (striking candidate’s name

from ballot and holding electoral board erred in denying objection where candidate falsely stated he was “qualified” for office despite not meeting eligibility requirements set forth in Illinois Constitution); U.S. Const. art. II, § 1, cl. 5 (specifying age, residency, and citizenship qualifications for Office of President); U.S. Const. Amend. XXII, § 1 (forbidding the election of a person to the office of President more than twice); U.S. Const. Amend. XIV, § 3 (requiring disqualification of candidates for public office who took an oath to uphold the Constitution and then engaged in or supported insurrection against the United States or gave aid or comfort to those who have).

The Illinois Supreme Court in *Goodman* directed that objections based on constitutionally-specified qualifications *must be evaluated*, including objections that a candidate has improperly sworn that they meet constitutional qualifications for the office for which they seek candidacy. *Goodman*, 241 Ill. 2d at 409-10 (“The statutory requirements governing statements of candidacy and oaths are mandatory If a candidate’s statement of candidacy does not substantially comply with the statute, the candidate is not entitled to have his or her name appear on the primary ballot.”). Decisions of other Illinois courts track *Goodman* and recognize that electoral boards *must apply* constitutional criteria governing ballot placement. *See Harned v. Evanston Mun. Officers Electoral Bd.*, 2020 IL App (1st) 200314, ¶ 23 (“While petitioner is correct that electoral boards do not have authority to declare statutes unconstitutional, they are required to decide, in the first instance, if a proposed referendum is permitted by law, even where constitutional provisions are implicated.”); *Zurek v. Petersen*, 2015 IL App (1st) 150456, ¶ 33-35 (unpublished) (recognizing that while “the Board does not have the authority to declare a *statute* unconstitutional[, this] does not mean that the Board had no authority to consider the constitutionally-based challenges” and that to determine whether the referendum “was valid and whether the objections should be sustained or overruled,

the Board was required to determine if the referendum was authorized by a statute or the constitution”).

Consistent with these decisions, the State Officers Electoral Board has frequently evaluated objections to presidential candidates based on constitutional candidacy requirements. *See, e.g., Freeman v. Obama*, No. 12 SOEB GP 103 (Feb. 2, 2012)¹⁵⁷ (evaluating objection that candidate did not meet qualifications for office of President set out in Article II, Section 1 of the U.S. Constitution); *Jackson v. Obama*, No. 12 SOEB GP 104 (Feb. 2, 2012) (same); *Graham v. Rubio*, No. 16 SOEB GP 528 (February 1, 2016) (State Officers Electoral Board determining eligibility based on whether facts presented about candidate established he met natural born citizen requirement of U.S. Constitution); *Graham v. Rubio*, No. 16 SOEB GP 528 (Hearing Officer Findings and Recommendations, adopted by the Electoral Board, determining that the Electoral Board was acting within the scope of its authority in reviewing the adequacy of the Candidate’s Statement of Candidacy and evaluating whether it was “invalid because the Candidate is not legally qualified to hold the office of President” based on criteria in the U.S. Constitution); *see also Socialist Workers Party of Illinois v. Ogilvie*, 357 F. Supp. 109, 113 (N.D. Ill. 1972) (approving Electoral Board’s decision to remove from ballot presidential candidate who did not meet constitutional age qualification and denying motion for preliminary injunction to enjoin decision).

Article II, Section 1, Clause 5 of the U.S. Constitution requires the President to be a natural-born citizen, at least thirty-five years of age, and a resident of the United States for at least fourteen years. Section 1 of the Twenty-Second Amendment provides that no person can be elected President more than twice. Section 3 of the Fourteenth Amendment disqualifies from public office

¹⁵⁷ The Electoral Board decisions cited here are attached hereto as part of Group Exhibit 6.

any individual who has taken an oath to uphold the U.S. Constitution and then engages in insurrection or rebellion against the United States, or gives aid or comfort to those who have. Objections to a candidate’s inclusion on the primary ballot, asking the Electoral Board to apply these constitutional requirements, fall directly within the Electoral Board’s jurisdiction and mandatory duties.

The Board’s evaluation of this objection to the Candidate’s constitutional eligibility criteria is governed by the Election Code and the Illinois Supreme Court’s direction in *Goodman* that the board *must* evaluate a candidate’s statement of candidacy that they are “qualified” for the office at the time the nomination papers are filed because “statutory requirements governing statements of candidacy and oaths are mandatory.” 241 Ill. 2d at 409-10; *see also Delgado v. Bd. of Election Comm’rs of City of Chicago*, 224 Ill. 2d 481, 485-86 (2007) (differentiating the impermissible action of an electoral board’s “question[ing] [the] validity” of underlying legal prerequisites from the required action of an electoral board *applying* a constitutional provision).

To do so, the Electoral Board has the ability, and indeed the clear obligation, when necessary to evaluate evidence and even resolve complex factual issues. The Board is obligated to “decide whether or not the certificate of nomination or nominating papers or petitions on file are valid or whether the objections thereto should be sustained” 10 ILCS 5/10-10. To fulfill that responsibility, the Board has the power to compel and weigh witness testimony—through live testimony or affidavits—as well as documentary evidence, such as books, papers, records, and other documents. *Id.* Electoral boards and their hearing officers indeed utilize this power to consider and evaluate the credibility of high volumes of witness testimony and documentary evidence in an expedited manner whenever necessary to fulfill their mandate. *See, e.g., Raila v. Cook Cnty. Officers Electoral Bd.*, 2018 IL App (1st) 180400-U, ¶¶ 17-27 (unpublished) (“the

hearing officer heard testimony from over 25 witnesses and the parties introduced over 150 documents and a short video clip,” and the hearing officer “issued a 68-page written recommendation that contained his summary of the testimony and documentary evidence”); *Muldrow v. Barron*, 2021 IL App (1st) 210248, ¶¶ 28-30 (electoral board properly made factual finding of widespread fraud based on determinations as to the credibility of witnesses’ testimony).

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

II. THE REASONED OPINION OF THE COLORADO SUPREME COURT, BASED ON THE SAME EVIDENCE, DIRECTS THE OUTCOME OF THIS OBJECTION.

