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' REPLY IN SUPPORT OF THEIR 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, Ralph E. Cintron, and Darryl P. Baker (the "Objectors"), by and through their undersigned attorneys, submit this reply in support of their Motion to Grant Objectors' Petition, or in the Alternative for Summary Judgment ("Motion") and state as follows:

INTRODUCTION

Petitioners' Objection and their Motion present comprehensive factual evidence and legal argument establishing that Candidate Trump is disqualified from appearing on the Illinois ballot under Section 3 of the Fourteenth Amendment. Faced with Objectors' detailed and admissible facts about the events of January 6, Candidate Trump protests that he generally disputes some of the facts, and would offer more evidence but for procedural limitations. But the "disputes" he raises are largely unsupported by evidence or delve into peripheral issues rather than the core facts that underlie the Objection. Tellingly, he declines to offer his own affidavit testimony to address "disputes" based on his own conduct. He dismisses evidence as inadmissible but neglects to address the proper evidentiary standards. He argues the five days of testimony from the Colorado trial and that court's ruling should be disregarded despite their clear evidentiary value and persuasive authority, respectively. He offers a purported Rule 191(b) affidavit to argue summary judgment is premature, but it so fully fails to comply with the rule's requirements (or otherwise provide meaningful information) that it is fatally defective and cannot be considered.

In sum, Candidate Trump fundamentally does not engage with the merits of Objectors' arguments. Instead, he tries to evade the Objection by casting aspersions at Objectors' filing and the general electoral objection process dictated by the Illinois Election Code. The Board should reject Candidate Trump's renewed attempt to jettison the Objection through complaints about the SOEB procedures—procedures that he has not even minimally availed himself of. As detailed in previous briefing, the Election Code grants the Electoral Board the clear authority and necessary

procedures to resolve the Objection. And if, despite Objectors' request, the Board elects not to do that on Summary Judgment, the Hearing Officer and the Board are well-equipped to make factual determinations upon the record submitted by the parties and decide the Objection. To the extent the Board determines that there is any need to weigh the evidence, the relevant and admissible evidence establishing that Candidate Trump engaged in insurrection—as spelled out below—is overwhelming, and he is therefore disqualified from the presidency.

ARGUMENT

I. TRUMP MISCONSTRUES THE SUMMARY JUDGMENT STANDARD.

Objectors have presented detailed facts in their motion, most of which are supported by admissible public records, contemporaneous news videos, and Candidate Trump's own statements. In response, Candidate Trump stridently argues that Objectors have somehow upended the summary judgment process by asking the Board to consider what he falsely claims are "disputed facts." But it is black letter law that someone cannot make a fact "disputed" merely by claiming disagreements between the parties, and the role of the Board is not as limited as he contends.

"The propriety of awarding summary judgment depends upon whether or not a *bona fide* issue of fact exists between the parties to the action." *Porter v. Miller*, 24 Ill. App. 2d 424, 429–30 (3d Dist. 1960). "A mere denial is not sufficient to raise a genuine issue as against uncontroverted evidentiary matter." *Id.* at 431; *accord Caponi v. Larry's 66*, 236 Ill. App. 3d 660, 670 (2d Dist. 1992) ("To prevent entry of summary judgment, an opponent must present a *bona fide* factual issue and *not merely general denials* and conclusions of law.") (emphasis added); *see, e.g., Dangeles v. Muhlenfeld*, 191 Ill. App. 3d 791, 801 (2d Dist. 1989) (affirming summary judgment where movant's supporting affidavits were uncontradicted).

While the summary judgment standard draws "all *reasonable* inferences in favor of the nonmovant," *Destiny Health, Inc. v. Connecticut Gen. Life Ins. Co.*, 2015 IL App (1st) 142530, ¶

20 (emphasis added), "the inferences drawn in favor of the nonmovant must be supported by the evidence. Mere speculation and conjecture is insufficient to defeat a motion for summary judgment." *Id.* The reviewing body "is not required to entertain unreasonable inferences raised in opposition to a motion for summary judgment." *W. Bend Mut. Ins. Co. v. DJW-Ridgeway Bldg. Consultants, Inc.*, 2015 IL App (2d) 140441, ¶ 26 (internal quotation marks omitted). Inferences may be drawn, however, from undisputed facts—including in favor of the moving party where that is only the reasonable inference available. *Fruit of the Loom, Inc. v. Travelers Indem. Co.*, 284 Ill. App. 3d 485, 494 (1st Dist. 1996). In other words, the party moving for summary judgment may rely on circumstantial evidence to do so if the undisputed facts establish that the movant is entitled to judgment.

Here, Candidate Trump has failed to properly dispute the material facts supporting the Objection. He repeatedly either claims disputes without providing support or diverts focus from the material facts presented by Objectors and injects side issues.[1] He baselessly rails against drawing inferences in favor of Objectors, when the inferences the Candidate seeks in his own favor are patently unreasonable. In sum, Objectors support their motion with undisputed material facts, based on admissible evidence, that the Candidate has either not disputed at all or, at a minimum, not properly disputed.

[1] Objectors comprehensively address each of the 62 facts Trump claims are disputed in the chart attached as Exhibit A. For *nearly every single fact* the "dispute" is not unsupported by on-point countervailing evidence. The chart also addresses Trump's admissibility challenges, which assert baseless relevancy objections and ignore basic evidentiary principles like the admissibility of out-of-court statements offered for non-hearsay purposes. *See* Exhibit A.

II. THE CORE FACTS OF OBJECTORS' PETITION ARE UNDISPUTED, SUPPORTED BY ADMISSIBLE EVIDENCE, AND ESTABLISH THAT TRUMP ENGAGED IN INSURRECTION.

The assault on and invasion on the U.S. Capitol on January 6, 2021 was one of the most extraordinary, historic, frightening, and ultimately tragic events in our nation's history. It began with a president's pre-election plotting to declare a "rigged election" in the event that he lost his reelection effort, and continued with his mobilization of political extremists, the attempts of numerous advisors to dissuade then-President Trump from disputing what was a fair election, plans by Trump and others in the White House for a "wild" protest of the election certification in the capital, fiery speeches designed to incite an armed crowd, a vicious and brutal assault on law enforcement, the invasion and seizure of the Capitol, threats to murder the Vice President and members of the United States Congress, and the disruption of the electoral certification process as elected representatives fled for their own safety. The House Select January 6th Committee's ("Select Committee") Final Report (the "January 6th Report") that thoroughly recounts the event is over 800 pages long.

In their Petition and in their Motion, Objectors have presented a relatively detailed account of those events so as to provide useful context and to ensure that the Board has access to facts that it might consider material to the objection. At its core, however, the elements necessary to demonstrate disqualification under Section Three are simple, and the set of material facts that are necessary to prove those elements is limited. As set forth in Objectors' Motion and in their response to Trump's Motion to Dismiss, there is general consensus on the Section Three elements. An "insurrection" is a: (1) concerted, (2) use of force or violence, (3) to resist the government's authority to execute the law in some significant respect. *See, e.g.*, Mot. at 41. To "engage in" an insurrection means to provide "voluntary assistance, by service or contribution." *Id.* at 47-48.

Here, regardless of Candidate Trump's quibbles about certain peripheral factual claims or pieces of evidence, the fundamental facts are not genuinely in dispute and overwhelmingly establish that the events of January 6, 2021 unquestionably constituted an insurrection and that Trump engaged in that insurrection. While Objectors comprehensively establish the lack of dispute as to *each fact* Trump challenges in the chart attached as Exhibit A, the Board need not rely on every fact asserted. In their Motion, Objectors have supported the Objection's fundamental facts with plainly admissible evidence, consisting primarily of Trump's own public statements on Twitter and in news videos, and the facts reported by governmental bodies following legally authorized investigations, such as the facts contained in the January 6th Report.

A. The January 6th Report Is Admissible Under Illinois Rule of Evidence 803(8) and the SOEB Rules of Procedure.

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

Here, apart from his wholly conclusory screed against the Report included in the sixth column of the third row of the chart attached as Exhibit A to his Response, Trump offers no *evidence* to meet his burden to show lack of trustworthiness.[2]

There is, by contrast, ample reason to accept the Report as trustworthy, as the trial court found and the Colorado Supreme Court affirmed in *Anderson*: the investigation was timely (beginning six months after the attack and finishing within two years), the investigative staff consisted of "highly skilled lawyers, including two former U.S. Attorneys," and there was a "formal ten-day hearing in which seventy witnesses testified under oath." *Anderson v. Griswold*, 2023 CO 63, ¶ 170; *see also* Ex. 15 to Mot. (Heaphy Testimony) (testifying extensively about the diligence and impartiality of the investigations). And though Trump claims partisan bias, the Select Committee included two duly elected Republicans, the investigative staff included "many Republican lawyers," and the "overwhelming majority" of witnesses were Trump administration officials and Republicans. *Anderson*, 2023 CO 63, ¶ 169; *see also* Ex. 15 (Heaphy Testimony) at 154; Ex. 8 (January 6th report) at xvi.[3] Even assuming the Select Committee did have a partisan bias, facts are facts, and in their Motion, Objectors have also taken care to rely exclusively on the Report's findings of historical fact rather than any overarching opinions or conclusions, thereby further removing any element of bias and bolstering the trustworthiness of the evidence.

[2] The Affidavit of David Warrington (appended to Trump's Opposition brief as Exhibit E) demonstrates the utter baselessness of Trump's claims about the Report. In it, Mr. Warrington takes the rather incredible position that if Rep. Benny Thompson, Chairman of the U.S. House Select Committee on the January 6th attack were called to testify, he would testify the purpose of the report was to validate a preexisting belief shared by all committee members that Trump incited an insurrection and the Committee doctored and destroyed evidence it had collected. *See* Opp. Br., Ex. E § 6(k); *see also* discussion *infra* Part IV.C.4.

[3] Trump improperly, and without any basis, infers that the Colorado trial court's reliance on only 31 conclusions from the January 6th Report indicates that those were the only reliable or admissible conclusions in the entire report instead of making the more sensible inference that those particular conclusions were the only ones the court found necessary to adopt in reaching its decision.

Even if the findings of the January 6th Report were not admissible under Rule 803(8) (which they plainly are), they would be admissible in this proceeding, because under the Rules of Procedure applicable to this hearing, the rules of evidence are not to be "strictly applied," and admissibility is to be interpreted "liberally" in order to present all matters that may be relevant. Ill. Admin. Code tit. 26, § 125.180(a). Indeed, where admissibility of evidence depends upon even an "arguable interpretation of substantive law," the Hearing Officer *must* admit the evidence. *Id.* § 125.180(c). Because there is far more than an "arguable" basis to accept the findings of the January 6th report, the evidence is admissible on these grounds as well.

B. Undisputed Facts Supported By Admissible Evidence Show that Candidate Trump Engaged in Insurrection.

The fundamental facts proving each element, all of which are supported by admissible evidence and not genuinely disputed, are as follows:

Undisputed Facts Supporting Insurrection

(1) The January 6th attack was a concerted effort on the part of thousands.

Trump cannot and does not dispute that January 6th involved a concerted effort. The January 6th Report, the Senate Rules Committee's Staff Report, the prior admissible testimony of Officers Hodges and Pingeon, and the video footage seen nationwide establish that thousands gathered at the Capitol to overwhelm law enforcement and storm the Capitol building during the electoral certification process. *See, e.g.*, Ex. 9 to Mot. (*Rules & Admin. Review*) at 24; Ex. 14 to Mot. (Pingeon Testimony) at 211:25-213:2; Ex. 2 to Mot. (Hodges Testimony) at 79:7-20; Gr. Ex. 4 (Trial Exhibits from *Anderson v. Griswold*) at P-020. Trump takes great pains to contrast January 6th with the Whiskey Rebellion of the late 18th century (Opp. Br. at 8-9), but the comparisons are

distorted and irrelevant.[4] It does nothing to undermine the clear fact that January 6th involved *thousands* of attackers with a common purpose.

(2) The January 6th attack involved the violent use of force.