By now, the objection raised by petitioners has been presented in multiple states throughout the country. The two states that have addressed the merits of the issues, Colorado and Maine, both determined—following the presentation of evidence with the opportunity for cross-examination, and extensive briefing of the legal issues—(a) that the events of January 6, 2021 constituted an “insurrection,” (b) that Trump “engaged in” that insurrection, and (c) that he is therefore ineligible for the Office of President of the United States. *See generally Anderson v. Griswold*, 2023 CO 63, 2023 WL 8770111 (Dec. 19, 2023); *In re Challenges of Rosen, Saviello, and Strimling, Gordin, and Royal*, (Me. Sec’y of State Dec. 28, 2023), *appeal remanded to Sec’y of State sub nom. Trump v. Bellows*, Docket No. AP-24-01 (Me. Super. Ct. Jan. 17, 2024) (Murphy, J). With those carefully reasoned, directly-on-point rulings as a guide, the Electoral Board should reach the same conclusions.

The Colorado Supreme Court decision, in which it reviewed factual findings issued by the trial court following a five-day trial, is particularly instructive. The Colorado Supreme Court

applied the identical constitutional standards raised here. Indeed, the persuasive authority that the Colorado opinion provides *based on the same evidence submitted with this motion*,¹⁵⁸ fully directs the same result. The thorough, well-reasoned decision concerning the same facts, evidence, and identical legal issues is highly persuasive, and there is no reason for the electoral board to depart from its conclusions. *See Kostal v. Pinkus Dermatopathology Lab., P.C.*, 357 Ill. App. 3d 381, 395 (1st Dist. 2005) (“Although they are not binding, comparable court decisions of other jurisdictions ‘are persuasive authority and entitled to respect.’”).

The Colorado Supreme Court had “little difficulty” concluding that substantial evidence supported the finding that the events of January 6th constituted an insurrection, noting the concerted and public use of force by a group of people for the purpose of preventing the peaceful transfer of power that day. *Anderson*, 2023 CO 63, ¶ 189. Then, in affirming the trial court’s finding that Trump “engaged in” the insurrection, the Colorado Supreme Court highlighted evidence—“the great bulk of which was undisputed”—showing, among other things, that Trump laid the groundwork prior to the November 2020 election to later claim that the election was rigged, sought to overturn the lawful results of that election, fanned the flames of his supporters with knowledge of their violent propensities, knew of the potential for violence on January 6th, issued tweets that put a target on the back of Vice President Pence, exhorted his followers to fight at the Capitol, and took no action to stop the attack or call in reinforcements despite knowledge that the Capitol was under attack. *Id.* ¶¶ 197-221; *see also* Maine Sec. of State Ruling, Ex. 5 (evaluating the same facts). Trump can provide no reason for the electoral board to reach a different finding here.

¹⁵⁸ Witness testimony from the Colorado proceedings is included in Exhibits 1-2 and 13-16. Trial exhibits from that testimony are included as part of Group Exhibit 4; video exhibits from that testimony have also been separately submitted in the folder titled “Colorado Trial Video Exhibits.” *See* Ex. 3, Fein Affidavit (providing testimony about witnesses, transcripts, and exhibits); *see also* Ex. 17, Sherman Affidavit.

In concluding that Trump’s engaging in an insurrection disqualified him for the Office of President under Section Three of the Fourteenth Amendment, the Colorado Supreme Court also persuasively dispatched with Candidate Trump’s various meritless attempts to avoid the plain effect of that constitutional provision. The court rejected, for example, the argument that Section Three of the Fourteenth Amendment is not enforceable without enacting legislation from Congress, recognizing that Section Three is—like the other provisions of the Reconstruction Amendments—self-executing, as it would be absurd to make those fundamental constitutional provisions dependent on congressional action. *Anderson*, 2023 CO 63, ¶ 106. The court also rejected that Section Three presents a non-justiciable political question because nothing in the text commits the task of assessing presidential candidate qualifications to Congress, and the standards for resolving Section Three claims are judicially discoverable and manageable. *Id.* ¶¶ 112-125. As for the notion that Section Three somehow does not apply to the Office of the President, the court explained that (a) the text and history of Section Three definitively establish that the President is an “office under the United States,” (b) the President is an “officer of the United States,” and (c) the presidential oath is an oath “to support the Constitution of the United States.” *Id.* ¶¶ 128-159. Finally, the court conclusively rejected the claim that Trump’s speech at the Ellipse—in which he exhorted the armed crowd to march to the Capitol and “fight like hell”—was somehow protected by the First Amendment, concluding that Trump’s speech encouraged the use of violence, that Trump intended that his speech would result in the use of violence, and that the imminent use of violence was the likely result of his speech. *Id.* ¶¶ 228-255.

Colorado and Maine are the only two states that have yet evaluated the evidence and ruled on the merits of a Section 3 challenge, and both found Trump disqualified. No court anywhere has found otherwise. Rather, the only courts that have reached a decision to *not* bar Trump from the

ballot in the face of a challenge to his eligibility have done so based on procedural grounds not applicable here. *See, e.g., Castro v. Scanlan*, 86 F.4th 947, 953 (1st Cir. 2023) (affirming dismissal based on lack of Article III standing required in federal courts); *Grove v. Simon*, 997 N.W.2d 81, 83 (Minn. 2023) (deferring issues to general election under Minnesota state challenge procedure); *LaBrant v. Sec’y of State*, ___ N.W.2d ___, 2023 WL 8656163, *16 & n.18 (Mich. Ct. App.) (same under Michigan state law), *leave to appeal denied*, No. 166470 (Mich. Dec. 27, 2023) (mem.); *State ex rel. Nelson v. Griffin-Valade*, No. S070658 (Or. Jan. 12, 2024) (deferring until after U.S. Supreme Court decision; Oregon’s primary is not until May 21), *available at* <https://freespeechforpeople.org/wp-content/uploads/2024/01/court-issued-court-issued-miscellaneous-1.pdf>; *Trump v. Bellows*, Docket No. AP-24-01 (Me. Super. Ct. Jan. 17, 2024) (Murphy, J.) (upon agreement by the parties, Maine Superior Court remanding to Maine Secretary of State until after U.S. Supreme Court Decision).

The highly persuasive decision of the Colorado trial court and Supreme Court, therefore, simplify the task of the Electoral Board here and guide the resolution of Petitioner’s objection.