Similarly, Trump cannot genuinely dispute that the January 6th attack was a violent use of force. He presents evidence in the form of testimony and video purporting to show that *some* of the people who attended Trump's rally and marched to the Capitol on January 6, 2021 were peaceful. But everyone agrees on that point. That is still no basis to dispute the fact that the attack itself was ultimately extremely violent. The Select Committee's factual finding that 250 law enforcement officers were injured that day is admissible under Rule 803(8), and Trump does not dispute it. Ex. 8 to Mot. (January 6th Report) at 711; *see also* Opp. Br., Ex. A at Item 59 (purporting to dispute the number of law enforcement officers who died but not disputing the number injured). Nor does Trump dispute the plainly admissible testimony by police officers on the scene, video,

[4] The Whiskey Rebellion did, as Trump notes, involve thousands of rebels—but as cited above, so did January 6th. While more than two thousand attackers actually penetrated the Capitol, 20,000 surrounded or attempted to storm the building. Ex. 8 to Mot. (January 6th Report) at 76, 662, 727. And while the federal response to the Whiskey Rebellion included over 11,000 men, the response to the January 6th attack ultimately required a massive law enforcement response that included the U.S. Capitol Police, the D.C. Metropolitan Police Department, the D.C. National Guard, the FBI's Special Weapons and Tactics (SWAT) and Hostage Rescue teams, the Bureau of Alcohol, Tobacco and Firearms' Special Response Team, the U.S. Marshals Service, the U.S. Park Police, Maryland State Police, Virginia State Police, and police departments from Baltimore (Maryland), Montgomery County (Maryland), Fairfax County (Virginia), Prince William County (Virginia), and Arlington County (Virginia), with the Maryland National Guard, Virginia National Guard, and other state police and National Guard units mobilized and prepared to deploy. *See, e.g.*, Cong. Research Serv., *Law Enforcement's Response to the January 6th Events at the Capitol* (Jan. 22, 2021), https://apps.dtic.mil/sti/pdfs/AD1147493.pdf; U.S. Gov't Accountability Office, *Capitol Attack* (Feb. 2023), https://www.gao.gov/assets/gao-23-106625.pdf. And while Washington himself led the force to suppress the Whiskey Insurrection, that only highlights the contrast with Trump's choice to allow the January 6th insurrection to rampage. The Whiskey Insurrection was concentrated in western Pennsylvania (not across four states as Trump claims), and while it did briefly control the town of Bower Hill, it never overtook important federal facilities. *See* Robert Coakley, *The Role of Federal Military Forces in Domestic Disorders, 1789–1878* (U.S. Army Ctr. of Mil. Hist. 1996), *available at* https://history.army.mil/html/books/030/30-13-1/CMH_Pub_30-13-1.pdf. In contrast, the January 6th insurrection conquered the U.S. Capitol, the seat of our national government. The number of deaths were comparable, approximately three in Whiskey Rebellion, *id.* at 35-66, and five during January 6th.

and Select Committee factual findings that many of the attackers brought weapons including knives, tasers, and pepper spray, and overwhelmed law enforcement by force. *See* Ex. 8 to Mot. (January 6th Report) at 640-42, 655; Ex. 9 to Mot. (*Rules & Admin. Review*) at 24; Ex. 2 to Mot. (Hodges Testimony) at 74-76; Ex. 14 to Mot. (Pingeon Testimony) at 200-201, 211-213, 220-221, 224-225; Gr. Ex. 4 (Trial Exhibits from *Anderson v. Griswold*) at P-020; *see also* Opp. Br., Ex. A at Item 44 (purporting to dispute the existence of firearms but not other weapons). Trump also does not and cannot dispute the attackers' threats to kill government officials, including Vice President Pence (including crowd chants to "hang" him), which were captured on video. Ex. 8 to Mot. (January 6th Report) at 642, 655.

(3) The January 6th attack was aimed at disrupting, and did disrupt, the lawful certification of the electoral vote.

It is also undisputed that the attackers breached the Capitol while Congress was in the process of certifying the electoral vote. The attackers were there on January 6th precisely because they opposed the certification scheduled to take place. It is further beyond legitimate dispute that they were sent to the Capitol from the Ellipse by Trump in an effort to prevent the vote. In undeniably admissible statements in the form of his own tweets, Trump had summoned supporters to Washington, D.C. on January 6th—the date of the vote—no fewer than twelve times. *See* Gr. Ex. 7 to Mot. (Trump Tweet Compilation). They broke into the Capitol after Trump gave a speech in which he directed them to march to the Capitol and to fight in opposition to the certification of the electoral vote, and Trump repeatedly invoked the name of Vice President Pence, urging him to be "courageous" and refer the votes "back to the states" rather than allow them to be certified. *See Rally on Electoral College Vote Certification*, C-SPAN (Jan. 6, 2021), https://www.c-span.org/video/?507744-1/rally-electoral-college-vote-certification (cited at Mot. at 20-22). Trump disputes none of those facts, and the inescapable inference to draw from them is that the

attackers invaded the Capitol for the purpose of disrupting the certification of the electoral vote and they did so at Trump's urging. Similarly, there can be no dispute about what is an established matter of public record: the attack did disrupt the lawful certification of the vote by forcing Congress to recess as Vice President Pence, Senators, and Representatives fled for safety. Ex. 9 to Mot. (*Rules & Admin. Review*) at 25; Ex. 16 to Mot. (Swalwell Testimony) at 141:3-142:20.

In sum, as Trump admitted by the statements of his legal counsel during his impeachment proceedings, January 6th was a "violent insurrection." 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 (cited at Mot. at 40.) That obvious conclusion is supported by admissible evidence, and Trump has not disputed what he previously admitted with any contradicting evidence.

Undisputed Facts Supporting Trump's Engagement in Insurrection

Admissible evidence supports, and Trump does not dispute, the following facts showing that Trump provided "voluntary assistance" to the insurrection:

(4) After votes were cast in the 2020 election, Trump repeatedly told his supporters to "stop the fraud" and claimed that he had actually won what he called a "rigged election." Gr. Ex. 7 to Mot. (Trump Tweet Compilation).

Trump's own statements, made in tweets and on news video, are plainly admissible, and they show that Trump orchestrated the "stolen election" narrative that provided the motivation for the January 6th insurrection. Indeed, it cannot be disputed that he planted the seeds for that narrative prior to the election by claiming that the only way he could lose was if the election were "rigged." *See* Mot. at 5 n.3. Trump does not and cannot dispute that he made these claims despite offering no concrete evidence of election fraud and in the face of scores of legal rulings unanimously upholding the results of the election.

(5) Trump summoned his supporters to gather in Washington, D.C. on the day of and in opposition to the electoral vote certification at least twelve times, including his

December 2020, tweet: "Big protest in D.C. on January 6th! Be there, will be wild!" Gr. Ex. 7 to Mot. (Trump Tweet Compilation) at 7.

Again, Trump's own statements are undeniably admissible, and Trump does not dispute them. They plainly show that Trump assisted the insurrection by gathering his supporters for what he advertised would be a "wild" event.

(6) Militant extremists mobilized in response to Trump's "wild" tweet.

The Select Committee reports that Twitter recorded a "fire hose" of calls to overthrow the U.S. government following the "wild tweet," and other extremist groups—including the Oath Keepers, Proud Boys, and Three Percenter militias—began organizing following the tweet. Ex. 8 to Mot. (January 6th Report) at 499-501. These are admissible findings of historical fact under Illinois Rule 803(8), and Trump does not dispute them. The facts establish that Trump not only provided "voluntary assistance," but set in motion the most radical and dangerous elements behind the attack. Trump, himself, was aware—and proud—of what he had done. For example, on January 1, 2021, when a supporter told Trump on Twitter that "The calvary [sic] is coming, Mr. President!" Trump quoted that tweet and wrote back, "A great honor!" Gr. Ex. 7 to Mot. (Trump Tweet Compilation) at 7. Trump cannot contest the admissibility of his own statements and has offered no evidence to dispute their obvious meaning. In addition, the evidence is clear and undisputed that Trump knew and approved of the fact that many of those who gathered on January 6th were armed. When Trump was informed that his supporters were not allowed through the magnetometers (metal detectors) at the entrance to the Ellipse 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 mags [metal detectors] away. Let my people in. They can march to the Capitol from here. Take the fucking mags [metal detectors] away." Ex. 8 to Mot. (January 6th Report) at 585. Trump's own statement, in response to being given notice that thousands of supporters had

weapons, is admissible. While Objectors need not rely on the testimony of political extremism expert Professor Peter Simi, who testified about the impact of Trump's communications on extremist supporters (Mot. at 21, 27, 29) Trump's objection to the admissibility of his testimony also is misplaced and contrary to the rules governing these proceedings.[5]

(7) The speakers who preceded Trump onstage during his own rally at the Ellipse primed the crowd with violent rhetoric.

Trump cannot and does not dispute that his then-lawyer, Rudy Giuliani, called for "trial by combat" during his Ellipse speech, Wash. Post, *Trump, Republicans incite crowd before mob storms Capitol*, YOUTUBE (Jan. 6, 2021), https://youtu.be/mh3cbd7niFQ (cited at Mot. at 19), or that Rep. Mo Brooks told the crowd to "start taking down names and kicking ass," to be prepared to sacrifice their "blood" and "lives," and to "do what it takes to fight for America" by "carry[ing] the message to Capitol Hill," since "the fight begins today," The Hill, *Mo Brooks gives FIERY speech against anti-Trump Republicans, socialists*, YOUTUBE (Jan. 6, 2021), https://youtu.be/ZKHwV6sdrMk (cited at Mot. at 19). Trump approved both speakers against the warnings of his advisors. Ex. 8 to Mot. (January 6th Report) at 536. Their statements were recorded on video and are non-hearsay because offered not for their truth but for the effect they had on the crowd and notice to Trump of what the crowd had been told and its effect.

[5] Though Mr. Simi's testimony is in no way essential to establish the key elements of Objectors' Petition, the Board is certainly free to rely on it. To be sure, Illinois Supreme Court Rules provide for the disclosure of expert witnesses in response to interrogatories, *see* Ill. Sup. Ct. R. 213(f), but Trump has offered no basis for his contention that such formalities would apply in these expedited proceedings. This Board has the discretion to apply the Illinois Supreme Court rules regulating discovery as is suitable in this time-limited context (*See* SOEB Rules of Procedure 2024 § 13), but this Board's rules do not require any procedure for disclosure of experts, with the exception of handwriting experts (*see id.* § 9 (outlining procedure for identifying a handwriting expert in a records examination but leaving open case management related to other types of experts)). Even without these formalities, however, Trump cannot reasonably dispute that he had adequate notice of Mr. Simi's testimony. Objectors cited Mr. Simi's testimony in their Petition filed on January 4, 2024, sufficiently in advance of the deadline for Trump to disclose any rebuttal witnesses, January 24, 2024. And, on top of that, one of Trump's attorneys in these proceedings is the very same attorney who cross examined Mr. Simi. Ex. 4 to Mot. (Simi Affidavit), Ex. A at 6.

(8) During his own speech at the Ellipse, Trump said "We fight. We fight like hell. And if you don't fight like hell, you're not going to have a country anymore." Rally on Electoral College Vote Certification, C-SPAN (Jan. 6, 2021), https://www.c-span.org/video/?507744-1/rally-electoral-college-vote-certification (cited at Mot. at 20-22.)

Trump's own statement calling on the crowd to fight is plainly admissible and not disputed.

(9) During his speech at the Ellipse, Trump instructed the crowd to march on the Capitol. *Id.*

Once again, Trump's own statement instructing the crowd to march on the Capitol where the insurrection took place is admissible and undisputed.

(10) Trump watched the attack on live television news. Ex. 8 to Mot. (January 6th Report) at 593.

The Select Committee's finding that Trump watched the attack on live news is admissible under Rule 803(8). Trump does not dispute the fact except to claim that it is irrelevant, but the relevance of Trump's live monitoring of the attack is clear when one considers his actions—and lack thereof—as the attack unfolded, as discussed immediately below.

(11) While Trump was watching the attack unfolding and the Capitol being breached, Trump tweeted: "Mike Pence didn't have the courage to do what should have been done to protect our Country and our Constitution." Gr. Ex. 7 to Mot. (Trump Tweet Complication) at 16.

Trump cannot and does not dispute that Trump made this tweet criticizing Vice President Pence for failing to block the certification of the electoral vote at the precise time that attackers were invading the Capitol with Mike Pence inside. And as Trump's own statement, the tweet is undeniably admissible.

(12) During the attack, Trump did not order any federal law enforcement or the D.C. National Guard to help retake the Capitol or protect the Vice President or Congress from the attackers. Ex. 8 to Mot. (January 6th Report) at 607, 595; Ex. 10 to Mot. (Daily Diary of President Donald Trump); Ex. 13 to Mot. (Banks Testimony) at 255-56.

The fact that Trump did not order additional law enforcement or the D.C. National Guard as the attack was unfolding is supported by findings of the Select Committee and Trump's own daily diary, both of which are admissible under Rule 803(8), and by the prior admissible testimony of Professor William Banks. Trump does not and cannot deny this fact. Instead, Trump offers evidence purporting to show that he may have given authorization for the deployment of National Guard troops in advance of January 6th. But even assuming the truth of that questionable evidence, Trump does not dispute that as he was monitoring the attack in real time and made no effort to order additional federal law enforcement to support the officers at the Capitol despite the clear need for such support and the President's undisputed authority to order it. Indeed, if Trump did contemplate calling up the National Guard before the event, his failure to do so during the insurrection has even greater significance.

(13) During the attack, Trump did not make a public statement telling the attackers to leave the Capitol until 4:17 PM Eastern Time, more than three hours after violence erupted, at which point he repeated claims about a "fraudulent election" and continued to express support for the attackers, tweeting: "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." Ex. 8 to Mot. (January 6th Report) at 579-80; *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 (cited at Mot. at 28.)

Again, though Trump was aware of the attack and was watching it live, he cannot dispute that he made no public statement—despite ample opportunity to do so—telling the attackers to stop the violence, leave the Capitol, and go home for over three hours.

* * *

The thirteen facts identified above, each of which is supported by admissible evidence, allow for only a single inference: Donald Trump provided "voluntary assistance" to and thus "engaged in" the January 6th insurrection. The Colorado Supreme Court reached the same

conclusion and explicitly stated that the "great bulk" of the evidence supporting that conclusion was undisputed. *Anderson*, 2023 CO 63, ¶ 221. The same is true here. Indeed, Objectors submit that all of the evidence presented in their Motion is admissible and probative of Trump's ineligibility and therefore respond, in the attached Exhibit 1, to each of Trump's purported "disputes" and objections found in the Exhibit A chart attached to his response. But the technical objections to various items of evidence in that chart are a sideshow. Nothing in that chart or elsewhere in Trump's filing creates any genuine dispute regarding the facts listed above or undermines the admissibility of the evidence that supports them. Despite repeatedly protesting that Objectors have Trump's intent wrong or a fact is in dispute because "Objectors have no statement from the President . . . stating that he planned, directed, or intended violence" (Opp. Br. at 4), ***Candidate Trump has failed to submit an affidavit addressing any of these points.*** Because the only reasonable inference to be drawn from those facts is that Trump "engaged in insurrection" for purpose of Section Three, Objectors are entitled to summary judgment.

III. THE COLORADO AND MAINE PROCEEDINGS DO NOT MEAN THAT SUMMARY JUDGMENT IS IMPROPER; ON THE CONTRARY, THIS COURT SHOULD CONSIDER THE FACTUAL RECORD AND PERSUASIVE REASONING SET FORTH IN THE COLORADO AND MAINE DECISIONS.

Trump argues that, because the Colorado and Maine proceedings were not resolved at summary judgment and instead proceeded to a trial or an evidentiary hearing, this means that summary judgment cannot be proper here. Opp. Br. at 11. Not so. As discussed in detail above, *supra* Part II, this is a case that rests on undisputed facts. Indeed, in reviewing the record in the Colorado trial court, the Colorado Supreme Court observed the "great bulk" of the evidence establishing that Trump engaged in insurrection "was undisputed at trial." *Anderson*, 2023 CO 63, ¶ 221. Here, the Board has the benefit of considering the witness testimony from the Colorado trial, where Trump had the opportunity to call his own witnesses and cross examine the petitioners'

witnesses. This expansive record provides the Board with far more information than the Colorado Court had available at the outset of its Section 3 proceeding. Indeed, the Candidate himself has expressly agreed that it is valuable and proper for the Board to rely on these transcripts instead of requiring original affidavits or live testimony from each of these witnesses. He entered into a Stipulated Order in this proceeding (attached here as Ex. 2), where he indicated agreement that "circumstances exist that make it desirable and in the interests of justice and efficiency to minimize unnecessary or duplicative testimony . . . and avoid the need for a contested evidentiary hearing" and, on this basis, agreed that all the witness testimony from the Colorado proceedings fell within the former testimony exception to the hearsay rule.

Despite this practical agreement, he now advances the improper and opportunistic argument that Objectors are somehow acting improperly by, what he characterizes as, "simply transplant[ing] the transcripts from the Colorado proceedings to this case." Opp. Br. at 10. This position cannot be squared with his representations to this Board in the Stipulated Order, or with the reality of these proceedings. In short, as the parties have stipulated, it is entirely proper for this Board to consider the testimony and evidence presented in the Colorado proceedings. And the undisputed, admissible evidence contained in those transcripts combined with the other undisputed evidence outlined in Part II warrants summary judgment.

Trump does not deny that *legal conclusions* set forth in out-of-state decisions, like the Colorado and Maine decisions, can be persuasive precedent, *see* Opp. Br. at 11, but he argues that another court's *factual findings* cannot be persuasive and contends that Objectors are asking this Board to "call off an evidentiary hearing . . . by . . . substituting out-of-state factual findings for its own." *Id.* This intimation that *Objectors* are asking the Board to "call of an evidentiary hearing" is surprising and inappropriate given the Candidate's own agreement that it is "desirable and in

the interests of justice" to "avoid the need for a contested evidentiary hearing" before this Board. *See* Ex. 2 (Stipulated Order). It is also completely baseless for Trump to contend that Objectors are asking this Board to adopt the Colorado and Maine factual findings wholesale without weighing the evidence itself. They have never done so.

Importantly, however, the Colorado and Maine bodies' application of law to the facts, including the conclusions that Trump engaged in insurrection, is persuasive (albeit not binding) precedent worthy of this Board's respect. *See, e.g., Cont'l Cas. Co. v. Howard Hoffman & Assocs.*, 2011 IL App (1st) 100957, ¶ 36 (considering as "persuasive authority" the "two other jurisdictions [that] have found the relevant policy language contained in Continental's policy to be unambiguous and enforceable"); *Robertsson v. Misetic*, 2018 IL App (1st) 171674, ¶ 16 (deeming other jurisdictions' decision "entitled to respect" where they held that membership in the state bar does not subject an individual to general jurisdiction). In this vein, when the Colorado Supreme Court issued its decision in *Anderson v. Griswold* shortly after the Maine evidentiary hearing had concluded, the Maine Secretary of State found persuasive the Colorado Supreme Court's application of law to facts in concluding that the events of January 6th constituted an insurrection. *See* Ex. 5 to Mot. (Maine Secretary of State Ruling) at 23-24 ("In making their case that the events of January 6, 2021 constitute an insurrection, the Rosen Challengers rely heavily on the proceedings in—and evidence from—the *Anderson* case. Much of that evidence is in the record here, and I find the reasoning of the Colorado Supreme Court compelling."). Here too, the reasoning found in the Colorado and Maine decisions provides valuable guidance to this Board and should not be ignored.

IV. MR. WARRINGTON'S IMPROPER RULE 191(B) AFFIDAVIT DOES NOT AFFECT SUMMARY JUDGMENT.

Notably, Candidate Trump has *not* submitted an affidavit in this matter, either to contest evidence Objectors have presented or to address any other issue. Instead, he attempts to invoke Illinois Supreme Court Rule 191(b), through an affidavit from one of his campaign committee's attorneys, arguing that summary judgment is premature. The Board, however, must disregard the affidavit. First and foremost, it completely fails to comply with the requirements of Rule 191(b), most notably because attorney affidavits are not permissible but also due to several other deficiencies. Second, as a matter of substance, the referenced testimony would not change the outcome of Objectors' motion—it would not create a material dispute of fact. While Candidate Trump presents the affidavit as an effort to create an enticing sideshow to derail the objection process, the Board must reject the diversion.

A. The Purported Rule 191(b) Affidavit is Fatally Defective.

As an initial matter, David Warrington's affidavit does not warrant delaying summary judgment because it fails to satisfy the basic requirements of Rule 191.

1. The Affidavit is Not Signed by Candidate Trump. (All Paragraphs)

Per Rule 191(b), any affidavit submitted in accordance therewith must be an "affidavit of [a] *party*." Ill. Sup. Ct. R. 191(b). Accordingly, a Rule 191(b) affidavit is "fatally defective" if it is not signed by the party himself and is instead signed by the party's attorney. *Crichton v. Golden Rule Ins. Co.*, 358 Ill. App. 3d 1137, 1151–52 (5th Dist. 2005) (finding that Rule 191 (b) affidavit was "deficient" where it was "exclusively signed by the plaintiff's attorney, whereas the rule requires that the affidavit be signed by a party"); *Giannoble v. P & M Heating & Air Conditioning, Inc.*, 233 Ill. App. 3d 1051, 1064 (1st Dist. 1992) ("Plaintiff's Rule 191(b) affidavit was fatally defective. . . . [T]he affidavit was signed by plaintiff's attorney, whereas the rule requires that the

affidavit be signed by the party."). A purported Rule 191(b) affidavit that violates this requirement cannot justify delaying summary judgment. *See, e.g., Abramson v. Marderosian*, 2018 IL App (1st) 180081, ¶¶ 36-37 (holding that "[t]he [191(b)] affidavit submitted by plaintiff's attorney, rather than plaintiff himself, was thus insufficient" and affirming trial court's denial of plaintiff's motion to stay summary judgment briefing). Because the proffered 191(b) affidavit is not signed by the Candidate himself and is instead signed by David Warrington, who does not even claim to represent Candidate Trump but rather purports to be general counsel for Candidate Trump's presidential campaign committee, a legally distinct entity (Opp. Br., Ex. E at ¶ 1), it is "fatally defective" and thus cannot justify delaying summary judgment.

2. The Alleged Material Facts Are Not Within Exclusive Knowledge of The Potential Witnesses. (Paragraphs (a), (b), (c), and (f))

Mr. Warrington's affidavit is defective for the additional and independent reason that it acknowledges that the potential witnesses identified in paragraphs 6 (a), (b), (c), and (f) are not the only persons with knowledge of the supposed material facts articulated. Rule 191(b) requires the affidavit to "contain a statement that any of the material facts which ought to appear in the affidavit are known *only to persons* whose affidavits affiant is unable to procure . . . ." Ill. Sup. Ct. R. 191(b) (emphasis added). Illinois courts reject Rule 191(b) affidavits that do not assert that the alleged material facts are within the *exclusive knowledge* of the witnesses identified. *Wynne v. Loyola Univ. of Chicago*, 318 Ill. App. 3d 443, 456 (1st Dist. 2000) (plaintiff's Rule 191(b) motion was properly denied because plaintiff's affidavit did not state that "the witnesses she seeks to depose are the 'only' persons with knowledge of any material facts"); *Crichton*, 358 Ill. App. 3d at 1151–52 (Rule 191(b) affidavit was "deficient" because "the plaintiff's attorney failed to state in his affidavit that the material facts were known only to persons whose affidavits the affiant was unable to procure.").

Mr. Warrington's affidavit should be rejected on this basis. Though he mechanically asserts that the potential witnesses identified are the only persons with knowledge of the material facts to which they would be expected to testify (Opp. Br., Ex. E at ¶ 3), he then contradicts himself by identifying other witnesses who he alleges possess the same knowledge, and whose testimony the Candidate has already obtained in the *Anderson v. Griswold* trial in Denver District Court. Mr. Warrington contends that:

- Each of the supposedly material facts within the knowledge of Mark Meadows is also within the knowledge of Kash Patel or Katrina Pearson, and that they testified thereto in the *Anderson v. Griswold* trial. *See* Opp. Br., Ex. E ¶ 6(a).

- Each of the purported material facts to which Mayor Muriel Bowser would testify is allegedly reflected in a letter within Candidate Trump's possession or is within the knowledge of Mr. Patel or Tom Bjorklund, and that they testified thereto at the *Anderson v. Griswold* trial. *Id.* at ¶ 6(b).

- The purported material facts within the knowledge of General Mark Milley and Ryan McCarthy are also within the knowledge of Mr. Patel and consistent with his testimony in the *Anderson v. Griswold* trial. *Id.* at ¶ 6(c), (f).

The *Anderson v. Griswold* testimony is part of the record in this case, and the Candidate has had full opportunity to rely upon it in responding to Objectors' motion for summary judgment.

What is more, all of Mr. Meadows', General Milley's, and General McCarthy's anticipated testimony is centered around what Candidate Trump himself did or did not do, and knew or did not know:

- "Mr. Meadows would likely testify that . . . (1) President Trump authorized the deployment of 10,000 to 20,000 National Guard Troops . . . (2) President Trump and his staff took reasonable precautions to ensure no speakers at the Ellipse on January 6, 2021 would be likely to make incendiary comments that could be construed as incitement [sic] a call to violence . . . and (3) President Trump was told in advance of January 6, 2021, by military officials that the U.S. Department of Defense had adequate plans and resources to address any disturbances on January 6, 2021." *Id.* at ¶ 6(a).

- "General Milley would likely testify that President Trump authorized the deployment of 10,000 to 20,000 National Guard troops on January 6, 2021." *Id.* at ¶ 6(c).

- "General McCarthy would likely testify that President Trump authorized deployment of 10,000 to 20,000 National Guard troops on January 6, 2021." *Id.* at ¶ 6(f).

For each of these purported material facts—and all others for which Trump claims that someone else could testify about what Trump did or knew—there is an additional person who clearly would have knowledge about what he himself did or knew: the Candidate himself. And he could plainly secure his own affidavit. Because Mr. Warrington's affidavit reveals that these potential witnesses do not possess *exclusive* knowledge of the facts to which they would testify, the Candidate's request for Rule 191(b) relief should be denied.

3. The Affidavit Fails to Identify Potential Witnesses by Name. (Paragraphs (d), (i), and (j))

Moreover, for the potential witnesses identified in paragraphs 6(d), (i), and (j) and paragraph 7, the affidavit violates the express requirement in Rule 191(b) that it must "nam[e] the persons" the affiant wants to depose. Ill. Sup. Ct. R. 191(b). Mr. Warrington's affidavit falls short in so far as he attempts to identify as potential witnesses certain unnamed "operators of the magnetometers of at the Ellipse on January 6," "Capitol security guards located in the U.S. House of Representatives," "Capitol police on East steps of the U.S. Capitol," and "other current government officials, including members of the District of Columbia National Guard." Opp. Br., Ex. E at ¶ 6 (d), (i), (j), and ¶ 7. Under Rule 191(b), his futile reference to *unnamed* purported potential witnesses plainly cannot justify delaying or denying summary judgment. *See, e.g., Rush v. Simon & Mazian, Inc.*, 159 Ill. App. 3d 1081, 1085 (1st Dist. 1987) (ruling that trial court properly found that the 191(b) affidavit was "insufficient" in part because the affidavit merely identified the potential witness by his title—not by name).

4. The Affidavit Fails to Append Required Documents and to Adequately State Reasons for Affiant's Belief as to Anticipated Testimony. (Paragraphs (a), (b), (c), (e), (f), (g), (h), and (k))

As to the witnesses identified in paragraphs 6 (a), (b), (c), (e), (f), (g), (h), and (k), Mr. Warrington's affidavit fails to satisfy the mandate that affidavits "shall have attached thereto sworn or certified copies of all documents upon which the affiant relies." Ill. Sup. Ct. R. 191(a). This alone renders the affidavit deficient, but the omission of these documents is particularly troubling as to paragraphs 6 (e), (g), (h) and (k), because the omitted documents are the *only basis* provided for Mr. Warrington's belief as to the potential witnesses' anticipated testimony.