III. THE FACTS ESTABLISH THAT TRUMP ENGAGED IN INSURRECTION AND IS THUS DISQUALIFIED FROM PUBLIC OFFICE.

A. The events of January 6 constituted an “insurrection” under Section 3.

At the January 6th attack, a violent, unified mob flooded the Capitol, brandishing the Confederate flag and other symbols of white supremacy, attacked law enforcement, broke into chambers threatening to kill Vice President Mike Pence, Speaker of the House Nancy Pelosi, and other leaders, ultimately overwhelmed law enforcement and seized control of the Capitol building. Candidate Trump cannot legitimately dispute that the events of January 6, 2021 qualify as an insurrection. Indeed, as he has explicitly admitted through counsel during his impeachment

hearings, “everyone agrees” that it was an insurrection.¹⁵⁹ “Everyone,” in this case, includes the United States Congress,¹⁶⁰ the Colorado Supreme Court in its detailed analysis of a Section 3 challenge, and at least fifteen federal judges who have presided over cases involving January 6.¹⁶¹

1. *Legal standard.*

Courts that have evaluated the meaning of “insurrection” under Section 3 have looked to both ordinary usage and historical context. What has emerged is universal recognition of a standard that encompasses the events of January 6, 2021. As recognized by the Colorado Supreme Court, “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.” *Anderson*, 2023 CO 63, ¶ 184 And the Colorado Supreme Court had “little difficulty” concluding that the events of January 6 met these criteria. *Id.* ¶ 185. *See also* Ruling of the Secretary of State, *In re: Challenges to Primary Nomination Petition of Donald J. Trump, Republican Candidate for*

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

¹⁶⁰ Act of Aug. 5, 2021, Pub. L. No. 117-32, 135 Stat 322. In a statute enacted by both houses, Congress declared the attackers were “insurrectionists.”

¹⁶¹ *United States v. Little*, 590 F. Supp. 3d 340, 344 (D.D.C. 2022); *United States v. Munchel*, 567 F. Supp. 3d 9, 13 (D.D.C. 2021); *United States v. Bingert*, 605 F. Supp. 3d 111, 115-16 (D.D.C. 2022); *United States v. Brockhoff*, 590 F. Supp. 3d 295, 298-99 (D.D.C. 2022); *United States v. Grider*, 585 F. Supp. 3d 21, 24 (D.D.C. 2022); *United States v. Puma*, 596 F. Supp. 3d 90 (D.D.C. 2022); *United States v. Rivera*, 607 F. Supp. 3d 1 (D.D.C. 2022); *United States v. DeGrave*, 539 F. Supp. 3d 184 (D.D.C. 2021); *United States v. Randolph*, 536 F. Supp. 3d 128 (E.D. Ky. 2021); *Matter of Giuliani*, 197 A.D.3d 1, 25 (2021); *O'Rourke v. Dominion Voting Sys. Inc.*, 571 F. Supp. 3d 1190, 1202 (D. Colo. 2021); *United States v. Hunt*, 573 F. Supp. 3d 779, 807 (E.D.N.Y. 2021); *Rutenburg v. Twitter, Inc.*, No. 4:21-CV-00548-YGR, 2021 WL 1338958, at *1 (N.D. Cal. Apr. 9, 2021); *O'Handley v. Padilla*, 579 F. Supp. 3d 1163, 1172, 1175-76 (N.D. Cal. 2022); *United States v. Munchel*, 991 F.3d 1273, 1275-79 (D.C. Cir. 2021).

President of the United States, at 24-25 (Dec. 28, 2023) (“Maine Sec. of State Ruling,” attached as Exhibit 5) (ruling that even if it applied Trump’s more demanding definition of “insurrection”—which it found to be unworkable and unsupported—“the events of January 6, 2021 meet that standard”); *State v. Griffin*, No. D-101-CV-2022-00473, 2022 WL 4295619, at *17 (N.M. Dist. Sep. 06, 2022) (defining “insurrection” as “an (1) assemblage of persons, (2) acting to prevent the execution of one or more federal laws, (3) for a public purpose, (4) through the use of violence, force, or intimidation, by numbers,” and finding that January 6 readily satisfied that standard).

In line with these decisions, the definitions and usage of the word “insurrection” contemporaneous with the enactment of Section 3 can be summarized to denote a “concerted, forcible resistance to the authority of government to execute the laws in at least some significant respect.” William Baude & Michael Stokes Paulsen, *The Sweep and Force of Section Three*, 172 U. Pa. L. Rev. ___, at 64 (forthcoming) (canvassing dictionary definitions, public and political usage, judicial decisions, and other sources);¹⁶² *see, e.g.*, President Lincoln, *Instructions for the Gov’t of Armies of the United States in the Field*, Gen. Orders No. 100 (Apr. 24, 1863), art. 149 (“Insurrection is the rising of people in arms against their government, or a portion of it, or against one or more of its laws, or against an officer or officers of the government. It may be confined to mere armed resistance, or it may have greater ends in view.”);¹⁶³ *see also The Prize Cases (The Amy Warwick)*, 2 Black (67 U.S.) 635, 666 (1862) (“Insurrection against a government may or may not culminate in an organized rebellion, but a civil war always begins by insurrection against the lawful authority of the Government.”).

¹⁶² Available at https://papers.ssrn.com//.cfm?abstract_id=4532751.

¹⁶³ Available at https://avalon.law.yale.edu/19th_century/lieber.asp#sec10.

To qualify as an insurrection, an uprising must be “so formidable as for the time being to defy the authority of the United States.” *In re Charge to Grand Jury*, 62 F. 828, 830 (N.D. Ill. 1894) (emphasis added). However, no minimum threshold of violence or level of armament is required. *See id.* (“It is not necessary that there should be bloodshed”); *see also Case of Fries*, 9 F. Cas. 924, 930 (C.C.D. Pa. 1800) (“military weapons (as guns and swords . . .) are not necessary to make such insurrection . . . because numbers may supply the want of military weapons, and other instruments may effect the intended mischief”). Even a failed attack with no chance of success can qualify as an insurrection. *See In re Charge to Grand Jury*, 62 F. at 830 (“It is not necessary that its dimensions should be so portentous as to insure probable success”); *see also Home Ins. Co. of N.Y. v. Davila*, 212 F.2d 731, 736 (1st Cir. 1954) (an insurrection “is no less an insurrection because the chances of success are forlorn”).

Moreover, although the insurrectionists must act in a concerted manner, they need not be highly organized. *See Home Ins. Co. of N.Y.*, 212 F.2d at 736 (“[A]t its inception an insurrection may be a pretty loosely organized affair. . . . It may start as a sudden surprise attack upon the civil authorities of a community with incidental destruction of property by fire or pillage, even before the military forces of the constituted government have been altered and mobilized into action to suppress the insurrection”).

The insurrection of January 6, 2021 was larger, more coordinated, and more violent than several insurrections that predated the enactment of Section 3 and informed its meaning. *See The Reconstruction Acts (I)*, 12 U.S. Op. Atty. Gen. 141, 160 (1867) (construing language identical to Section 3 as including “not only the late rebellion, but every past rebellion or insurrection which has happened in the United States”). For instance, Congress specifically cited the Whiskey Insurrection as an example of a previous insurrection during debate over Section 3, *see Cong.*

Globe, 39th Cong. 1st Sess. 2534 (1866) (Rep. Eckley), and though it initially boasted thousands of participants, virtually all fled before federal forces arrived, and it was “almost bloodless.” Indeed, Congress noted that though it was “small in comparison” to the Civil War, it nonetheless qualified as an insurrection. *Id.*; see also Robert Coakley, *The Role of Federal Military Forces in Domestic Disorders, 1789–1878*, at 35-66 (U.S. Army Ctr. of Mil. Hist. 1996) (recounting antebellum insurrections that involved loosely organized, lightly-armed groups and few deaths).¹⁶⁴

2. *The January 6 insurrection met the legal standard.*

The January 6 insurrection unquestionably qualifies as an insurrection under Section 3. Trump’s emphatic admission on this point should resolve the inquiry.¹⁶⁵ But it need not. As discussed above, the Colorado Supreme Court confirmed that January 6 constituted an insurrection after reviewing findings and evidence from a five-day trial—testimony and evidence that objectors also present in this motion. *Anderson*, 2023 CO 63, ¶¶ 4, 100-102; see also *supra* Part II.

January 6 involved actual and threatened use of force. As set forth in more detail in the Statement of Facts, a group of thousands descended on and forcibly entered the Capitol on January 6 with calls to “Storm the Capitol!”, “Invade the Capitol Building!”, and “Take the Capitol!”, and their action was so formidable that it overwhelmed law enforcement. Many in the mob arrived armed with weapons, including firearms, knives, tasers, and pepper spray, as well as armor, and tactical gear. And many others fashioned weapons out of flagpoles and signposts. The mob repeatedly and violently attacked police officers who were tasked with defending the Capitol.

¹⁶⁴ Section 3’s phrase “insurrection or rebellion against *the same*” is best read as an “insurrection or rebellion against [the Constitution of the United States]” (i.e., to block exercise of core constitutional functions of the federal government) but can also be read as an insurrection or rebellion against “the United States.” The January 6 insurrection satisfies both readings, so the distinction does not matter here.

¹⁶⁵ 167 Cong. Rec. S729 (Trump’s counsel stating “everyone agrees” that “there was a violent insurrection of the Capitol”).

More than 250 law enforcement officers were injured in the January 6 attacks and five police officers died following the assault on the Capitol.

Moreover, the group's actions were concerted and public, and aimed at impeding the peaceful transfer of power to the incoming president. Seeing Trump's tweets as a call to arms to block the peaceful transfer of power, militarized extremist groups began organizing for January 6. The attackers shared the common purpose of using violence to prevent Congress from certifying the electoral vote on January 6—as Congress is required to do by the Twelfth Amendment and as is necessary to accomplish a peaceful transfer of power. Indeed, upon breaching the Capitol, the mob immediately marched through the Capitol building toward the House and Senate chambers, where the certification of the presidential election was to take place. This breach succeeded in forcing both chambers into recess and obstructing Congress's certification of electoral votes. What is more, the mob directed much of its vitriol and threats of violence at Vice President Pence, who had the constitutional duty to oversee the electoral count. *See* U.S. Const. art. I, § 3, cl. 4; *id.* at art. II, § 1, cl. 3.

In short, January 6 undoubtedly qualifies as an insurrection. In fact, this insurrection included something that *no past insurrection* achieved: its violent seizure of the Capitol, obstructing and delaying an essential constitutional procedure. Even the Confederates never attacked the heart of the nation's capital, prevented a peaceful and orderly presidential transition of power, or took the U.S. Capitol.

B. Donald Trump engaged in the January 6 insurrection.

1. Courts overwhelmingly recognize Trump's responsibility for the January 6 insurrection.

As discussed above, *supra* Part II, the Colorado Supreme Court concluded that Trump “engaged” in insurrection under Section 3 based on “Trump’s direct and express efforts, over

several months, exhorting his supporters to march the Capitol to prevent what he falsely characterized as an alleged fraud on the people of this country”—efforts that he undertook “to aid and further a common unlawful purpose that he himself conceived and set in motion: prevent Congress from certifying the 2020 presidential election and stop the peaceful transfer of power.” *Anderson*, 2023 CO 63, ¶ 221. Evaluating the same set of facts, the Maine Secretary of State concurred. *See* Maine Sec. of State Ruling, Ex. 5, at 26-32.

In addition, at least nine federal judges to date have recognized that Trump had significant, direct responsibility for the January 6 insurrection. In a published opinion, one federal judge in the District of Columbia stated:

For months, the President led his supporters to believe the election was stolen. When some of his supporters threatened state election officials, he refused to condemn them. Rallies in Washington, D.C., in November and December 2020 had turned violent, yet he invited his supporters to Washington, D.C., on the day of the Certification. They came by the thousands. And, following a 75-minute speech in which he blamed corrupt and weak politicians for the election loss, he called on them to march on the very place where Certification was taking place.

...

President Trump’s January 6 Rally Speech was akin to telling an excited mob that corn-dealers starve the poor in front of the corn-dealer’s home. He invited his supporters to Washington, D.C., after telling them for months that corrupt and spineless politicians were to blame for stealing an election *from them*; retold that narrative when thousands of them assembled on the Ellipse; and directed them to march on the Capitol building—the metaphorical corn-dealer’s house—where those very politicians were at work to certify an election that he had lost. The Speech plausibly was, as [John Stuart] Mill put it, a “positive instigation of a mischievous act.”¹⁶⁶

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

¹⁶⁶ *Thompson v. Trump*, 590 F. Supp. 3d 46, 104, 118 (D.D.C 2022).