In paragraphs (e), (g), and (h), Mr. Warrington identifies Steven Sund, Paul Irving, and Michael Stenger as potential witnesses, and states that due to "public statements" by Mr. Sund and "public reports of [the] actions" of Mr. Irving and Mr. Stenger, he believes that Mr. Sund would testify that Trump authorized deployment of 10,000 to 20,000 National Guard troops on January 6th, and that Mr. Irving and Mr. Stenger would testify they refused to request National Guard troops until late afternoon on January 6th, because they did not perceive the violence at the Capitol to constitute a serious threat. Opp. Br., Ex. E ¶¶ 6(e), (g), (h). Mr. Warrington's omission of the "documents upon which [he] relies" not only violates 191(a), but also the requirement in 191(b) that he state "his reasons for his belief" about the anticipated substance of their sworn testimony. The Board is left unable to evaluate the reasonableness of the basis for his supposed belief, and that is fatal to his affidavit.

Furthermore, in paragraph (k), Mr. Warrington identifies as a potential witness Representative Benny Thompson, the Chairman of the United States House Select Committee on the January 6th attack, and quite amazingly, swears *under oath* that "Representative Thompson would likely testify (1) that the purpose of the House Select Committee was to gather evidence in an attempt to validate the belief shared by him and all other committee members (before their appointment to the Committee) that President Trump incited an insurrection on January 6, 2021 .

. . and (2) that the Committee doctored evidence and encrypted or destroyed evidence that it had collected . . . .” Opp. Br., Ex. E ¶ 6(k). In short, he believes Rep. Thompson would testify that the Select Committee was engaged in a witch hunt and the January 6th Report was fraudulent. The only stated reasons for his belief are “recent news media reports” and Committee members’ “public votes in favor of impeaching President Trump and their public statements,” *id.*, but in violation of 191(a), he does not attach any of these documents. Even if he had properly appended them, however, this paragraph is plainly deficient. Mr. Warrington does not offer any reasonable basis to support a belief that Rep. Thompson would, in a drastic turnabout, now denigrate the report he issued by a Congressional Committee that he chaired. *See Olive Portfolio Alpha, LLC v. 116 W. Hubbard St., LLC*, 2017 IL App (1st) 160357, ¶¶ 28-29 (rejecting 191(b) affidavit that was “based on speculation”).

In short, Mr. Warrington’s affidavit is defective in its entirety, and as outlined above, each individual paragraph is also defective. For these reasons, this Board should deny Candidate’s attempt to rely on this affidavit to delay these proceedings.

B. <u>The Proffered Testimony Would Not Create a Material Dispute of Fact.</u>

Even if Mr. Warrington’s affidavit met the requirements of Rule 191(b), the proffered testimony would not create a material dispute of fact that would impact summary judgment. The core facts necessary to meet the elements of “insurrection” and “engage in,” set forth in detail in Part II, remain undisputed.

Setting aside purported potential witness Rep. Thompson—the Committee Chairman who Mr. Warrington quite incredibly attests will testify that the January 6th Report he chaired is a product of fraud—the remaining witnesses’ anticipated testimony is focused on three topics: (1) the deployment of National Guard troops in D.C. on January 6, 2021 (paragraphs (a), (b), (c), (e), (f), (g), (h)), (2) other purported precautions taken by Trump in advance of January 6th (paragraph

(a)), and (3) the claim that the insurrectionists of January 6th were supposedly unarmed, peaceful, and not dangerous (paragraphs (d), (i), and (j)). None of this testimony would move the needle on summary judgment.

1. Deployment of the National Guard

Even if any or all of the witnesses Mr. Warrington identified were to testify that Trump authorized the Deployment of National Guard troops for January 6, 2021, or that Mayor Bowser objected to the presence of National Guard troops before January 6, 2021, or that other stakeholders either requested or failed to request the presence of the National Guard (Opp. Br., Ex. E ¶¶ 6(a)-(c), (e)-(h)), Trump does not dispute with any evidence whatsoever that he was monitoring the attack in real time, that he made no effort to order additional federal law enforcement to support the officers at the Capitol despite the clear need for such support, and that he had authority to order it. *See supra* Part II.B(12).

2. Other Purported Precautions

Even if Mr. Meadows testified that Trump and his staff took precautions to ensure that "no speakers at the Ellipse on January 6, 2021, would be likely to make incendiary comments," as Mr. Warrington claims he would, *id.* at ¶ 6(a), Trump cannot and does not dispute that the other speakers he did permit in fact that day called for "trial by combat," "taking down names and kicking ass," and preparing to sacrifice "blood" and "lives." *See supra* Part II.B(7); *see also Thompson v. Trump*, 590 F. Supp. 3d 46, 66, 104, 115, 118 (D.D.C. 2022) (noting this context is important in determining that Trump's speech constituted "plausibly words of incitement").[6]

[6] Trump elected not to appeal the district court's rejection of his defense that his speech supposedly did not incite imminent lawless action. *Blassingame v. Trump*, 87 F.4th 1, 5 (D.C. Cir. 2023).

Nor can he dispute that, during his own speech, he implored the crowd to "fight like hell," urging that "if you don't fight like hell, you're not going to have a country anymore," and directing the crowd to march on the Capitol. *Id.*

3. Unarmed, Peaceful, and Not Dangerous

As discussed in Part II, Trump cannot genuinely dispute that the January 6th attack was violent. Mr. Warrington contends (i) that certain unnamed operators of magnetometers at the Ellipse would testify that the majority of attendees at the Ellipse on January 6th possessed no dangerous items, and that operators of magnetometers did not find a single firearm or other deadly weapon; (ii) that certain unnamed security guards who were located in the U.S. House of Representatives on January 6th would testify that "at no time were any House members in physical danger" but that these unnamed individuals would concede, at the same time, that House members were evacuated "as a precaution to avoid violence at the Capital [sic]"; and (iii) that certain unnamed Capitol police on the East steps of the U.S. Capitol on January 6th would testify that they perceived the crowd to be "peaceful and not threatening." Opp. Br., Ex. E, ¶¶ 6(d), (i), (j). If members of the House needed to be evacuated to "avoid violence" they plainly were in enough danger to stymie the peaceful transfer of power. Moreover, even if some members of the crowd were unarmed or peaceful, Trump does not (and cannot) dispute that many were armed and dangerous and overwhelmed law enforcement by force. *See supra* Part II.B(2), (3).

In short, the purported anticipated testimony articulated in Mr. Warrington's affidavit does not create a material dispute of fact that would impede summary judgment.

C. <u>Trump Had an Opportunity To Present Evidence and Declined.</u>

Last, given that Trump voluntarily elected not to avail himself of the discovery procedures before this Board, it is disingenuous for Trump to now claim that he has not had adequate discovery for the Board to rule on summary judgment. Opp. Br. at 14-15.

The Candidate contends that he "has not been permitted to conduct discovery in any proceedings challenging his nominating papers, including in Colorado, Maine, or Illinois." Opp. Br. at 15. And Mr. Warrington even swears under oath that "[n]o discovery has been permitted with respect to the Objections" before this Board. *See* Opp. Br., Ex. E at ¶ 4. Yet, Trump did have the opportunity to request subpoenas for documents and witness testimony, SOEB Rules of Procedure 2024 § 8(1) (outlining the process to obtain subpoenas), but he declined to do so. He did not even provide an affidavit with his *own* testimony, to address many of the issues he characterizes as central to this objection.[7] Further still, he has specifically sought to *limit* the presentation of witness testimony in the hearing before this Board. Ex. 2 (Stipulated Order). He cannot have it both ways.

Trump's apparent strategy in this and other similar proceedings, e.g., in Colorado and Maine, has been to decline to take full advantage of the opportunity to call witnesses (including himself) and present other evidence, and then to later claim that the proceedings were inadequate because he did not have such an opportunity. As the Colorado trial court explained:

> [W]hile Trump has repeatedly suggested he was not afforded due process, at no point did he ask the Court for any relief on this basis that the Court denied and in fact only used approximately twelve hours and fifteen minutes of the eighteen hours provided to him at the Hearing (or, approximately two-thirds of the allotted time). Further, the Court offered to hear additional witness testimony outside the 5-day hearing if there were any witnesses who were not able to testify between October 30, 2023 and November 3, 2023.

Ex. B to Petition (Colorado Trial Court Final Order) at 16 n.6; *see also Anderson v. Griswold*, 2023 CO 63, ¶ 82 ("He made no specific offer of proof regarding other discovery he would have conducted or other evidence he would have tendered."); Ex. 5 to Mot. (Maine Secretary of State Ruling) at 17 ("Mr. Trump's concerns about the adequacy of this proceeding are . . . without merit.

[7] Whatever the reasons for Trump's strategic decision to neither provide an affidavit nor testify live, Objectors would not have opposed (if they had been asked) Trump's providing timely sworn testimony.

He has had the opportunity to present evidence; to call witnesses; to cross-examine; and to argue at length both the legal and factual issues germane to my decision."). This is the hide-the-ball strategy of a party who knows he will lose in a fair fight on the merits.

Moreover, Trump's vague request that the Board "permit the non-movant to complete relevant discovery before considering and ruling upon a motion for summary judgment" (Resp Br. at 16) does not appear to be a genuine request for more time. Notably, he does not ask for an additional week or even two weeks to secure these witnesses' testimony. This ostensible request for more time is merely a general protest against the expedited proceedings which this Board is statutorily mandated to follow. Such a protest is unavailing as discussed below. *See infra* Part V.

V. THE HEARING OFFICER AND BOARD ARE WELL-EQUIPPED TO DECIDE THE OBJECTION; EITHER ON SUMMARY JUDGMENT OR BY EXERCISING FACT-FINDING.

Candidate Trump's arguments boil down to a renewed complaint that this Objection cannot be heard through the process directed by the Illinois legislature in the Election Code. *See* Opp. Br. at 15. As Objectors have thoroughly addressed in their Objection (¶¶ 46-54), their Motion (at pp. 32-36), and their Opposition to the Candidate's Motion to Dismiss (at pp. 5-15), the Electoral Board has both the authority and procedures to fairly resolve this Objection. Again, while the Objection relies on facts that deal with a candidate's conduct in extraordinary national events, this does not sweep it outside the Board's purview. The Illinois Supreme Court has repeatedly endorsed the electoral board objection process to evaluate detailed information in highly contested objections. This includes in a contentious objection evaluating former Presidential Chief of Staff Rahm Emmanuel's residency during the time he served and lived in Washington D.C., that involved detailed information about events in Washington. *Maksym v. Bd. of Election Comm'rs of City of Chicago*, 242 Ill. 2d 303, 306 (2011) (crediting the "extensive evidentiary hearing" before electoral board and board's factual findings in appeal of objection on Emmanuel's qualification to

appear on ballot based on disputed Chicago residency), *see also* Objectors' Opp. to Mot. to Dismiss at 9 (collecting cases with disputed facts, complex records, and extensive evidentiary proceedings).

The complaints fall particularly flat since the evidence on which the Objection relies has been so thoroughly developed, aiding the hearing officer and the Board, while Candidate Trump has simultaneously failed to even minimally avail himself of the procedures available. *See supra* Part IV.E. Here, he has not even submitted an affidavit despite repeated claims that the Objection misconstrues his "actual intentions" on January 6th. Opp. Br. at 2; *see also, e.g., id.* at 1 (Trump denies he intended or supported crimes or violence); *id.* at 4 ("Objectors have no statement from the President . . . stating he planned, directed, or intended violence"); and *id.* at 5 (claiming to dispute Trump was aware that supporters planned violence). This Objection has been on file since January 4, 2024. It follows Section 3 proceedings about the January 6th attack filed in several states that date as early as September 2023.[8] Candidate Trump has not attempted to dispute the evidence of his "intentions" through his own testimony in *any* of them.

Moreover, while Objectors stand by the strong facts and arguments presented in their motion and this reply that summary judgment can be granted, a denial of the motion does *not* close the objection process, as the Candidate suggests. Should the Hearing Officer recommend and the Board decline to grant summary judgment, the next step is to decide the Objection. Then the Hearing Officer, and Board, will evaluate admissible evidence the parties have submitted, and reach decisions on facts deemed disputed for summary judgment. SOEB Rules of Procedure 2024 at §§ 4-5, 7(c), 10. The parties have agreed to forgo live witness testimony and stipulate to the

[8] Candidate Trump faced a Section 3 ballot challenge in Minnesota that was filed on September 12, 2023. *See* Petition to Challenge Placement of Donald J. Trump on the 2024 Primary and General Election Ballots, *Growe, et al. v. Simon*, Case No. A23-1354 (*available at* https://freespeechforpeople.org/wp-content/uploads/2023/09/2023-09-12-petition.pdf). He neither testified nor submitted affidavit testimony in either the Colorado or Maine proceedings. *See Anderson*, 2023 CO 63; Ex. B to Petition (Colorado Trial Court Final Order); Ex. 5 to Mot. (Maine Secretary of State Ruling) at 3-7.

authenticity of the trial witness testimony in the *Anderson* case, virtually all of the trial exhibits, and have presented other video, documentary, and affidavit testimony.[9] Since "a preponderance of the relevant and admissible evidence" supports the Objection, it must be sustained. SOEB Rules of Procedure 2024 at § 11(b). In this posture, the Hearing Officer and the Board are well-equipped to reach factual conclusions and decide the Objection.

VI. CONCLUSION

For these reasons and those stated in their Motion, 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.

Respectfully submitted,

By: /s/ Caryn C. Lederer
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[9] The stipulation provides that the Hearing Officer will resolve remaining objections to admissibility either as needed to decide the summary judgment motion or on the Objection itself.

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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.

PROOF OF SERVICE

Counsel for Objectors hereby certifies that Objectors' Reply in Support of Their Motion to Grant Objectors' Petition, or in the Alternative for Summary Judgment was filed with the State Officers Electoral Board via email at generalcounsel@elections.il.gov and Hearing Officer Judge Clark Erickson via email at ceead48@icloud.com, and served on Candidate Trump via his counsel at AMerrill@watershed-law.com, before 5:00 p.m. on January 25, 2024.

/s/ Caryn C. Lederer
Caryn C. Lederer

Exhibit 1

Objectors' Response

	Factual assertion	Cite in Brief	Claimed Evidentiary Support	Basis for disputing assertion	Evidentiary Objections	Objectors' Response
1	"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)."	Section II, p. 5	Fn. 3 (Aug. 17, 2020 C-SPAN video from WI; Aug. 2, 2020 WaPo video from RNC; Sept. 24, 2020 C-SPAN video of President Trump departing White House).	These videos show only that President Trump exercised his First Amendment rights to speak on matters of public concern (i.e., election integrity). They cannot support the inference that he prepared or urged voters to engage in "insurrection," four to five months before Jan. 6, 2021.	These videos of President Trump's comments are irrelevant because they are temporally distant from the events of January 6, 2021, the day of alleged "insurrection." The comments were about election integrity and on matters of public concern—and which were not incendiary—are protected by the First Amendment. These videos are incomplete, lack foundation not supported by testimony, are from sources unauthenticated by the record, and represent an improper attempt to offer character evidence.	Trump's statements in the video footage are relevant because they show Trump laying the foundation for the insurrection—planting the seed that the election would somehow be fraudulent if he were to lose—and because they show his intent to refuse to allow the peaceful transfer of power if he lost. Trump presents no evidence to dispute that he made the statements. That those comments may be protected under the First Amendment does not render them inadmissible. In addition, the videos—like all news footage

	Factual assertion	Cite in Brief	Claimed Evidentiary Support	Basis for disputing assertion	Evidentiary Objections	Objectors' Response
						cited—are self-authenticating, and their genuineness cannot be disputed, especially under the Board's relaxed evidentiary standards. *See United States v. Loera*, No. 09-CR-0466 (BMC), 2018 WL 2744701, at *4 (E.D.N.Y. June 7, 2018) (finding news video self-authenticating and nothing that "[i]t would be extremely difficult to forge news videos").
2	"Trump did not hide his intentions: when asked during a September 23, 2020 press conference if he would commit to a	Section II, pp. 5-6	Fn. 4 (Sept. 23, 2020 C-SPAN video of President Trump's statements).	See Disputed Fact No. 1.	See Disputed Fact No. 1.	See Response to Fact 1.

Objectors' Response

	Factual assertion	Cite in Brief	Claimed Evidentiary Support	Basis for disputing assertion	Evidentiary Objections	Objectors' Response
	peaceful transfer of power following the election, Trump refused to do so."					
3	"Trump aligned himself with extremist and white supremacist organizations and signaled they should be prepared to act on his behalf."	Section II, p. 6	Fn. 5-7 (Sept. 29, 2020, Trump asked to disavow Proud Boys—supported by Simi affidavit or testimony from Anderson trial; "stand back, stand by" comments—Sept. 29, 2020 AP video from debate; Proud Boys took that statement as call to be ready—Simi affidavit or testimony from Anderson and Jan. 6th Report)	The "stand back and stand by" comment was in direct response to the moderator's demand that President Trump tell certain groups to "stand down." Moreover, Trump's reference to Proud Boys directly responded to Joe Biden's demand that President Trump direct his remark to "Proud Boys." Further, the entire exchange referred to then-recent unrest in cities like Kenosha, Wisconsin and Portland, Oregon. Further, the video clip is incomplete. Immediately before that exchange, President Trump expressly stated that his supporters	All of Simi's testimony was based on President Trump's protected speech and not any actions by President Trump. Simi admitted that all of the "patterns" of speech and behavior that he saw President Trump engage in are normal patterns of political speech. (TR. 10/31/2023, pp. 141:7-142:9). Simi further admitted that his testimony was limited to identifying the patterns in President Trump's communication over time and how it was interpreted by far-right extremists. Importantly, Simi testified that	Trump does not dispute that he told the Proud Boys to "stand back and stand by" (i.e., to be ready) in a live presidential debate; nor does he present any evidence to dispute the fact that Proud Boys members responded to his statement as a call to action. Contrary to Trump's claim, news footage of a live presidential debate is self-authenticating, and his purported evidentiary objections to the January 6th Report—that it "contains improper

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				"should not add to the violence in . . . these cities," and he said that he would "do anything" in order "to see peace." Immediately after the exchange, President Trump reiterated that violence was a "problem." His "stand back" statement emphasized that his supporters were not the ones who should "do something" about the problem. The full exchange cannot plausibly be interpreted as an endorsement of those groups, let alone of their future actions in response to an election that had not yet happened. The very next day, September 30, President Trump emphasized to a	whether President Trump's intended to mobilize people to violence on January 6th was beyond the scope of his opinion. (TR. 10/31/2023, pp. 206:20-207:4). Simi did not consider First Amendment standards in evaluating President Trump's speech. Additionally, the comments are irrelevant because they are temporally distant from the events of January 6, 2021, the day of alleged "insurrection." Moreover, the videos lack foundation not supported by testimony and represent an improper attempt to offer character evidence. In addition to issues surrounding the	legal conclusions, speculation, and hearsay"—are conclusory and not specific to the portion of the Report cited for this particular claim. The factual findings from the Report are generally admissible for the reasons discussed at Reply, § II(A), and the citation here regarding the reaction of Proud Boys members is a statement of historical fact admissible under Rule 803(8). Any out-of-court statement contained therein is not offered for the truth of the matter asserted but for the reaction of extremists to

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				reporter that although he was not familiar with the Proud Boys, "they have to stand down and let law enforcement do their work . . . [W]hoever they are, they have to stand down. Let law enforcement do their work." The statement does not explicitly endorse actual violence, and President Trump used the exact words – "stand down" that the moderator asked him to use.	formation and bias of the Select Committee, the Jan. 6th Report is inadmissible because it contains improper legal conclusions and speculation, and hearsay. The Report itself is hearsay and each of the statements that it contains, quotes, and relies upon—the documents, the testimony, the transcribed interviews, and the like—is also inadmissible hearsay. Further, the Report is unreliable and untrustworthy as a product of a politically motivated and biased grandstanding exercise undertaken by congresspeople who had already predetermined President Trump's	Trump's comment. The purported "evidentiary objections" to Professor Simi's testimony are not objection at all but merely identify the scope of his testimony.

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					guilt, did not have a minority report issued because no pro-Trump congresspeople were on the committee, and issued statements accordingly before beginning work on a committee staffed by inexperienced investigators who had never handled investigations involving violence. Indeed, the Report is so unreliable that almost none of the Report's Eleven Recommendations, taking up a mere four pages out of over 800, have been adopted. Even the judge in Anderson announced in her Final Order that she only considered and cited 31 of the Report's conclusions, even though the	

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					petitioners in that case originally sought to admit all 411 conclusions. Thus, even a tribunal predisposed to remove President Trump from the ballot did not find the vast majority of conclusions to be reliable. President Trump, the party whose presence on the Illinois ballot is being challenged, was not a party to the Select Committee's proceedings, had no lawyer or other representative to protect his interests, and had no opportunity to cross-examine the witnesses who testified, to introduce testimony or documents, or to question the accuracy or truth of the Report's conclusions	

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					or any of the information that formed the basis for those conclusions. The Select Committee has been widely recognized as a political show trial or partisan political star chamber.	
4	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.	Section II, p. 6	None.	Objectors fail to cite evidence supporting this factual statement and omit facts showing that Democrats disputed the results of previous presidential elections thereby obstructing the transition of power.	Unsupported statement.	The Hearing Officer and Board may take official notice of the fact that prior presidential elections resulted in the peaceful transfer of power and were not contested by the use of violence and extra-judicial means. *See* Ill. Admin. Code tit. 26, § 125.185 (allowing notice to be taken on all matters on which a circuit court might take judicial notice); *People v. Tassone*,

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						41 Ill. 2d 7, 12 (1968) ("Courts do not operate in a vacuum; they are presumed to be no more ignorant than the public generally, and will take judicial notice of that which everyone knows to be true.").
5	"[M]edia outlets projected that Biden was in the lead."	Section II, p. 6.	Fn. 8 (Nov. 5, 2020 CNN Election 2020 Presidential results)	Media outlets projecting that Biden was in the lead are irrelevant hearsay. Opinions from media outlets did not establish that President Biden would win the election or that the election was problem free.	This is hearsay, is irrelevant to the determination of whether the events of Jan. 6, 2021, constituted an insurrection, lacks foundation not supported by testimony, is from sources unauthenticated by the record, is an improper attempt to get testimony not subject to cross-examination into the record, and represents an improper attempt to	News reports projecting Biden's lead are not hearsay because they are not offered for the truth of the matter asserted but are offered, rather, to show Trump's knowledge and motive when he later tweeted about voter fraud. They are relevant to Trump's motive and intent to retain power and the office of the presidency, and

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					offer character evidence.	their authenticity cannot genuinely be disputed. Nor is a news report projecting election results in any way impermissible "character evidence."
6	"Trump alleged on Twitter that widespread voter fraud had compromised the validity of such results."	Section II, p. 6	Fn. 9 (President Trump's Nov. 4, 2020 tweet and two Nov. 5 tweets, all part of Group Exhibit 7/also referred to as "Trump Tweet Compilation").	These tweets are protected speech, advocating a public policy opinion. They did not advocate violence or urge people to engage in insurrection.	Statements in referenced tweets that President Trump made about election integrity and on matters of public concern—and which were not incendiary—are protected by the First Amendment. Additionally, they are irrelevant because they are temporally distant from the events of January 6, 2021, the day of the alleged "insurrection." Moreover, the tweets represent an improper attempt to offer character evidence.	Trump's tweets about election fraud are relevant to his intent to retain power and the office of the presidency and his laying the foundation for the January 6th insurrection; they are not offered as "character evidence." Nor does the fact that the tweets may be protected under the First Amendment render them inadmissible.

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7	"[O]n November 7, 2020, news organizations all across the country declared that Joseph Biden won . . ."	Section II, p. 7	Fn. 10 (Nov. 7, 2020 CBS and NPR articles)	See Disputed Fact No. 5.	See Disputed Fact No. 5.	See Response to Fact 5.
8	"Trump falsely tweeted: 'I WON THIS ELECTION, BY A LOT!'"	Section II, p. 7	Fn. 11 (Trump Nov. 7, 2020 tweet from Tweet Compilation (Group Ex. 7) at 2)	See Disputed Fact No. 6.	See Disputed Fact No. 6.	See Response to Fact 6.
9	"[A]ides and advisors close to Trump investigated his election fraud claims and repeatedly informed Trump that such allegations were unfounded."	Section II.A., p. 7	Fn. 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	See Disputed Fact No. 3.	See Disputed Fact No. 3 (objections to January 6th Report). The evidence also demonstrates multilevel hearsay: the January 6th Report itself is hearsay and statements that anyone "informed" anyone else of anything is classic hearsay.	Trump does not offer any evidence to dispute the fact that he was repeatedly informed that his election-fraud allegations were baseless. The factual findings from the January 6th Report on this point are admissible for the reasons discussed at Reply, § II(A). Statements from advisors

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			Attorney General William Barr informed Trump his 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).			informing Trump are not "classic hearsay"; they are not hearsay at all because they are offered to establish the fact that Trump was informed not that the statements made to him were true.
10	"And on December 1, 2020, Trump's appointed Attorney General, William Barr, publicly declared that the U.S. Department of Justice found no evidence of voter fraud . . . ."	Section II.A., p. 7	Fn. 13 (Jan. 6th Report at 377; June 28, 2022 AP Article.	That the Justice Department found no evidence of voter fraud to warrant a change in electoral results does not negate President Trump's sincerely held belief that voter fraud had occurred resulting in his loss.	See Disputed Fact Nos. 3, 5, and 9.	To the extent Trump claims Barr's public declaration that there was no evidence of voter fraud is hearsay, he is again wrong because the statement is offered to show Trump's

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						knowledge—namely, that he knew Attorney General Barr was so confident in the lack of merit to the election-fraud claims that he stated so publicly. Trump purports to dispute this fact by asserting that Trump "sincerely held" the belief that voter fraud had occurred, yet Trump offers no evidence to support that assertion—not even in his own testimony—and thus cannot create a genuine dispute.
11	"Despite knowing the lack of evidence of voter fraud, Trump continued to refuse to accept his electoral loss."	Section II.A., p. 7	None.	This statement claims to have knowledge about what President Trump knew when no evidence supports such claim.	Unsupported statement. Even Simi testified that he could not testify about Trump's knowledge (TR. 10/31/2023, pp. 205:22-207:4).	The preceding sentences—the statements from Trump's advisors and the statement from Attorney General Barr—