- “Based on the evidence, the Court finds it more likely than not that President Trump corruptly attempted to obstruct the Joint Session of Congress on January 6, 2021.”¹⁶⁷
- “The fact remains that [the defendant] and others were called to Washington, D.C. by an elected official; he was prompted to walk to the Capitol by an elected official. . . [the defendant was] told lies, fed falsehoods, and told that our election was stolen when it clearly was not.”¹⁶⁸
- “And as for the incendiary statements at the rally detailed in the sentencing memo, which absolutely, quite clearly and deliberately, stoked the flames of fear and discontent and explicitly encouraged those at the rally to go to the Capitol and fight for one reason and one reason only, to make sure the certification did not happen, those may be a reason for what happened, they may have inspired what happened, but they are not an excuse or justification.”¹⁶⁹
- “[B]ut we know, looking at it now, that they were supporting the president who would not accept that he was defeated in an election.”¹⁷⁰
- “And you say that you headed to the Capitol Building not with any intent to obstruct and impede congressional proceedings; but because the then-President, Trump, told protesters at the ‘stop the steal’ rally -- and I quote: After this, we’re going to walk down; and I will be there with you. We’re going to walk down. We’re going to walk down. I know that everyone here will soon be marching over to the Capitol Building to peacefully and patriotically make your voices heard. And you say that you wanted to show your support for and join then-President Trump as he said he would be marching to the Capitol; but, of course, didn’t.”¹⁷¹
- “[A]t the ‘Stop the Steal’ rally, then-President Trump eponymously exhorted his supporters to, in fact, stop the steal by marching to the Capitol. . . [h]aving followed then-President Trump’s instructions, which were in line with [the defendant’s] stated desires, the Court therefore finds that Defendant intended her presence to be disruptive to Congressional business.”¹⁷²

¹⁶⁷ *Eastman*, 594 F. Supp. 3d at 1193.

¹⁶⁸ Tr. of Sentencing at 55, *United States v. Lolos*, No. 1:21-cr-00243 (D.D.C. Nov. 19, 2021).

¹⁶⁹ Tr. of Sentencing at 22, *United States v. Peterson*, No. 1:21-cr-00309, ECF No. 32 (D.D.C. Dec. 1, 2021); *see also* Tr. of Plea and Sentence at 31, *United States v. Dresch*, No. 1:21-cr-00071 (D.D.C. Aug. 4, 2021) (“At the end of the day the fact is that the defendant came to the Capitol because he placed his trust in someone [Donald Trump] who repaid that trust by lying to him.”); *United States v. Dresch*, No. 1:21-cr-00071, 2021 WL 2453166, *8 (D.D.C. May 27, 2021) (“Defendant’s promise to take action in the future cannot be dismissed as an unlikely occurrence given that his singular source of information, . . . (‘Trump’s the only big shot I trust right now’), continues to propagate the lie that inspired the attack on a near daily basis”).

¹⁷⁰ *United States v. Tanios*, No. 1:21-mj-00027, ECF No. 30 at 107 (N.D.W. Va. Mar. 22, 2021).

¹⁷¹ Tr. of Sentencing at 36, *United States v. Gruppo*, No. 1:21-cr-00391 (D.D.C. Oct. 29, 2021).

¹⁷² Findings of Fact and Conclusions of Law at 15, *United States v. MacAndrew*, No. 1:21-cr-00730, ECF No. 59 (D.D.C. Jan. 17, 2023),

https://storage.courtlistener.com/recap/gov.uscourts.dcd.238421/gov.uscourts.dcd.238421.59.0_2.pdf.

- Four sentencing cases of January 6 defendants included statements by a judge that, “The events of January 6th involved the rather unprecedented confluence of events spurred by then President Trump”¹⁷³

2. *Legal standard.*

The meaning of “engage” under Section 3, as reflected in dictionaries, historical evidence, and case law, undoubtedly encompasses the actions of Donald Trump. After surveying these sources, the Colorado Supreme Court concluded that “engaged in” requires “an overt and voluntary act, done with the intent of aiding or furthering the common unlawful purpose.” *Anderson*, 2023 CO 63, ¶ 194. *Cf. Engage*, WEBSTER’S DICTIONARY (1828) (relevantly defining “engage” as “[t]o embark in an affair”).¹⁷⁴

Also in accord with these definitions is the reading of “engage” as articulated, at the time the Fourteenth Amendment was being debated, by then Attorney General Stanbery. He stated that a person may “engage” in insurrection or rebellion “without having actually levied war or taken arms.” *The Reconstruction Acts (I)*, 12 Op. Att’y Gen. at 161. Indeed, as he explained, when individuals act “in the furtherance of the common unlawful purpose” or do “any overt act for the purpose of promoting the rebellion,” they have “engaged” in insurrection or rebellion. *Id.* at 161-62. Words and actions alike can constitute engagement. According to Stanbery, “[d]isloyal sentiments, opinions, or sympathies would not disqualify; but when a person has, by speech or by

¹⁷³ Tr. of Sentencing at 38, *United States v. Prado*, No. 1:21-cr-00403 (D.D.C. Feb. 7, 2022); Tr. of Sentencing at 28, *United States v. Barnard, et al.*, No. 1:21-cr-00235 (D.D.C. Feb. 4, 2022); Tr. of Sentencing at 68, *United States v. Stepakoff*, No. 1:21-cr-00096 (D.D.C. Jan. 20, 2022); Tr. of Sentencing at 28, *United States v. Williams*, No. 1:21-cr-00388 (D.D.C. Feb. 7, 2022).

¹⁷⁴*Cf. Engage*, WEBSTER’S THIRD NEW INTERNATIONAL DICTIONARY (2002) (defining “engage” as “to begin and carry on an enterprise” or “to take part” or “participate”); *see also Engage*, MERRIAM-WEBSTER DICTIONARY, <https://www.merriam-webster.com/dictionary/engage> [<https://perma.cc/7JDM-4XSB>] (defining “engage” as “to begin and carry on an enterprise” or “to take part” or “participate”).

writing, incited others to engage in rebellion, [h]e must come under the disqualification.” *The Reconstruction Acts (II)*, 12 U.S. Op. Att’y Gen. 182, 205 (1867).