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						establish Trump's knowledge that his claims lacked evidence. The subsequent sentences describing Trump's continued attempts to overturn the election show his refusal to accept his electoral loss. Trump does not offer any evidence—not even his own testimony—to dispute these facts.
12	"Some of Trump's actions—e.g., lawsuits contesting election results—were meritless but not illegal to pursue . . . ."	Section II.A., p. 7	None.	This statement overarchingly calls all of President Trump's election lawsuits "meritless," when he sincerely believed they did have merit.	Unsupported statement. Wholly irrelevant to whether President Trump "engaged in insurrection."	Objectors expressly admit that the meritless lawsuits were lawful and "not at issue here" as stated in their brief.
13	"But as it became clear that Trump's lawful, nonviolent attempts to remain in power would	Section II.A., pp. 7-8.	None.	Unsupported statement making improper legal conclusions.	Unsupported statement making improper legal conclusions.	The sentence quoted here is a topic sentence that is followed by supporting facts

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	fail, he turned to unlawful means to illegally prolong his stay in office."					with citations, including the sentence that follows regarding the unlawful "fake electors" scheme.
14	"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."	Section II.A., p. 8	Fn. 14 (January 6th Report at 341-42 (Ex. 8)).	These are legal conclusions unsupported by any record evidence. No record evidence supports that President Trump "oversaw" an effort to obtain and transmit alternate slates of electors. Nor can Objectors establish that any potential alternate slate of electors was illegal. Representative Swalwell testified that "it was well-known among myself and my colleagues and the public that President Trump believed that Pence had the – that Vice President Pence had the ability to	Improper legal conclusion. See Disputed Fact Nos. 3, 9, including objections to January 6th Report.	The cited portion of the January 6th Report establishes that, under Trump's direction, a "slate of electors" who were not the actual, certified electors, met to cast votes without any legal authority or basis to do so. That fact is admissible for the reasons discussed at Reply, § II(A). The cited testimony of Rep. Swalwell regarding Trump's belief does not actually establish that Trump had a good-faith belief that Vice President Pence had

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				essentially reject the electoral ballots that were sent from the states." TR [10/31/2023], p. 162:4-8. President Trump could not have believed that Vice President Pence could have rejected the ballots if he "had lost." There is no record evidence that any alternate slate of electors was "fake."		legitimate legal authority to reject property certified electoral ballots, and Trump does not offer any other evidence—not even his own testimony—to dispute the fact.
15	"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	Section II.A., p. 8.	Fn. 15 (Jan. 6th Report at 346).	See Disputed Fact Nos. 3, 9.	See Disputed Fact Nos. 3, 9, including objections to January 6th Report.	See Response to Facts 3 and 9 and see Reply, § II(A) generally, regarding the admissibility of the January 6th Report.

	Factual assertion	Cite in Brief	Claimed Evidentiary Support	Basis for disputing assertion	Evidentiary Objections	Objectors' Response
	challenges to the election results were underway."					
16	"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."	Section II.A., p. 8.	Fn. 16 (Jan. 6th Report at 341).	See Disputed Fact No. 14.	See Disputed Fact Nos. 3, 9, including objections to January 6th Report.	See Response to Facts 3, 9, and 14.
17	"Between December 23, 2020, and early January 2021, Trump repeatedly attempted to speak with Rosen in an	Section II.A., p. 8.	Fn. 19 (Jan. 6th Report at 383).	President Trump was not committing election fraud in "attempting to speak" to a person, nor by trying to determine what lawful options existed to object to the	See Disputed Fact Nos. 3, 9, including objections to January 6th Report.	Objectors are not asserting that Trump was committing election fraud; rather, he was repeatedly speaking to the Acting

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	effort to enlist his support for the purported election fraud."			results.		Attorney General to get him to support Trump's claim that there had been election fraud. This factual finding is undisputed and admissible for the reasons discussed at Reply, § II(A).
18	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."	Section II.A., p. 9.	Fn. 20 (Jan. 6th Report at 386).	President Trump did not testify before the Select Committee nor did he have the ability to crossexamine those who claim he made this statement.	This is hearsay, and President Trump has had no opportunity to cross examine Rosen. See Disputed Fact Nos. 3, 9, including objections to January 6th Report.	The statement is not hearsay. It is not offered from the truth of what Rosen said but for the fact that it was said *to Trump*. The factual finding that Rosen said this is admissible for the reasons discussed at Reply, § II(A).
19	On December 31, 2020, Trump asked Rosen and Donoghue to direct the Department of Justice to seize voting machines.	Section II.A., p. 9.	Fn. 21 (Jan. 6th Report at 396).	See Disputed Fact No. 18.	Hearsay. See Disputed Fact Nos. 3, 9, and 18, including objections to January 6th Report.	The statement was made by Trump, a party-opponent, and is thus not hearsay. The factual finding that he made the statement is

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						admissible for the reasons discussed at Reply, § II(A).
20	Rosen and Donoghue rejected Trump's request, citing the Department of Justice's lack of any legal authority to seize state voting machines.		Fn. 22 (Jan. 6th Report at 396-97).	See Disputed Fact No. 18.	Hearsay. See Disputed Fact Nos. 3, 9, and 18, including objections to January 6th Report.	The statement is offered to show Trump's knowledge, not for the truth of the matter asserted. The factual finding that the statement was made to Trump is admissible for the reasons discussed at Reply, § II(A). See Response to Fact 18.
21	"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	Section II.A., p. 9.	Fn. 23 (Jan. 6th Report at 397).	Bureaucratic gossip and authorization to speak with President Trump is irrelevant.	Hearsay. See Disputed Fact Nos. 3, 9, and 18, including objections to January 6th Report.	The willingness of Trump to deviate from proper protocol to attempt to retain to power and the office of the presidency is relevant on intent. The fact that Clark told Rosen and Donoghue that Trump was prepared to fire

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	Rosen and Donoghue that Trump was prepared to fire them and to appoint Clark as the acting attorney general." (emphasis added)					them is not offered for the truth of the statement but to show Trump's further attempts to pressure Rosen and Donoghue via Clark. Trump's own statement is admissible as the statement of a party-opponent. The findings that those statements were made are admissible for the reasons discussed at Reply, § II(A). See Response to Facts 3, 9, and 18.
22	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	Section II.A, p. 9.	Fns. 24-25 (Jan. 6th Report at 389-90, 397.	See Disputed Fact Nos. 14, 18.	Hearsay. See Disputed Fact Nos. 3, 9, and 18, including objections to January 6th Report.	See Response to Fact 21. Clark's statements are not offered for their truth but to show how Trump was attempting to pressure Rosen and Donoghue via Clark. The factual

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	did so, then Clark would turn down Trump's offer and Rosen would remain in his position. Rosen and Donoghue again refused.					findings regarding those statements are admissible for the reasons discussed at Reply, § II(A) See Response to Facts 3, 9, and 18.
23	Following his election loss, Trump publicly and privately pressured state officials in various states around the country to overturn the election results.	Section II.A., p. 9.	Unsupported.	No evidence to support this statement. President Trump disputes that he "pressured" state officials to overturn election results. And this is not evidence of engaging in insurrection.	Improper legal conclusion and subjective statement of fact unsupported by admissible evidence.	The statement is supported by subsequent sentences with citations to evidence, including descriptions of efforts to pressure Georgia officials Brad Raffensperger and Gabriel Sterling and Vice President Pence.
24	Trump pressured Georgia Secretary of State Brad Raffensperger to "find 11,780 votes" for him, and thereby fraudulently and unlawfully turn his	Section II.A, p. 9-10.	Fn. 26 (Jan. 6th Report at 263).	Improperly characterizes evidence. On the call, President Trump clearly noted that all he needed to win the state was 11,780 votes and that President Trump	See Disputed Fact Nos. 3, 9, and 18, including objections to January 6th Report.	Trump does not dispute that he told Georgia's Secretary of State to "find 11,780 votes." He simply claims that he meant something other than what we said, while offering

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	electoral loss in Georgia to an electoral victory.			believed that more votes than that number had been illegally cast. Irrelevant to whether President Trump "engaged in insurrection."		no evidence whatsoever—including his own testimony—to support that claim. The factual findings regarding Trump's conversations with Secretary Raffensperger are admissible for the reasons discussed at Reply, § II(A). See Response to Facts 3, 9, and 18.
25	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. (emphasis added)	Section II.A, p. 10.	Fn. 27 (Jan. 6th Report at 303-05).	Irrelevant to whether President Trump "engaged in insurrection." There is no evidence of causation regarding threats of violence around the country. Gabriel Sterling video (Fn 28—P-126 attached in Group Exhibit 4) and President Trump's retweet of the video (Fn. 29—Group	See Disputed Fact Nos. 3, 9, and 18, including objections to January 6th Report.	Trump claims that there is no evidence of causation regarding threats of violence, but the connection between Trump's frequent tweets and claims about fraudulent state election officials and the violent threats against those officials is clear. Trump's claim that

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				exhibit 7 at 3) only show allegations of threats in Georgia, and President Trump has not testified about these issues nor did he cross-examine the witnesses involved.		he never testified about these issues falls flat as he has had the opportunity do so—and had the opportunity here—but has refused to do so. The factual findings regarding threats to state official are admissible for the reasons discussed at Reply, § II(A).
26	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	Section II.A., p. 10.	Fn. 30 (Jan. 6th Report at 428).	Calling the theory "baseless" is subjective opinion. See Disputed Fact No. 14.	Hearsay. See Disputed Fact Nos. 3, 9, and 18, including objections to January 6th Report.	Trump's only attempt to dispute this fact is to take issue with the characterization of the theory that Pence could reject votes on January 6 as "baseless," but Trump does not offer any evidence or argument to support the theory's legal merit. Eastman knew the theory was baseless,

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	reexamine the results.					admitting to Pence's attorney that the theory would lose at the Supreme Court 9-0. January 6th Report at 449-50. There is no hearsay because the fact concerns the topic of their discussion, not the truth of anything discussed. The factual findings regarding the meeting are admissible for the reasons discussed at Reply, § II(A). See Response to Facts 3, 9, and 18.
27	As Trump later admitted, the decision to continue seeking to overturn the election after the failure of legal challenges was his alone.	Section II.A, p. 10.	Fn. 31 (NBC News Meet the Press Sept. 17, 2023 broadcast).	Irrelevant to whether President Trump "engaged in insurrection." Mischaracterizes evidence. President Trump's statement indicated his belief that election fraud took place.	See Disputed Fact No. 5.	The admission is relevant to Trump's intent and establishes that he was determined to remain in power regardless of whether his own attorneys said he was entitled to do so

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						under the law. Trump does not present any evidence to dispute that fact.
28	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.	Section II.A., p. 11	None.	No evidence, but rather argument by counsel. Irrelevant to whether President Trump "engaged in insurrection." President Trump sincerely believed the election results were illegitimate due to fraud and that Pence had the authority to reject slates of electors, so they were not lies or false expectations. See Disputed Fact No. 14.	Unsupported legal conclusions and subjective statement of fact unsupported by admissible evidence.	The subsequent sentences, supported by citations to Trump's own statements in his tweets, establish that Trump continued to maintain that the election results were illegitimate and that Vice President Pence could overturn the election. Though Trump claims to have "sincerely believed the election results were illegitimate due to fraud," he presents no evidence—including from his own testimony—to support that claim.

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29	That same day, Ali Alexander of Stop the Steal, and Alex Jones and Owen Shroyer of Infowars led a march on the Supreme Court. 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!"	Section II.B. p. 12.	Fns. 39-40 (Jan. 6th Report at 505).	Irrelevant to whether President Trump "engaged in insurrection." Any association with Alexander and Jones is contradicted by testimony that President Trump explicitly excluded Alexander and Jones from speaking at the Ellipse. (TR. 11/01/2023 p. 281:4-11); (TR. 11/01/2023 p. 293:8-11).	Hearsay. See Disputed Fact Nos. 3, 9, and 18, including objections to January 6th Report.	The fact is not asserted to establish Trump's "association" with Alexander and Jones but, rather, to establish Trump's knowledge that supporters were engaging in such rallies, as further evidenced by his tweet responding to the rally, cited in footnote 41 of Objectors' Motion. Nothing in the asserted fact is hearsay, as the chants of the crowd are obviously not asserted for the truth of any matter asserted. The facts regarding the march are admissible findings of the January 6th Report for the reasons

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						discussed at Reply, § II(A).
30	Trump continued to issue tweets encouraging his supporters to "fight" to prevent the certification of the election results.	Section II.B, p. 12.	Fn. 42 (Simi Aff., supra note 5, at Ex. A, 83:20-22 (Ex. 1).	Irrelevant to whether President Trump "engaged in insurrection." See Trump Video Exhibits 1046-1048, 1054, 1074 showing politicians regularly use rhetoric like "fight," but do not mean it as a call for actual physical combat or violence.	All of Simi's testimony was based on President Trump's protected speech and not any actions by President Trump. Simi admitted that all of the "patterns" of speech and behavior that he saw President Trump engage in are normal patterns of political speech. (TR. 10/31/2023, pp. 141:7-142:9). Simi further admitted that his testimony was limited to describing how President Trump's comments were interpreted by far-right extremists. Simi never spoke to a single January 6, 2021 participant, and he testified that President	Trump's tweets encouraging supporters to "fight," which they eventually did at the Capitol on January 6th, is plainly relevant. The fact that certain politicians use "fighting" rhetoric without inciting violence is irrelevant to Professor Simi's testimony, which is specifically about far-right extremists and their understanding of calls to "fight" to advance far-right goals. Trump's purported "objections" to Simi's testimony are not evidentiary objections at all but

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					Trump's intent on or before January 6th was beyond the scope of his opinion. (TR. 10/31/2023, pp. 206:20-207:4). Simi did not take into account First Amendment and standards in evaluating President Trump's speech.	just describe the scope of his testimony.
31	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.	Section II.C., p. 13.	Fn. 46 (Jan. 6th Report at 499-501; Simi Aff., supra note 5, at Ex. A, 17:14-15 (Ex. 1)).	Irrelevant to whether President Trump "engaged in insurrection." The groups referenced in this statement have not submitted testimony in this case, nor has President Trump testified about these groups, nor has President Trump had an opportunity to crossexamine witnesses testifying to these purported findings.	See Disputed Fact Nos. 3, 9, 18, and 30, including objections to January 6th Report.	That extremist groups who participated in the January 6th insurrection began organizing for that event in response to a tweet from Trump is hardly irrelevant. The source of the submitted testimony does not determine its admissibility. The Select Committee's factual findings about those groups' response to Trump's tweet is

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	Factual assertion	Cite in Brief	Claimed Evidentiary Support	Basis for disputing assertion	Evidentiary Objections	Objectors' Response
						admissible for the reasons discussed at Reply, § II(A).
32	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	Section II.C., p. 13.	Fn. 48 (Simi Aff., supra note 5, at Ex. A, 80:13-81:1 (ex. 1)).	See Disputed Fact No. 31.	Speculation. See Disputed Fact No. 30.	See Response to Facts 30 and 31.
33	On December 29, 2020, Alexander tweeted, "Coalition of us working on 25 new charter busses to bring people FOR FREE to #Jan6 #STOPTHESTEAL for President Trump. If you have money for buses or have a company, let me know. We will list our buses sometime in the next 72 hours.	Section II.C., p. 14.	Fn. 53 (January 6th Report, supra note 7, at 532 (Ex. 8)).	See Disputed Fact No. 29.	Hearsay. See Disputed Fact Nos. 3, 9, and 18, including objections to January 6th Report.	See Response to Fact 29 – the fact is not offered to establish an "association" between Trump and Alexander. Nor is it hearsay offered for the truth of the matter asserted. The tweet from the leader of Stop the Steal shows that political extremists were *publicly* organizing for the January 6th even and

	Factual assertion	Cite in Brief	Claimed Evidentiary Support	Basis for disputing assertion	Evidentiary Objections	Objectors' Response
	STAND BACK & STAND BY!"					that they were using Trump's words ("STAND BACK & STAND BY") as a rallying cry. See Response to Facts Nos. 3, 9, and 18. The factual finding that Alexander issues the tweet is admissible for the reasons discussed at Reply, § II(A).
34	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.	Section II.C., p. 14.	Fn. 55 (Jan. 6th Report at 533).	President Trump disputes all facts in this statement.	See Disputed Fact Nos. 3, 9, and 18, including objections to January 6th Report. This is opinion unsupported by any testimony or documentation.	Trump purports to "dispute all facts" stated but does not offer any evidence to dispute them. The cited portion of the January 6th Report contains factual findings regarding Trump's and the White House's communications to supporters about a plan to march to the Capitol following his Ellipse speech as a means to

	Factual assertion	Cite in Brief	Claimed Evidentiary Support	Basis for disputing assertion	Evidentiary Objections	Objectors' Response
						disrupt the vote; those findings are admissible for the reasons discussed at Reply, § II(A).
35	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 analogy to the American Revolution that their plans for the January 6 congressional certification of electoral votes included violent rebellion.	Section II.C., pp. 14-15.	Fn. 58 (Simi Aff. at Ex. A, 29:2-9 (Ex. 1))	No evidence of "threatening terminology." No evidence that any member of the crowd on January 6, 2021, viewed "1776" as a call to violence.	Hearsay. See Disputed Fact Nos. 3, 9, 18, and 30.	As Professor Simi testifies, the references to "1776" by extremists *was* threatening terminology, referring to revolution. Those references are evidence of motive and intent and are not hearsay.
36	By early January 2021, Trump anticipated that the	Section II.C, p. 15.	Fn. 62 (Ex. 12, Letter from Donald	Mischaracterizes the content of Trump's letter – he merely said		The letter speaks for itself and states that Trump anticipated

	Factual assertion	Cite in Brief	Claimed Evidentiary Support	Basis for disputing assertion	Evidentiary Objections	Objectors' Response
	crowd was preparing to amass on January 6 at his behest would be large and ready to follow his command.		J. Trump to The Select Committee to Investigate the January 6th Attack on the U.S. Capitol, at 2-3 (Oct. 13, 2022)).	that he authorized the National Guard because "based on instinct and what I was hearing, that the crowd coming to listen to my speech, and various others, would be a very big one."		the crowd to be "very big" and that the crowd would be there to "listen to [his] speech."
37	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."	Section II.C., p. 15.	Fn. 59 (Jan. 4, 2021 video of Trump GA rally, Bloomberg).	See Disputed Fact No. 30.	See Disputed Fact Nos. 1 and 13.	See Response to Facts 1, 13, and 30. Trump offers no evidence to dispute the substance of his statement or to indicate that his intent was something other than to prevent the peaceful transfer of power.
38	Speakers during these events made remarks indicating that the event to be held at the Capitol the next day would be violent.	Section II.C., p. 15.	Fn. 64 (Jan. 6th Report at 537-38).	See Disputed Fact No. 30.	See Disputed Fact Nos. 3, 9, and 18, including objections to January 6th Report.	See Response to Facts 3, 9, 18, and 30. The Select Committee's factual findings about what was said at Trump's rallies are admissible for the

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	Factual assertion	Cite in Brief	Claimed Evidentiary Support	Basis for disputing assertion	Evidentiary Objections	Objectors' Response
						reasons discussed at Reply, § II(A).
39	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.	Section II.D, p. 17.	Fn. 76 (Jan. 6th Report at 63, 66-67, 539-40).	President Trump has not testified about these issues nor did he crossexamine the witnesses involved.	See Disputed Fact Nos. 3, 9, and 18, including objections to January 6th Report.	The factual findings cited from the January 6th Report establish are admissible for the reasons discussed at Reply, § II(A) and establish that he was personally informed of plans for violent action. Trumps claim that has not testified about these issues is irrelevant as he has had the opportunity to testify in this and other proceedings and has declined the opportunity. See Response to Facts 3, 9, and 18.
40	Statements from Mo Brooks and Giuliani at Ellipse.	Section III.D., p. 19.	Fn. 81-82 (the Hill and WaPo from Jan. 6, 2021).	Cherry-picks statements from the speech out of context. See Disputed Fact No. 30.	Hearsay. See Disputed Fact No. 3, 5, including objections to January 6th Report.	The statements from Mo Brooks and Rudy Giuliani are not hearsay as they are not offered for

	Factual assertion	Cite in Brief	Claimed Evidentiary Support	Basis for disputing assertion	Evidentiary Objections	Objectors' Response
						the truth of anything either person asserted but for the effect on the crowd and the intent and motive of Trump who approved them as speakers. Trump complains of "cherry-picking" out of context but provides no context to support the inference that Brooks and Giuliani's statements were anything but a call to violence. It is unclear why Trump repeats an objection to the January 6th Report as that Report is not cited as a source for either statement.
41	At the Ellipse, an estimated 25,000 people refused to walk through the	Section III.D., p. 19	Fn. 84-85 (January 6th Report, supra note 7, at 585	Heaphy says "we had testimony that he was told about weaponry" but provides no detail	See Disputed Fact No. 3, 9, and 18 (regarding hearsay).	Heaphy's testimony supports the more detailed finding from the January 6th

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	Factual assertion	Cite in Brief	Claimed Evidentiary Support	Basis for disputing assertion	Evidentiary Objections	Objectors' Response
	magnetometers at the entrance. When Trump was informed that people were not being allowed through the monitors because they were carrying weapons…		(Ex. 8); Heaphy Testimony, supra note 74, at 217:9-18 (Ex. 15)).	that would allow President Trump the meaningful ability to investigate this claim.		Report, which is admissible for the reasons discussed at Reply, § II(A), and establishes that Trump ordered the magnetometers to be turned off to allow supporters to bring weapons to the Ellipse rally before the march to the Capitol. Trump does not dispute this. His statement is non-hearsay as the admission of a party-opponent, and the statements made to him are admissible to show the effect on the listener (Trump) and his knowledge regarding the weapons.
42	Trump supporters understood the calls to "fight," not as metaphorical but	Section III.D, p. 21.	Simi Aff., supra note 5, at Ex. A, 49:14-21, 59:7-	See Disputed Fact No. 30.	See Disputed Fact No. 3.	To the extent Trump claims this testimony is irrelevant, he is

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	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.		17, 101:8-102:21, 126:11-19, 221:10-21 (Ex. 1).			simply wrong. Trump's direction to his supporters to "fight" and testimony from a political extremism expert about how Trump's rhetoric would be perceived is highly relevant to show Trump's engagement in insurrection. The fact that certain politicians use "fighting" rhetoric without inciting violence is irrelevant to Professor Simi's testimony, which is specifically about far-right extremists involved with January 6 and their understand of calls to "fight" to advance far-right goals. Trump's purported

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						"objections" to Simi's testimony are not evidentiary objections at all but just describe the scope of his testimony.
43	The attackers, following directions from Trump and his allies, shared the common purpose of preventing Congress from certifying the electoral vote.	Section III.E, p. 22.	Rally on Electoral College Vote Certification, supra note 87; Ex. 2, Hodges Affidavit, at Ex. A, 71:17-21, 7:6-15; Ex. 14, Pingeon Testimony, at 200:25-210:11.	Mischaracterization of evidence. The evidence of "common purpose" was the use of the "Heave-Ho" chant to breach a door, people holding similar flags, and that the officers knew what was happening in the Capitol – this does not demonstrate "the common purpose of preventing Congress from certifying the electoral vote"	"Fact" not supported by the evidence cited.	The evidence cited also includes Trump's speech at the Ellipse, where he ordered his followers to march to the Capitol while discussing the certification of the electoral vote that would be taking place. Given that direction from Trump, the attackers subsequent attack on the Capitol, and their common apparel as they did so, there is only one inference that can be drawn about the

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	Factual assertion	Cite in Brief	Claimed Evidentiary Support	Basis for disputing assertion	Evidentiary Objections	Objectors' Response
						attackers' common purpose.
44	Many were armed with weapons including knives, tasers, pepper spray, and firearms.	Section III.E., p. 22.	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).	No evidence that anyone had firearms. The word "many" mischaracterizes the evidence, in light of the tens of thousands who attended the rally at the Ellipse.	See Disputed Fact Nos. 3, 9, including objections to January 6th Report.	Contrary to Trump's assertion, the factual findings cited from the January 6th Report, which are admissible for the reasons discussed at Reply, § II(A), establish that multiple individuals had firearms. Moreover, the record shows that approximately 25,000 individuals refused to walk through magnetometers because they did not want to be screened for weapons. See January 6th Report at 585.
45	By this point, both the House Chamber and Senate Chamber	p. 24	None.	No evidence that "attackers" had chambers "under control."	Unsupported legal conclusion and subjective	The preceding and subsequent sentences cite to evidence

	Factual assertion	Cite in Brief	Claimed Evidentiary Support	Basis for disputing assertion	Evidentiary Objections	Objectors' Response
	were under the control of the attackers.				statement of fact not supported by evidence.	establishing that the attackers had breached the House and Senate Chambers, forcing the elected representatives to flee. Those facts support the inference that the attackers had control of the chambers.
46	After this, Trump immediately began watching the Capitol attack unfold on live news in the private dining room of the White House.	Section III, p. 25	January 6th Report, supra note 7, at 593 (Ex. 8).	Irrelevant to whether President Trump "engaged in insurrection." See Disputed Fact Nos. 3, 9.	See Disputed Fact Nos. 3, 9, 18, including objections to January 6th Report	It is extremely relevant that Trump was watching live news and was thus aware of the attack as it was unfolding, especially given his subsequent actions—or lack thereof to take action to end the attack or call in reinforcements for struggling law enforcement on the scene. This factual finding from the

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	Factual assertion	Cite in Brief	Claimed Evidentiary Support	Basis for disputing assertion	Evidentiary Objections	Objectors' Response
						January 6th Report is admissible for the reasons discussed at Reply, § II(A).
47	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	Section III, p. 25	Trump Tweet Compilation, supra note 9, at 16 (Group Ex. 7); January 6th Report, supra note 7, at 429 (Ex. 8).	Does not support a conclusion that President Trump "encouraged" or "provoked" the crowd. No statements from any participant or organizer to this effect. No evidence of President Trump's intent. President Trump was exercising his First Amendment rights to speak on a matter of national concern, not to encourage and provoke violence.	See Disputed Fact Nos. 3, 6, 9, including objections to January 6th Report.	Trump does not explain or offer evidence to dispute how a tweet accusing Vice President Pence of not having courage made while attackers were storming the Capitol with Vice President Pence inside was anything other than "encouragement" or "provocation." The subsequent sentence and supporting citation is further evidence that the tweet did indeed provoke the crowd. The tweet itself, based on the timing and in the context of the attack, is evidence of