This reading is also consistent with the relevant case law, which defines “engage” under Section 3 as providing *any* voluntary assistance, either by service or contribution. *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 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”); *Griffin*, 2022 WL 4295619, *19-20 (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 13-14¹⁷⁵ (same). As underscored by the case law, engagement does *not* require that an individual personally commit an act of violence. *See Powell*, 27 F. Cas. at 607 (defendant made a payment to avoid serving in Confederate Army); *Worthy*, 63 N.C. at 203 (defendant simply served as county sheriff in service of the Confederacy); *Rowan*, *supra*, at 13-14 (“engagement” includes “marching orders or instructions to capture a particular objective, or to disrupt or obstruct a particular government proceeding”); *Griffin*, 2022 WL 4295619, at *20. Indeed, Jefferson Davis—the president of the Confederacy—never fired a shot. Furthermore, “engagement” does not require previous conviction, or even charging, of any criminal offense. *See, e.g., Anderson*, 2023 CO 63, at ¶¶ 105, 190-95 (recognizing charging and conviction is not required); *Powell*, 27 F. Cas. at 607 (defendant not charged with any prior crime); *Worthy*, 63 N.C. at 203 (defendant not charged with any crime); *In re Tate*, 63 N.C. 308 (1869) (defendant not charged with any crime). Indeed, Section 3 could

¹⁷⁵ Available at <https://bit.ly/MTGOSAH>.

never have required a prior criminal conviction; President Andrew Johnson pardoned most ex-Confederates in 1865, before the Fourteenth Amendment was even drafted, and *all* ex-Confederates by 1868,¹⁷⁶ so virtually *no* ex-Confederates were ever charged with crimes—but Section 3 was vigorously enforced for years afterward.

3. *Trump’s participation in January 6 more than satisfies the definition of “engage.”*

Trump’s words and actions leading up to and on January 6 readily satisfy these criteria. As set forth in detail in the Statement of Facts, even before the November 2020 election, Trump was the primary propagator of the lie that the election was fraudulent. During his campaign he claimed that fraudulent voting activity would be the only possible explanation for his defeat. He emphatically and publicly refused to commit to a peaceful transition of power following the election. At the same time, Trump aligned himself with militarized extremist groups, including white supremacist organizations, and asked them to be prepared to act on his behalf.

After he lost the election, Trump repeatedly asserted publicly—without any factual basis—that widespread voter fraud was the reason for his defeat, and that Vice President Pence had the authority to overturn the election. Both were known lies. In this same vein, he publicly and privately pressured state officials around the country to unlawfully overturn the election results.

On December 19, 2020, Trump sent a tweet recruiting his supporters to travel to Washington, D.C. on January 6: “Statistically impossible to have lost the 2020 Election. Big protest in D.C. on January 6. Be there, will be wild!” Several far-right extremist groups, such as the Proud Boys, the Oath Keepers, and the Three Percenters militias, unsurprisingly viewed

¹⁷⁶ See, e.g., Nat’l Park Serv., *Andrew Johnson and Reconstruction*, <https://www.nps.gov/anjo/andrew-johnson-and-reconstruction.htm>.

Trump's December 19, 2020 tweet as a call to arms, and began to organize their efforts to disrupt the January 6 session of Congress.

By early January 2021, Trump was aware of his supporters' plans to commit violent acts at the Capitol on January 6 in connection with the certification of electoral votes. Despite this knowledge, he proceeded to stoke the flames of their anger and facilitate this anticipated violence. This included deriding direct warnings, such as when he retweeted Gabriel Sterling's pleas to stop inspiring people to commit violence to avoid someone "get[ting] killed" with more rhetoric about the "rigged election," as well as calls to action such as at a rally, two days before the insurrection, where Trump asserted that the transfer of power set for January 6 would not happen because "We're going to fight like hell" and "take [the White House] back." Against this backdrop, Trump repeated his call for supporters to amass in Washington D.C. on January 6 at least twelve times.

On the morning of January 6, Trump was informed that his supporters were armed with weapons and as a result were not being permitted through the magnetometers at the Ellipse entrance. Trump ordered the magnetometers removed, explicitly stating his supporters wouldn't hurt *him* and they would proceed to march to the Capitol. Throughout his speech that morning, Trump repeatedly singled out Vice President Pence, urging him to reject electoral votes from the states Trump had lost. He asserted that Biden's victory was illegitimate and that the transfer of power to Biden could not take place, exhorting the crowd to "fight like hell" because "if you don't fight like hell, you're not going to have a country anymore." Trump criticized Republicans for being "nice" and acting like a "boxer with his hands tied behind his back," and told the crowd they were "going to have to fight much harder." Trump then called upon his supporters to proceed to the Capitol, which his supporters unsurprisingly took as a call for a violent invasion of the Capitol.¹⁷⁷

¹⁷⁷ As noted above and made evident here, the Colorado Supreme Court easily concluded, Trump's speech on January 6 was not protected by the First Amendment pursuant to the test set forth *Brandenburg*

Professor Simi testified that these inciting communications were understood by Trump's supporters to be direct calls for violence.

At 1:21 p.m. Trump learned that mob at the Capitol had turned violent, yet he did nothing to stop the attack. On the contrary, Trump goaded the crowd by tweeting at 2:24 p.m.: "Mike Pence didn't have the courage to do what should have been done to protect our County 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!!" The violence raged on.

Ignoring the advice of government officials, personal advisors, and family members, and in violation of his fiduciary duties as Commander in Chief, Trump allowed the insurrection to continue for several hours without intervention or instruction for the mob to disperse, and without ordering additional law enforcement to the scene as the Capitol Police were overtaken by Trump's violent mob. And even then—and to this day—he refused to condemn the violent attack against the United States.

IV. TRUMP ENGAGED IN REBELLION.

As much as the events of January 6 constituted an "insurrection," the course of events leading up to January 6 likewise constituted a "rebellion" under Section 3. Just as South Carolina commenced its "rebellion" when it illegally seceded in December 1860—four full months before firing the first shots at Fort Sumter—so too Trump's rebellion against the Constitution and illegal attempt to overstay his term in office began well before he sent an armed mob to the Capitol. A federal court has ruled that Trump's illegal schemes, including pressuring Vice President Pence to

v. *Ohio*, 395 U.S. 444, 447 (1969) and its progeny because it incited lawless action. *Anderson*, 2023 CO 63, ¶¶ 228-256.

disregard valid electoral votes, and directing the fraudulent elector scheme, “more likely than not” constituted criminal obstruction and fraud against the United States. *See Eastman v. Thompson*, 594 F. Supp. 3d 1156, 1193 (C.D. Cal. 2022). The effort to overthrow the results of the 2020 election by unlawful means, from on or about November 3, 2020, through at least January 6, 2021, constituted a rebellion under Section 3: an attempt to overturn or displace lawful government authority by unlawful means. *See Baude & Paulsen, supra* Part III, at 115-16. Just as Trump engaged in insurrection, undisputed facts show he also engaged in rebellion.

V. TRUMP GAVE “AID OR COMFORT TO THE ENEMIES” OF THE U.S. CONSTITUTION.

While the facts clearly demonstrate that Trump “engaged” in insurrection, they also make clear that he falls within Section 3’s prohibition on giving “aid or comfort to enemies” of the Constitution. As used in Section 3, “enemies” applies to domestic, as well as foreign enemies of the Constitution. This has been true since at least 1862 when Congress enacted the Ironclad Oath to “support and defend the Constitution of the United States, against all *enemies, foreign and domestic.*” Act of July 2, 1862, Ch. 128, 12 Stat. 502 (emphases added). Aid or comfort to enemies of the Constitution includes indirect assistance such as supporting, encouraging, counseling, or promoting the enemy, even where such conduct might fall short of “engaging” in insurrection.¹⁷⁸

By his conduct described herein, beginning before January 6, 2021, and continuing to the present time, Trump gave aid and comfort to enemies of the Constitution by, among other things: encouraging and counseling insurrectionists; deliberately failing to exercise his authority and responsibility as President to quell the insurrection; praising the insurrectionists, including calling

¹⁷⁸ *See Baude & Paulsen, supra* Part III, at 67-68.

them “very special,” “good persons,” and “patriots”; and promising or suggesting that he would pardon many of the insurrectionists if reelected to the presidency.

VI. SECTION 3 APPLIES TO THE PRESIDENT.

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. As established above, *supra* Part III, as President, Trump engaged in an insurrection, and Section 3 clearly applies to Trump because (i) the Presidency is an “office, civil or military under the United States”; (ii) the President is an “officer of the United States”; and (iii) the presidential oath constitutes an oath “to support the Constitution of the United States.” *Id.* Any assertion to the contrary is mere sophistry. A President may not engage in insurrection while in office and then return to the Presidency.

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 that the Presidency is an “office under the United States” within the meaning of Section 3. *Anderson*, 2023 CO 63, ¶ 129. First, the Presidency plainly satisfies the dictionary definitions of “office” from the time of the Fourteenth Amendment’s ratification. *See, e.g.*, Noah Webster, *An American Dictionary of the English Language* 689 (C.A. Goodrich ed., 1853) (defining “office” as a “particular duty, charge or trust conferred by public authority, and for a public purpose,” that is “undertaken by . . . authority from government or those who administer it”); *see also* Samuel Johnson, *A Dictionary of the English Language* 1755 (1st Folio ed. 1773) (defining “office” as “publick [sic] charge or employment”).

If that were not clear enough, the Constitution itself refers to the Presidency as an “office” twenty-five times. *See, e.g.*, U.S. Const. art. I, § 3, cl. 5 (“The Senate shall chuse [sic] their other

Officers, and also a President pro tempore, in the Absence of the Vice President, or when he shall exercise the *Office of President of the United States.*”) (emphasis added); *id.* at art. II, § 1, cl. 1 & 5 (providing that “[n]o Person except a natural born Citizen . . . shall be eligible to the *Office of President*” and “[t]he executive Power shall be vested in a President of the United States of America [who] shall hold his Office during the Term of four Years”) (emphases added).

In addition, the Constitution’s multiple references to an office “under the United States” make plain that the Presidency is 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) (“The principle of separation of powers . . . was woven into the [Constitution] The further concern of the Framers of the Constitution with maintenance of the separation of powers is found in the so-called ‘Ineligibility’ and ‘Incompatibility’ Clauses”).

Moreover, the generation that ratified and implemented the Fourteenth Amendment understood it to bar oath-breaking insurrectionists’ access to the Presidency. *See, e.g.,* MONTPELIER DAILY JOURNAL, Oct. 19, 1868 (observing that Section 3 “excludes leading rebels

from holding offices . . . from the Presidency downward”). When Congress considered the idea of granting blanket amnesty to shield Confederate rebels from Section 3, both supporters and opponents recognized that doing so would allow Jefferson Davis access to the Presidency. *See* John Vlahoplus, *Insurrection, Disqualification, and the Presidency*, 13 BRIT. J. AM. LEGAL STUD. __ (forthcoming 2024), at 7-10¹⁷⁹; TERRE HAUTE WKLY. EXPRESS, Apr. 19, 1871, at 4, col.1 (warning that if amnesty were granted, “JEFF DAVIS would be elligible [sic] to the Presidency”); *The Administration, Congress and the Southern States—The New Reconstruction Bill*, N.Y. HERALD, Mar. 29, 1871, at 6¹⁸⁰ (proposing “such an amnesty as will make even Jeff Davis eligible again to the Presidency”); *see also* THE CHICAGO TRIBUNE, May 24, 1872 (asserting that amnesty would make rebels “eligible to the President of the United States”). Of course, the underlying assumption by both sides of the amnesty debate was that—without amnesty—Section 3 barred Jefferson Davis and other ex-Confederates from the Presidency.

Last, 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.*

In short, by its plain language and any reasonable interpretation, Section 3 prohibits disqualified persons from holding the office of the Presidency.

B. The President of the United States is a Covered “Officer of the United States” Under Section 3.

¹⁷⁹ Available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4440157.

¹⁸⁰ Reproduced in *Northern View*, FAIRFIELD HERALD, Apr. 12, 1871, at 1.

The Colorado Supreme Court’s reasoned interpretation shows that just as the Presidency is an “office,” all interpretations—logical or textual—place President as an “Officer of the United States” within Section 3. *See Anderson*, 2023 CO 63, ¶ 143. Thus, a person who swears an oath as President cannot engage in insurrection and then subsequently be permitted to hold public office.

The simplest 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). This plain meaning must be the starting point:

The Constitution repeatedly designates the Presidency as an “Office,” which surely suggests that its occupant is, by definition, an “officer.” An interpretation of the Constitution in which the holder of an “office” is not an “officer” seems, at best, strained.

Motions Sys. Corp. v. Bush, 437 F3d 1356, 1371–72 (Fed. Cir 2006) (*en banc*) (Gajarsa, J., concurring in part and concurring in the judgment) (citations omitted). Even today, this plain meaning is widely used by the Supreme Court and the executive branch alike. *See, e.g., Nixon v. Fitzgerald*, 457 US 731, 750 (1982) (referring to president as “the chief constitutional officer of the Executive Branch”); *Cheney v. U.S. Dist. Court for the Dist. of Columbia*, 541 US 913, 916 (2004) (Scalia, J.) (referring to “the President and other officers of the Executive”); *Motions Sys. Corp.*, 437 F3d at 1368 (cataloguing multiple presidential executive orders in which the president refers to himself as an “officer”); Office of Legal Counsel, US Dep’t of Justice, *A Sitting President’s Amenability to Indictment and Criminal Prosecution* (Oct. 16, 2000), at 222, 226, 230 (distinguishing “other civil officers” from the president) (emphasis added), *available at*

https://www.justice.gov/d9/olc/opinions/2000/10/31/op-olc-v024-p0222_0.pdf; Exec. Order No. 11435 (1968) (referring to actions “of the President or of any other officer of the United States”).