	Factual assertion	Cite in Brief	Claimed Evidentiary Support	Basis for disputing assertion	Evidentiary Objections	Objectors' Response
	demands the truth.					President Trump's intent.
48	Trump's 2:24 PM tweet "immediately precipitated further violence at the Capitol." Immediately after it, "the crowds both inside and outside the Capitol building violently surged forward."	Section III, p. 25.	January 6th Report, supra note 7, at 86 (Ex. 8).	Implies causation between the Trump tweet and the action of members in crowd, with no evidence that members of the crowd read his tweets. No evidence of a "surge" in the crowds at that time period. Also, the following sentence of the MSJ indicates that this reaction happened 30 seconds later – this is too fast for a unified reaction to a tweet.	See Disputed Fact Nos. 3, 9, including objections to January 6th Report. This conclusion is not a fact and it is disputed.	The factual finding from the Select Committee that the crowds violently surged forward immediately after Trump's tweet is admissible for the reasons discussed at Reply, § II(A). The causal connection is obvious, and no additional evidence is required to establish it. Trump presents no evidence to dispute the connection. He simply states that it is "disputed" and offers armchair speculation about how quickly a crowd can respond to a tweet.
49	Shortly after Trump's tweet, Cassidy	Section III, p. 26.	January 6th Report, supra note 7, at 596	This is not evidence demonstrating that President Trump	This is classic hearsay. See Disputed Fact	At the time Meadows made the statement, it was an

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	Hutchinson and Pat Cipollone 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.		(Ex. 8).	believed Vice President Pence "deserved" violence.	Nos. 3, 9, and 18, including objections to January 6th Report.	excited utterance under Rule 803(2). That hearsay exception applies when there is (1) "an occurrence sufficiently startling to produce a spontaneous and unreflecting statement," (2) "an absence of time for the declarant to fabricate the statement," and the statement "relate[s] to the circumstances of the occurrence. *People v. Sutton*, 233 Ill. 2d 89, 107, (2009). Each element is met here given that Meadows made his statement about the startling occurrence of a violent attack, threats on the Vice President, and the President's approval

	Factual assertion	Cite in Brief	Claimed Evidentiary Support	Basis for disputing assertion	Evidentiary Objections	Objectors' Response
						of the situation. The Select Committee's finding that he made that statement is admissible for the reasons discussed at Reply, § II(A).
50	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… McCarthy urged Trump on the phone to make a statement directing the attackers to withdraw, Instead, Trump responded with words to the	Section III, p. 26.	January 6th Report, supra note 7, at 598 (Ex. 8).	No evidence that anyone was "trapped" within the Capitol, and this characterization is contradicted by the fact that Pence and others were evacuated. Irrelevant what Trump asked or said to those who were "trapped."	Hearsay within the January 6th report. See Disputed Fact Nos. 3, 9, and 18, including objections to January 6th Report.	That Pence and certain others were able to evacuate the Capitol with the assistance of Secret Service does not establish that others were able to do so, but whether leaders were "trapped," "unable to leave for a time while the attack was ongoing," or similar is beside the point. Trump's remark identifying and sympathizing with the attackers is certainly relevant to show his intent. It is a statement of a party-opponent and

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	Factual assertion	Cite in Brief	Claimed Evidentiary Support	Basis for disputing assertion	Evidentiary Objections	Objectors' Response
	effect of, "Well, Kevin, I guess they're just more upset about the election theft than you are."					is thus not hearsay. Nor is the statement of McCarthy hearsay as it is offered for the effect on Trump. The factual finding that this conversation occurred is admissible for the reasons discussed at Reply, § II(A).
51	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.	Section III, p. 27.	January 6th Report, supra note 7, at 599, 601-04.		This is classic hearsay. See Disputed Fact Nos. 3, 9, and 18, including objections to January 6th Report.	The statements made to Trump encouraging him to make a statement are not hearsay at all; they are not offered for the truth of the matter asserted but to show that Trump heard and rejected their encouragement. The factual finding that these statements were made is admissible for the

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						reasons discussed at Reply, § II(A).
52	Many attackers saw this tweet but understood it not to be an instruction to withdraw from the Capitol, and the attack raged on.	Section III, p. 27.	See e.g., Simi Aff., supra note 5, at Ex. A, 78:18-23 (Ex. 1).	See Disputed Fact Nos. 3, 9. 30.	See Disputed Fact Nos. 3, 9, 18, and 30. Simi never spoke with or interviewed a single participant in the events of January 6, 2021.	See Response to Facts 3, 9, 18, and 30. The fact that the attack continued beyond Trump's 2:38 PM tweet is beyond dispute.
53	Trump did not himself order any additional federal military of law enforcement personnel to help retake the Capitol.	Section III, p. 27.	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.	This omits Kash Patel's testimony that Trump authorized 10-20K national guardsmen. (TR. 11/01/2023, pp. 205:5-206:25); (TR. 11/01/2023, p. 212:1-3); (TR. 11/01/2023, p. 212:17-20); TR. 11/01/2023, p. 214:9-13)	See Disputed Fact Nos. 3, 9, and 18, including objections to January 6th Report.	Trump's citation to Patel's testimony does not actually dispute the fact. Though Patel claims that Trump authorized guardsmen days prior to January 6th, Trump presents no evidence that he ordered additional law enforcement to retake the Capitol after it had been breached. The January 6th Report findings are admissible for the reasons discussed at

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						Reply, § II(A). Trump does not object to the other evidentiary sources cited.
54	In fact, when [Trump] 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.	Section III, p. 28.	None (but arguably FN 137 applies to this statement, which says "January 6th Report, supra note 7, at 579-80 (Ex. 8)).	"After multiple deaths"– there were not multiple deaths. No evidence of multiple deaths. No evidence that members of crowd saw video and responded "precisely." Further, statement is directly contradicted by D.C. Mayor Muriel Bowser's statement and Tom Bjorklund's testimony.	See Disputed Fact Nos. 3, 9, including objections to January 6th Report.	It is a matter of public record that multiple people died during the January 6th attacks and that even more participants, including law enforcement officer, died soon after. But in any event, the evidence cited in connection with the subsequent sentences establishes that Trump's video had the effect of causing the attackers to disperse. Trump vaguely references Mayor Bowser's statement and Tom Bjorklund's testimony but does

	Factual assertion	Cite in Brief	Claimed Evidentiary Support	Basis for disputing assertion	Evidentiary Objections	Objectors' Response
						not identify the specific portions of their statement or testimony upon which he relies. The Select Committee's finding that attackers began to disperse following the release of Trump's video is admissible for the reasons discussed at Reply, § II(A).
55	Immediately after Trump uploaded the video to Twitter, the attackers began to disperse from the Capitol and cease the attack	Section III, p. 28.	January 6th Report, supra note 7, at 606 (Ex. 8).	This conclusion is directly contradicted by Murriel Bowser's public text and Tom Bjorklund's testimony.	See Disputed Fact Nos. 3, 9, and 18, including objections to January 6th Report.	See Response to Fact 54.
56	Around 5:20 PM, the D.C. National Guard began arriving. This was not because Trump ordered the National	Section III, p. 28-29.	Banks Testimony, supra note 135, at 255:21-256:18 (Ex. 13); January 6th Report,	Banks offered legal opinions as a professor of law. He did not testify to any of the events on January 6th. See also Disputed Fact No.	Banks did not testify to any of these facts. January 6th report is hearsay. These facts are not supported by evidence in the record. See Disputed Fact Nos.	Trump bizarrely asserts that Professor Banks did not testify regarding whether Trump authorized the National Guard, but

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	Factual assertion	Cite in Brief	Claimed Evidentiary Support	Basis for disputing assertion	Evidentiary Objections	Objectors' Response
	Guard to the scene; he never did. Rather, Vice President Pence – who was not actually in the chain of command of the National Guard – ordered the National Guard to assist the beleaguered police and rescue those trapped at the Capitol.		supra note 7, at 578, 724, 747 (Ex. 8).	53. Irrelevant to whether President Trump "engaged in insurrection."	3, 9, and 18, including objections to January 6th Report.	the cited testimony speaks for itself and shows that he did. The cited factual findings from the January 6th Report regarding Trump's failure to order the National Guard are admissible for the reasons discussed at Reply, § II(A). And Trump's failure to call in law enforcement despite the ability to do so to stop the attack is plainly relevant to whether he engaged in insurrection.
57	Even after Congress reconvened, Trump's attorney Eastman continued to urge Pence to delay the certification of the electoral results.	Section III, p. 29	167 Cong. Rec. H98; January 6th Report, supra note 7, at 669 (Ex. 8); Swalwell Testimony, supra note 114, at 169:11-	Irrelevant to whether President Trump "engaged in insurrection."	Hearsay. See Disputed Fact Nos. 3, 9, and 18, including objections to January 6th Report.	Eastman's continued urging on Trump's behalf to delay the certification is evidence of Trump's intent to continue to cling to power despite the attack that had just

	Factual assertion	Cite in Brief	Claimed Evidentiary Support	Basis for disputing assertion	Evidentiary Objections	Objectors' Response
	Ultimately, though six Senators and 121 Representatives voted to reject Arizona's electoral results and seven Senators and 138 Representatives voted to reject Pennsylvania's results, Biden's election victory was finally certified at 3:32 AM, January 7, 2021.		20 (Ex. 16).			occurred. There is no hearsay because Eastman was acting on behalf of Trump (a party opponent) and because his communications to Pence are not offered for the truth of the matter asserted but to show Trump's intent.
58	Professor Peter Simi, an expert in political extremism testified that the Trump supporters participating in January 6 understood that Trump's calls to	Section III, p. 29.	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).	See Disputed Fact No. 30.	Simi's testimony was about how groups generally understood Trump's speech. But he did not personally interview or talk to a single January 6th participant. He relied entirely curated, incomplete, and doctored videos from	See Response to Facts 3, 9, and 30. Trump offers no evidence the videos from the January 6th report were "doctored."

	Factual assertion	Cite in Brief	Claimed Evidentiary Support	Basis for disputing assertion	Evidentiary Objections	Objectors' Response
	"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.				the January 6th report. See Disputed Fact No. 3, 9, and 30, including objections to January 6th Report.	
59	In total, more than 250 law enforcement officers were injured as a result of the January 6th attacks, and five police officers died in the days following the riot.	Section III, pp. 29-30.	January 6th Report, supra note 7, at 711 (Ex. 8).	No evidence that anyone died as a result of events from January 6th, except for one civilian who was shot in the face at close range by a Capitol Police Officer. No evidence any police officer died as a result of the riot. DC Coroner ruled one officer's death –Officer Sicknick – as resulting from "natural causes."	See Disputed Fact Nos. 3, 9, including objections to January 6th Report.	Though Trump purports to dispute the number of deaths resulting from the January 6th attack, he offers no evidence in support. The factual findings from the January 6th report regarding the number of police officers who were injured or died are admissible for the reasons discussed at Reply, § II(A).

	Factual assertion	Cite in Brief	Claimed Evidentiary Support	Basis for disputing assertion	Evidentiary Objections	Objectors' Response
60	On May 10, 2023, during a CNN town hall, Trump maintained his position that the 2020 presidential election was a "rigged election" stated his inclination to pardon "many of" the January 6th rioters who have been convicted of federal offenses, and acknowledged that he had control of the January 6th attackers, who "listen to [him] like no one else"	P. 30.	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-	Mischaracterizes the evidence. President Trump never claimed he had control over January 6th participants. Rather, he claimed that his supporters listen to him "like no one else."	See Disputed Fact No. 5.	Trump's own statements speak for themselves.

	Factual assertion	Cite in Brief	Claimed Evidentiary Support	Basis for disputing assertion	Evidentiary Objections	Objectors' Response
			town-hall-trump/index.html.; id at 13:22; id at 8:24.			
61	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 hostages, what's happened. And it's a shame."	P. 30.	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.	Statements decrying prosecutions, years after the events of January 6, 2021, are irrelevant to whether President Trump "engaged in insurrection."	See Disputed Fact No. 5.	Trump's sympathetic treatment and characterization of the criminal January 6 attackers is highly relevant to show his intent and support for the January 6th insurrection.
62	On December 3, 2022, in a post on social media website Truth	P. 30	Donald J. Trump (@realDonald Trump),	Irrelevant to the determination of whether the events of		Trump's statement in opposition to the Constitution demonstrates his

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	Factual assertion	Cite in Brief	Claimed Evidentiary Support	Basis for disputing assertion	Evidentiary Objections	Objectors' Response
	Social, Trump called for "termination of all rules, regulations and articles, even those found in the Constitution.		TRUTH SOCIAL (Dec. 3, 2022, 6:44 AM), https://truthsocial.com/@realdonaldtrump/posts/109449803240069864	January 6th constitute an insurrection.		disrespect for the Constitution and his intent to engage in an insurrection against it.

Exhibit 2

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

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

STIPULATED ORDER REGARDING TRIAL TRANSCRIPTS
AND EXHIBITS FROM THE COLORADO ACTION

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

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

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

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

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

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

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

Dated: January 24, 2024

SO STIPULATED:

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

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

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DONALD J. TRUMP

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

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ENTERED:

Hearing Officer Clark Erickson