Indeed, Trump himself has repeatedly asserted that he was an “officer of the United States” in seeking removal of lawsuits to federal court. *See, e.g.*, 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 2-9¹⁸¹ (“The President of the United States is an ‘officer . . . of the United States’”) (omission in original); Donald J. Trump’s Notice of Removal, *K&D, LLC v. Trump Old Post Office LLC*, 1:17-cv-00731-RJL, ECF No. 1, at 3-4 (D.D.C. Apr. 19, 2017); Donald J. Trump’s Notice of Removal, *New York v. Trump*, 1:23-cv-03773-AKH, ECF No. 1, at 4-5 (S.D.N.Y. May 4, 2023). This admission alone should be determinative for purposes of evaluating his candidacy for the office.

Further, there is well-founded historical support for this commonsense principle. Well before the Civil War, both common usage and judicial opinions described the president as an “officer of the United States.” As early as 1789, congressional debate referred to the president as “the *supreme Executive officer* of the United States.”¹ *Annals of Congress* 487–88 (Joseph Gales, ed. 1789) (Rep. Boudinot); *cf.* THE FEDERALIST No. 69 (Alexander Hamilton) (“The President of the United States would be an officer elected by the people”). In 1799, Congress passed a postal statute and enumerated a list of “officers of the United States” that specifically included “the President of the United States.” An Act to establish the Post-Office of the United States, § 17, Mar. 2, 1799, 1 Stat. 733, 737. Chief Justice Branch wrote in 1837 while riding circuit that “[t]he president himself . . . is but an officer of the United States.” *United States ex rel. Stokes v. Kendall*, 26 F. Cas. 702, 752 (C.C.D.C. 1837), *affirmed*, 37 U.S. 524 (1838).

¹⁸¹ Available at <https://bit.ly/TrumpRemandOpp>.

By the 1860s, this usage was firmly entrenched. *See* Vlahoplus, *supra*, at 18-20. On the eve of the Civil War, President Buchanan called himself “the chief executive officer under the Constitution of the United States.” *Id.* at 18 (citation omitted). That usage was repeated with respect to President Lincoln. *See Cong. Globe*, 37th Cong., 2d Sess. 431 (1862) (Sen. Davis) (referring to President Lincoln as “the chief executive officer of the United States”). In a series of widely reprinted official proclamations that reorganized the governments of former confederate states in 1865, President Andrew Johnson referred to himself as the “chief civil executive officer of the United States.”¹⁸²

This usage continued throughout the Thirty-Ninth Congress, which enacted the Fourteenth Amendment, *e.g.*, *Cong. Globe*, 39th Cong., 1st Sess. 335 (Sen. Guthrie) (1866), 775 (Rep. Conkling) (quoting Att’y Gen. Speed), 915 (Sen. Wilson), 2551 (Sen. Howard) (quoting President Johnson), and during its two-year ratification period, *see, e.g.*, *Mississippi v. Johnson*, 71 U.S. 475, 480 (1866) (counsel labeling the president the “chief executive officer of the United States”); *Cong. Globe*, 39th Cong. 2d Sess. 335 (1867) (Sen. Wade) (calling president “the executive officer of the United States”); *Cong. Globe*, 40th Cong. 2d Sess. 513 (1868) (Rep. Bingham) (“executive officer of the United States”). Given the repeated and consistent description of the president as the “officer of the United States,” the plain meaning of the phrase in Section 3 necessarily includes the President.

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*

¹⁸² Andrew Johnson, Proclamation No. 135 (May 29, 1865); Proclamation No. 136 (June 13, 1865); Proclamation No. 138 (June 17, 1865); Proclamation No. 139 (June 17, 1865); Proclamation No. 140 (June 21, 1865); Proclamation No. 143 (June 30, 1865); Proclamation No. 144 (July 13, 1865), *all reprinted in* 8 *A Compilation of the Messages and Papers of the President*, 3510–14, 3516–23, 3524–29 (James D. Richardson ed., 1897).

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 also undermine Section 3's primary purpose: that "those who had been once trusted to support the power of the United States, and proved false to the trust repose, 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.

C. **The presidential oath is an oath to support the Constitution.**

Finally, 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 undoubtedly an oath "to support the Constitution," *id.* at amend. XIX, § 3; see *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).

Article VI of the Constitution provides that "all executive and judicial Officers . . . of the United States . . . shall be bound by Oath or Affirmation, to support this Constitution" without requiring specific language for such an oath. *Id.* at art. VI, cl. 3. Article II specifies the particular language of the President's oath to support the Constitution: a commitment to "preserve, protect and defend the Constitution." *Id.* at art. II, § 1 cl. 8. The presidential oath is simply one articulation of the oath to support the Constitution required by Article VI. And the language of the presidential oath is, of course, consistent with the plain meaning of the word "support." Indeed, the definition of "defend" includes "support," and vice versa. See *Defend*, WEBSTER'S DICTIONARY (1828) (defining "defend" to include "to support," and defining "support" to include "to defend"); Samuel Johnson, A DICTIONARY OF THE ENGLISH LANGUAGE (4th ed. 1773) (defining "[d]efend" as "[t]o stand in defence of; to protect; to support").

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 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.

VII. CONCLUSION

To resolve this Objection, the Electoral Board has a straightforward, non-discretionary task. It must evaluate a focused package of evidence—evidence that has been thoroughly reviewed by the Colorado Supreme Court after proceedings in which Candidate Trump participated—and apply well-defined standards to determine electoral qualifications set out in Section Three of the Fourteenth Amendment. Because material, undisputed facts show that Trump cannot meet the qualifications for president set out in the U.S. Constitution, he has presented invalid nomination papers to the Board and cannot appear on the ballot in the State of Illinois.

WHEREFORE, Petitioners-Objectors respectfully request that their Objectors’ Petition be granted, or in the alternative, for an entry of summary judgment in favor of Objectors and against Respondent-Candidate Trump, or for such other relief as the Board deems just, and, if necessary, a hearing to resolve any outstanding questions regarding Objectors’ Petition.

Respectfully submitted,

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